



## CLIENT BULLETIN

### ***CIGNA Corporation, et al., v. Amara, et al – Part II***

### ***The Supreme Court on Possible Equitable Relief for Misrepresentations of Plan Sponsors To Plan Participants***

In [Client Bulletin 2011-31](#), we discussed the case of *CIGNA Corporation, et al., v. Amara, et al.*, 2011 WL 1832824 (S. Ct.), Cause No. 09-804 (“CIGNA case”). In this case, 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 or such summaries of changes are not part of the Plan. The Court reversed a District Court’s and Second Circuit’s interpretation to the contrary and remanded the case back to the District Court for further action. The intricacies of the case are left for the reader to enjoy and the case is available by “[clicking here](#).”

While rejecting relief under Section 501(a)(1)(B), the Supreme Court indicated that the District Court might be able to fashion a remedy under the “equitable relief” provision of Section 501(a)(3)(B). Justices Scalia and Thomas concurred with the other five Justices opinion that Section 501(a)(1)(B) only authorizes relief based upon the Plan Document and rejected the majority’s discussion of the possible applicability of equitable relief under Section 501(a)(3)(B) as “*blatant dictum*” and “*utterly irrelevant*.” Before discussing the possible relief under Section 501(a)(3)(B), let’s take a look at the case.

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 changes. The summaries did not disclose that some employees would not be “better off” under the new Plan but might actually suffer loss. In fact, the District Court held the summaries in a newsletter about the change were “*significantly incomplete and misled the employees*.”

The District Court further found that CIGNA "*intentionally misled*" its employees. For example, when CIGNA employees asked for "details", "individual comparisons" and "an actual projection", they were not given such. Instead, internal CIGNA documents apparently produced in discovery (the fact-finding phase of a lawsuit) focus on "NOT providing employees before and after samples of the Pension Plan changes." (emphasis added)

The District Court found that CIGNA's statements violated ERISA Section 204(h), which requires a written notice summarizing the effects of reductions in the rate of future benefit accruals and also violated ERISA Sections 102(a) and 104(b). These ERISA Sections "require plan administrator to provide beneficiaries with summary plan descriptions [SPDs] and with summaries of material modifications [SMMs], '*written in a manner calculated to be understood by the average plan participant,*' that are '*sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan,*'"

Since the District Court believed it could fashion relief under Section 501(a)(1)(B), it did not consider whether it could also fashion relief under Section 501(a)(3)(B). So, the five Justices provided a discussion of "equitable relief" under Section 501(a)(3) that the District Court might find appropriate to use. The Supreme Court was careful to distinguish this case from other cases that addressed "equitable relief" under Section 501(a)(3), noting that this case, unlike the other cases involving Section 501(a)(3) cited, involved "*a suit by a beneficiary against a plan fiduciary (whom ERISA typically treats as a trustee) about the terms of a plan (which ERISA typically treats as a trust).*"

As the District Court was likely to reconsider Section 501(a)(3) in light of the fact that the relief it fashioned under Section 501(a)(1)(B) was not allowable, the Supreme Court indulged in a general discussion about possible equitable powers that would support the relief the District Court felt was appropriate. The use of such equitable powers was premised on CIGNA's summaries which were "*significantly incomplete and misled the employees*" and on the fact that that CIGNA "*intentionally misled*" its employees. Whether such equitable powers could be used to fashion a remedy for merely "*negligent misrepresentations*" or misrepresentations that were only "*partially misleading*" was beyond the Supreme Court's discussion. Thus, for instance, whether an unintentionally incorrect benefit statement could give rise to relief under Section 501(a)(3) was not addressed.

However, given the allegedly blatant misrepresentations in this case, the Supreme Court stated:

In sum, contrary to the District Court's fears, the types of remedies the court entered here fall within the scope of the term "appropriate equitable relief" in Section 502(a)(3).

The discussion serves as a reminder to plan sponsors to be very careful in their communications to plan participants.

