Legal developments affecting employee benefits

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Cigna v. Amara— The Supreme Court weighs in on ERISA cases premised on erroneous or misleading plan communications

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In *CIGNA v. Amara*, the Supreme Court enunciated important principles that will guide future ERISA lawsuits involving erroneous or misleading plan communications. For years there has been uncertainty as to how a court should analyze a benefits claim brought by a participant premised on a summary plan communication which differed in some material respect from the plan document. This decision resolves that ambiguity by holding that the summary plan description and similar participant communications should not be treated as the "plan," but that participants who have been harmed by erroneous or misleading summary plan communications may have claims against plan fiduciaries which could entitle them to equitable remedies.

The facts of the case are fairly complicated, but a superficial understanding of them is important. CIGNA converted its traditional pension plan to a cash balance plan. In doing so, CIGNA converted the value of each participant's accrued benefit as of the conversion date into an opening account balance. The participant's account balance was then credited with new contributions and interest after the conversion date. The plaintiffs brought a class action on behalf of participants who were harmed by this conversion alleging that the communications describing the conversion were intentionally misleading.

The district court concluded that the participant communications that CIGNA used to explain this change were inaccurate, misleading, and violated ERISA's disclosure requirements. Accordingly, in a decision that was affirmed by the Second Circuit, the district court ruled that CIGNA should provide each plaintiff with a benefit that was equal to the benefit that the participant had accrued under the traditional pension formula as of the conversion date, plus a benefit equal to what the participant earned under the cash balance formula after the conversion date (i.e., without converting the traditional pension benefit into an opening cash balance account). Moreover, the district court held that the evidence created a presumption in favor of the plaintiffs that they had been "likely harmed" and that class-applicable relief was appropriate.

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To understand the import of this case, it is first necessary to understand the types of claim that participants can bring under ERISA. ERISA sets forth very specific provisions that a participant must use as the basis for bringing a lawsuit. Generally, a participant can bring an action under: (i) ERISA section 502(a)(1)(B) to recover benefits due the participant under the terms of the plan; (ii) ERISA section 502(a)(2) to seek recovery on behalf of the plan against a fiduciary for breaching his/her fiduciary duties; or (iii) ERISA section 502(a)(3) to obtain appropriate equitable relief to redress violations of ERISA or the terms of the plan.

The central issue discussed by the Supreme Court was whether the plan communications constituted a part of the plan so that the plaintiffs could bring a lawsuit under ERISA section 502(a)(1)(B) to recover benefits under the misleading plan communications. The district court and Second Circuit ruled that the plan communications should be treated as part of the plan, and therefore participants could sue for plan benefits under ERISA section 502(a)(1)(B) based on these communications.

The Supreme Court overruled this holding. In particular, the Supreme Court noted that ERISA makes important distinctions between the official plan document and other plan communications (such as the summary plan description) and that the plan document and other plan communications are not one and the same. For example, the Court noted that the plan sponsor is responsible for adopting and amending the plan document. In doing so, the plan sponsor is generally treated as a settlor, not a fiduciary. In contrast, the plan administrator is responsible for communicating the terms of the plan and furnishing summary plan descriptions. In doing so, the plan administrator is operating in a fiduciary capacity, and its actions are judged through that prism. Given ERISA's clear delineations between the plan and the summary plan description, the Supreme Court concluded that participants cannot bring a cause of action for a misleading or erroneous summary plan description under ERISA section 502(a)(1)(B), which allows participants to sue for benefits under the plan. Specifically, the Supreme Court held:

> [W]e conclude that the summary documents, important as they are, provide communications about the plan, but that their statements do not themselves constitute the *terms* of the plan for purposes of §502(a)(1)(B).

The Supreme Court also noted that the district court's holding was internally inconsistent in that it concluded that the participants could sue for benefits under the plan under section 502(a)(1)(B), but the actual relief it granted participants was to reform the terms of the plan. Instead of providing participants the benefits specified be the terms of the plan, the district court reformed the plan to provide participants with a benefit that it believed to be fair and consistent with the expectations that were created by the misleading communications. In other words, the remedy the district court adopted was inconsistent with the terms of the plan, which also made the remedy inconsistent with an action under section 502(a)(1)(B). In effect, the district court granted participants an equitable remedy under section 502(a)(1)(B) when that section provides no such relief.

