United Actuarial Services, Inc.
Actuaries and Consultants

2011-31

May 18, 2011

CLIENT BULLETIN

Supreme Court Limits ERISA Benefit Claims To The Language of the Plan Document

Holding The SPD Is Not Part Of The Plan Document

In this case, *CIGNA Corporation, et al., v. Amara, et al.*, 2011 WL 1832824, Cause No. 09-804, the U.S. Supreme Court settled the question of whether plan participants can seek relief under *ERISA* Section 501(a)(1)(B) based upon the terms of a Summary Plan Description (SPD) and/or summaries of Plan changes such as Summaries of Material Modifications (SMMs) or *ERISA* Section 204(h) notices that are contrary to the terms of the Plan Document.

The Court's answer was "No." Section 501(a)(1)(B) only authorizes participants to bring an action to recover benefits due under the Plan Document. An SPD is not part of the Plan. The Court reversed a District Court's and Second Circuit's interpretation and remanded the case back to the District Court for further action.

The case concerned the conversion of a defined benefit plan into a cash balance plan. The plaintiffs alleged the summaries of the changes said one thing and the Plan another and they were entitled to hold the plan sponsor to the more glowing promises about the Plan in the summaries about the change. The intricacies of the case are left for the reader to enjoy and the case is available by "*clicking here*."

The Supreme Court said that an action under Section 501(a)(1)(B) can only be brought based upon the terms of the Plan, rejecting the argument of the U.S. Department of Justice that the "Plan" includes the SPD – that is, rejecting that the terms of the summaries are terms of the Plan. The holding applies equally to pension and health plan SPDs, etc.

Although the opinion was 8-0 (Justice Sotomayar did not participate), the Justices were split into two camps, with five Justices joining in one opinion that essentially said *ERISA* Section 501(a)(1)(B) does not authorize such relief on anything other than the Plan Document, to which they added a lengthy discussion of equitable relief under *ERISA* Section 501(a)(3) as a roadmap for the District Court to consider on remand. The other two Justices (Scalia and Thomas) concurred with that opinion to the extent it held that Section 501(a)(1)(B) only authorizes relief based

Prepared by Mike Ewing, J.D.
Director of Research
United Actuarial Services, Inc.
(317) 580-8659 • Fax (317) 580-8651
email: mewing@unitedactuarial.com

upon the Plan Document. Scalia and Thomas rejected the majority's discussion of the possible applicability of equitable relief under Section 501(a)(3)(B) as "*blatant dictum*" and "*utterly irrelevant*". This unanimous (8-0) opinion that participant's rights under Section 501(a)(1)(B) are to be based upon the Plan Document and not upon representations under the SPD, SMMs or summary 204(h) Notices will end the uncertainty that benefit claims can be made based on summary descriptions about the Plan that may be contrary to the terms of the Plan, at least under Section 501(a)(1)(B). In rejecting the Department of Justice's contrary interpretation, the Court said:

> *"Finally, we find it difficult to reconcile the Solicitor General's interpretation with the basic summary plan description objective: clear, simple communication. See ERISA Sections 2(a), 102(a), 29 U.S.C. § 1001(a), 1022(a) (2006 ed.). To make the language of a plan summary legally binding could well lead plan administrators to sacrifice simplicity and comprehensibility in order to describe plan terms in the language of lawyers."*

However, after making that clear, the Court muddied the waters by citing the equitable maxim that "*equity suffers not a right to be without a remedy*" and then discussing with at least a hint of approval possible equitable remedies the effect of which "smell" of money damages, i.e. reformation, estoppel and an equitable surcharge. By *distinguishing* earlier equitable relief rulings, the Court perhaps signaled its intention to "fix" these earlier Byzantine rulings limiting equitable relief under Section 501(a)(3)(B) that at times have left injured parties with no recourse for their injuries. *This is a complex matter and we will watch to see if the case makes its way back up to the Supreme Court again for clarification of what equitable remedies are available in this type of situation. The Court opined that an "injured party" must show actual harm and causation from the breach of any ERISA duty before being entitled to "equitable relief".*

Of course, where plan sponsors take advantage of a DOL Opinion Letter dated January 23, 1981, allowing an SPD and Plan Document to be one document, the possibility of a disconnect between the Plan Document and SPD vanishes. This "combo" approach works well with health plans but not as well with pension plans which are usually more complex than health plans.

The Court's opinion will give some relief to Plan Sponsors who feared that adhering to the notion that an SPD should be a summary of rights, as outlined in the SPD content regulation 29 CFR Section 2520.102-3, would expose them to claims for benefits based upon apparent (or manufactured) inconsistencies between the Plan Document and the SPD.

In any event, SPD's must still be accurate summaries of the Plan that comply with the SPD regulations…..which is often a Herculean task in its own right. Like the TV commercials that warn the viewer, "*Don't attempt this stunt on your own,*" drafting SPDs, and other summary documents is best left to trained professionals. At the very least, seeking professional advice is prudent.

* * *