To read the transcript of the oral argument in *CIGNA Corp. v. Amara,* please click here.

The Supreme Court Examines Requirements for ERISA Plan Beneficiaries to Recover Additional Benefits Based on Inconsistency Between the Plan's Summary Plan Description and the Plan Itself

December 3, 2010

INTRODUCTION

The Supreme Court heard oral arguments Tuesday in *CIGNA Corp. v. Amara*, No. 09-804, a case in which the Court is expected to decide whether "likely harm" suffices to entitle Employee Retirement Income Security Act of 1974 ("ERISA") plan beneficiaries to recover benefits based on an alleged inconsistency between the explanation of benefits in the Summary Plan Description ("SPD") and the terms of the plan itself, or whether a greater showing such as detrimental reliance must also be established.

The federal circuit courts are divided on the proper standard for allowing ERISA plan beneficiaries to recover when an SPD promises greater benefits than the plan actually provides. To recover, the Second Circuit has held that a plan beneficiary must merely show "likely harm." Many other circuits, including the First, Fourth, Seventh, Eighth, Tenth, and Eleventh Circuits, impose a stricter standard, requiring proof that the beneficiaries relied on an SPD or were prejudiced by the inconsistency. The Third, Fifth, and Sixth Circuits, by contrast, impose a more lenient standard, requiring only a material conflict between the SPD and the plan itself. The Court here is poised to resolve this split among the circuits.

BACKGROUND

ERISA requires that administrators of ERISA-qualified pension plans provide plan participants with SPDs that summarize the plan's terms. SPDs must be "written in a manner calculated to be understood by the average plan participant" and be "sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan." 29 U.S.C. § 1022(a).

ERISA provides participants and beneficiaries two primary means for bringing claims for violations of the act. First, a participant or beneficiary may bring a civil action "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan." 29 U.S.C. § 1132(a)(1)(B). Second, a participant or beneficiary may bring an action to

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"obtain other appropriate equitable relief" for violations of ERISA or the plan. 29 U.S.C. § 1132(a)(3). Section 1132(a)(1)(B) is distinguished from § 1132(a)(3) by its requirement that the rights or benefits that the participant or beneficiary seeks to enforce arise from the plan itself, not merely from ERISA.

In 1998, CIGNA transitioned from its original employee pension plan, an ERISA-governed defined benefit plan, to a new cash balance pension plan.[1] Under the old defined benefit pension plan, employees earned benefits over time based on their service and salary and received an annuity that provided them with an annual benefit payable for life upon retirement. Under the new cash balance pension plan, employees still earned benefits over time based on service and salary, but each employee had a hypothetical account made up of pay credits based on service and salary as well as interest credits. At retirement, employees could receive the amount in their hypothetical account either as a lump sum or in the form of an annuity.

In making this transition, CIGNA converted each plan participant's accrued benefit under the old plan into a lump sum and credited that amount to each participant's new cash balance plan account as an opening balance. Participants thereafter accrued additional benefits under the new cash balance plan based on annual pay credits and quarterly interest credits. Under the new plan, participants were guaranteed to receive no less than their accrued benefit under the old plan at the time of the transition. Absent that guarantee, because of differences in the way that benefits were calculated under the new plan, the payout from the benefits accrued under the new plan were potentially lower than under the old plan. In situations in which value of a participant's benefits under the original plan was greater than the under the new plan, there was a period of time when the participant would work and increase the value of their benefits under the new pension plan, but not increase their actual retirement payout because a larger balance in the pension account was required to receive the same distributions. During this time, benefits accumulated by the participant under the new plan "wore away" the difference in value between the plans until the value of the benefits under the new plan exceeded the lump sum benefits credited from the old plan. In October 1998, CIGNA issued a SPD summarizing the terms of the new plan for participants. The SPD did not disclose the possibility of "wear away."

In 2001, respondents filed a class action lawsuit against CIGNA in the United States District Court for the District of Connecticut claiming that the cash balance plan itself, and the SPD describing the cash balance plan transition, violated ERISA. The District Court held that the cash balance plan itself did not violate ERISA, but that CIGNA's SPD disclosures were inadequate and, in some instances, misleading because they failed to inform the participants of the possibility of "wear away."

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[1] In a defined benefit plan, an employee's account balance is notional and is based upon a benefit formula set forth in the pension plan—e.g., the formula may provide that an employee's annual pension benefit is a percentage of the employee's final salary multiplied by the employee's years of service. A cash balance plan is a specific type of defined benefit plan in which an employee's hypothetical account is made up of two credits: "pay credits" and "interest credits." Pay credits can be based upon years of service, and are credited to an employee's notional account as a percentage of the employee's pay (e.g., an employee making $50,000 annually who is entitled to a 5% pay credit based on years of service will have $2,500 credited to his or her account that year). Interest credits are the same for all employees, and are credited to the notional account by applying a common interest rate to the account balance.

The District Court then held that the class could recover for the inadequate disclosures in the SPD if plan participants or beneficiaries were likely to have been harmed as a result of a deficient SPD, with the burden shifted to the employer to show that the deficient SPD was in fact harmless error. The District Court specifically rejected CIGNA's argument that the plan participants or beneficiaries must show detrimental reliance on the inadequate SPD. The District Court found that respondents had made an initial showing of likely harm in this case because the SPD likely and reasonably led plan participants to believe that wear away was an unlikely result of the plan transition. The District Court rejected CIGNA's argument that it had rebutted the showing of likely harm because no class members' benefits would have changed due to their lack of power to prevent the plan amendment. The court reasoned that the SPD deficiency deprived class members of the opportunity to protest the implementation of the amendment, leave for another employer, or promptly file a lawsuit. In conclusion, the District Court held that the terms of the new plan had been modified by the SPDs.