The Supreme Court picked up on this issue in the second half of its opinion. Prior to *CIGNA v. Amara*, there were a number of cases that suggested the range of equitable remedies under ERISA section 502(a)(3) were quite limited. These cases were based on a 1993 Supreme Court decision, *Mertens v. Hewitt*, which many lower courts had interpreted as severely restricting the equitable relief available under ERISA section 502(a)(3). Presumably, this was why the district court, whose

sympathies clearly sided with the plaintiffs, did not rule on the plaintiff's remedies under ERISA section 502(a)(3). In the second half of its opinion, which did not go so well for employers, the Supreme Court ruled that the district court did not need to be so reluctant to consider equitable remedies under ERISA section 502(a)(3) because the available equitable remedies were broader than what many lower courts had thought. Specifically, the Supreme Court held that participants could, under the right facts, bring a lawsuit under ERISA section 502(a)(3) seeking appropriate equitable relief for erroneous or misleading plan communications and that the relief could result in monetary awards to participants.

In particular, under the right facts, the Supreme Court concluded that there were a number of equitable remedies that the district court could consider, including injunction, plan reformation, estoppel, and surcharge. While the Supreme Court did not hold that any of these equitable remedies should necessarily be granted to the plaintiffs, it expressly held that these remedies were within the district court's arsenal of potential remedies to consider and apply under the right facts.

Accordingly, the Supreme Court left the door wide open for the district court on remand to conclude that the facts of this case warranted equitable relief and that such relief could include monetary damages. In reaching this decision, the Supreme Court distinguished its decision in *Mertens* by stating that equitable relief was not appropriate in *Mertens* because that case was brought by a beneficiary against a firm providing actuarial services to the plan, and the firm was not acting as a fiduciary. The Supreme Court noted that a breach of services claim against a non-fiduciary was not traditionally viewed as an equitable claim. In contrast, the *CIGNA* case was brought by plan participants against plan fiduciaries. Moreover, plan fiduciaries have responsibilities to plan participants that are similar to the responsibilities that common law trustees have to trust beneficiaries, and courts have traditionally granted beneficiaries a variety of forms of equitable remedies against trustees for breaching their fiduciary duties.

Lower courts will now need to grapple with what types of equitable remedies are appropriate to apply in ERISA cases and under what facts they should be applied. This will keep the courts and the ERISA bar busy for years. For example, the original issue the Supreme Court sought to address was whether a showing of "likely harm" is sufficient to entitle plan participants to recover benefits based on faulty disclosures. The Supreme Court held that there is no single standard of harm plaintiffs must show to sue based on an erroneous or misleading plan communication. Instead, the answer to this will depend on the type of equitable remedy the plaintiffs are seeking. For example, an estoppel claim requires participants to show detrimental reliance, which is a higher standard to prove than "likely harm." However, detrimental reliance is not a prerequisite for other equitable remedies. For example, the Supreme Court held that the equitable remedy of "surcharge" only requires a showing of actual harm and causation, which is a less rigorous standard than detrimental reliance.

In sum, there is a little bit of something in this opinion for both plan sponsors and participants. Plan sponsors can find some comfort in the fact that summary plan communications will not be treated as the plan document, and participants cannot bring a lawsuit under ERISA section 502(a)(1)(B) for faulty plan communications. Plan participants, on the other hand, can obtain comfort from the fact that the Supreme Court has granted lower courts greater flexibility in applying equitable remedies than many practitioners thought possible.

In terms of practical takeaways you can glean from this case, here are a few thoughts:

- It is extremely important to be straightforward and accurate in all participant communications. In particular, avoid "puffery" and statements that try to downplay cuts in benefits.
- All material plan changes should be communicated to participants in a manner that accurately apprises participants of the impact of the change—the good and the bad.
- Plan administrators should consider adopting procedures to ensure all material plan communications are properly vetted for accuracy, completeness, and satisfaction of all legal requirements.
- The application, scope and breadth of equitable remedies that courts will apply in ERISA cases are unclear and will be determined by future litigation. For example, future litigation will determine what "actual harm" a participant must prove for the equitable remedy of surcharge, as well as what monetary damages are appropriate under surcharge.
- This case could make it more difficult for plaintiffs' attorneys to bring class actions for claims premised on faulty communications because equitable remedies are frequently participant specific.
- Because plaintiffs will now premise their theories for bringing these sorts of actions as breaches of fiduciary duty to properly communicate the terms of the plan, rather than a claim for plan benefits, the *CIGNA* decision may result in fiduciary liability insurance becoming more expensive and could create questions as to whether recoveries should be paid from plan assets.
- At this point, it is impossible to determine whether participants or fiduciaries will benefit more from this decision; that determination will depend on how the lower courts choose to interpret the decision.

The *CIGNA* decision makes it clear that ERISA lawsuits premised on erroneous or misleading plan communications are not going away. Accordingly, the best course of action for plan sponsors is to try their best to avoid them. This can be achieved by paying close attention to participant communications and avoiding the types of erroneous and misleading statements that got CIGNA into trouble.

As always, if you have any questions or would like to discuss this case in more detail, please do not hesitate to contact your Nixon Peabody benefits attorney:

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