CIGNA appealed to the Second Circuit Court of Appeals which summarily affirmed the District Court.

On June 28, 2010, the Supreme Court granted CIGNA's petition for writ of certiorari.

SUMMARY OF THE ARGUMENT

"[Y]ou can't require, it seems to me, each individual to make a calculation about whether they have actually been harmed, whether there is detrimental reliance."

CHIEF JUSTICE ROBERTS

At oral argument, CIGNA's counsel began by arguing that the lower courts erred in permitting recovery under ERISA § 502(a)(1)(B), which allows for recovery of benefits due under the plan, because the SPD is not part of the plan itself and representations in the SPD did not create benefits due under the plan. Justice Kagan challenged the idea that the SPD was not a plan document, observing: "[W]e have several times referred to the plan as having a range of documents associated with it, not as having just a single written instrument . . . ." She noted that because "the statute itself" refers to "documents and instruments, in the plural . . . one would think that the SPD is . . . one of those documents and instruments that govern the plan." CIGNA's counsel responded that the text of ERISA, in 29 U.S.C. §§ 1024(b)(2) and 1024(b)(4), refers to the "summary plan description . . . and/or . . . the . . . instruments under which the plan was established," and that the statute's distinction between the summary and the plan must be construed to mean "that the summary plan description is a separate document."

CIGNA's counsel also noted that the SPDs themselves state that if there is a contradiction between the SPD and plan, the plan governs. CIGNA's counsel argued that if plans could not say that inconsistent SPD provisions were trumped by the underlying plan, then long, complex SPDs would be drafted to avoid inconsistencies. Justice Ginsburg pointed out the drafting of long and complex SPDs would also violate ERISA, which "requires a summary to be understandable and not prolix." CIGNA's counsel responded that this is a Catch-22 CIGNA was trying to avoid.

Justice Breyer then raised the likely harm standard—the issue presented to the Court on certiorari—asking why, if the remedy was granted under ERISA § 502(a)(3), which permits courts to impose appropriate equitable relief, the likely harm standard was inappropriate. CIGNA's counsel responded that § 502(a)(3) provides *only* for "remedies that are available in equity," and that equity requires detrimental reliance, which is not encompassed in the likely harm standard. Chief Justice Roberts expressed concern with

"If the SPD is the plan and the SPD says you get certain benefits . . . , then you get the benefits under the SPD, period. It doesn't matter whether there's likely harm or reliance or anything else, right?"

JUSTICE ALITO

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the implementation of the detrimental reliance standard, stating that "you can't require, it seems to me, each individual to make a calculation about whether they have actually been harmed, whether there is detrimental reliance." CIGNA's counsel maintained that Congress provided an equitable remedy and that "the laws of equity would require that the person . . . demonstrate in some way that they were harmed."

Respondents' counsel argued that the detrimental reliance standard is not found in the text of ERISA. Justice Kennedy noted that "if reliance is not required, then there must be some [other] basis" for recovery under the plan. Respondents' counsel responded that the remedy under either § 502(a)(1)(B) or § 502(a)(3) would be an injunction rendering the unfavorable plan provision undisclosed in the SPD ineffective. Justice Alito turned to the likely harm standard, asking "if the SPD is part of the plan, then where does the 'likely harm' standard come from? . . . If the SPD is the plan and the SPD says you get certain benefits . . . , then you get the benefits under the SPD, period. It doesn't matter whether there's likely harm or reliance or anything else, right?" Respondents' counsel replied that the problem was "more of a nondisclosure issue," because the statute refers to material modifications. Likely harm was important, then, because it showed materiality. In response, Chief Justice Roberts stated that grounding "a nondisclosure claim on the theory that the summary is part of the plan" was "a very tough argument," because "the whole point of a summary is not to disclose everything" in the plan. Justice Alito explored the practical effect of Respondents' argument: "If you issue a succinct SPD, you risk misleading the recipients as to the contents of the plan and you may have financial liability. If, on the other hand, you issue . . . an SPD that is comprehensive, well, the worst that can happen, according to what you just said, is you could be faced with an injunction to provide a more concise and comprehensible statement."

The United States as amicus curiae also argued before the Court, siding with Respondents and asking the Court to uphold the likely harm standard. The United States' counsel argued that this case was akin to a contract case where the participants were promised benefits under the SPD. Justice Alito wondered where the "likely harm" standard would come from if this was akin to a contract case, since under contract law parties are "entitled to [their rights] under the contract," regardless of whether the contracting parties were harmed. The Deputy Solicitor General responded that likely harm is needed to show that the employee could have reasonably relied on the provision if informed, and thus the likely harm standard identifies when a failure to provide notice is akin to a breach of contract. He characterized this situation as equivalent to the insurance context, where certificates of insurance under group insurance plans that are provided to insureds govern over the underlying policy. In response, Justice Scalia asked: "But we have a statute here which says that it is the plan that governs. . . . [D]on't you think that's a crucial difference?" The Deputy Solicitor General replied that the same statute requires employers "to furnish the employee the essential information in the plan," and that the likely harm standard appropriately measured whether differences between the SPD and the underlying plan were material.

IMPLICATIONS

In deciding this case, the Court may determine the burden that plan participants and beneficiaries must meet in order to recover for deficiencies in a SPD. If an SPD is considered part of an ERISA plan, plan fiduciaries could be required to prepare significantly more detailed SPDs.

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