In discussing possible "equitable relief," the Supreme Court discussed the equitable power of "reformation" and noted:

First, what the District Court did here may be regarded as the reformation of the terms of the plan, in order to remedy the false or misleading information CIGNA provided. The power to **reform contracts** (as contrasted with the power to enforce contracts as written) is **a traditional power of an equity court**, not a court of law, and **was used to prevent fraud.**"  
(emphasis added)

Thus, the District Court could reform the Plan based upon the representations in the summaries and make CIGNA's promises in the summaries part of the Plan. CIGNA's summaries said that:

"...the new plan would *"significantly enhance"* its *"retirement program,"* would produce "an overall improvement in ... retirement benefits," and would provide "the same benefit security" with "steadier benefit growth." ... CIGNA also told its employees that they would *"see the growth in [their] total retirement benefits from CIGNA every year,"* ...that its initial deposit [to the new cash balance plan] *"represent[ed] the full value of the benefit [they] earned for service before 1998,"*

The Court then discussed the possible use of the equitable power of estoppel saying:

Second, the District Court's remedy essentially held CIGNA to what it had promised, namely, that the new plan would not take from its employees benefits they had already accrued. This aspect of the remedy resembles estoppel, a traditional equitable remedy.

"...when equity courts used the remedy of *estoppel*, they insisted upon a showing akin to detrimental reliance, *i.e.*, that the defendant's statement "in truth, influenced the conduct of" the plaintiff, causing "prejudic[e]." Eaton § 61, at 175; see 3 Pomeroy § 805. Accordingly, when a court exercises its authority under § 502(a)(3) to impose a remedy equivalent to estoppel, a showing of **detrimental reliance** must be made.  
(emphasis added)

Finally, the Court discussed the District Court's use of injunctive powers to require the plan administrator to pay to already retired beneficiaries money owed them under the plan as **reformed:**

Third, the District Court injunctions require the plan administrator to pay to already retired beneficiaries money owed them under the plan as **reformed**. But the fact that this relief takes the *form of a money payment* does not remove it from the category of traditionally equitable relief. Equity courts possessed the power to provide relief in the form of monetary "compensation" for a loss resulting from a trustee's breach of duty, or to prevent the trustee's unjust enrichment. ...Indeed, prior to the merger of law and equity this kind of monetary remedy against a trustee, sometimes called a "surcharge," was "exclusively equitable."

The surcharge remedy extended to a breach of trust committed by a fiduciary encompassing any violation of a duty imposed upon that fiduciary... Thus, insofar as

an award of make-whole relief is concerned, the fact that the defendant in this case, unlike the defendant in Mertens, is analogous to a trustee **makes a critical difference.** In sum, contrary to the District Court's fears, the types of remedies the court entered here fall within the scope of the term "appropriate equitable relief" in Section 502(a)(3).

To be sure, just as a court of equity would not surcharge a trustee for a nonexistent harm, a fiduciary can be **surcharged under Section 502(a)(3)** only upon a showing of **actual harm**—proved (under the default rule for civil cases) by a preponderance of the evidence. That actual harm may sometimes consist of detrimental reliance, but it might also come from the loss of a right protected by ERISA or its trust-law antecedents. In the present case, it is not difficult to imagine how the failure to provide proper summary information, in violation of the statute, injured employees even if they did not themselves act in reliance on summary documents—which they might not themselves have seen—for they may have thought fellow employees, or informal workplace discussion, would have let them know if, say, plan changes would likely prove harmful. We doubt that Congress would have wanted to bar those employees from relief.

We believe that, to obtain relief by surcharge for violations of Sections 102(a) and 104(b), a plan participant or beneficiary must show that the violation injured him or her. But to do so, he or she need only show harm and causation. Although it is not always necessary to meet the more rigorous standard implicit in the words "detrimental reliance," actual harm must be shown. (emphasis added, citations omitted)

In conclusion, the Supreme Court sent the case back down to the District Court:

Because the District Court has not determined if an appropriate remedy may be imposed under Section 502(a)(3), we must vacate the judgment below and remand this case for further proceedings consistent with this opinion.

While the Supreme Court's approval of the use of equitable principles under Section 501(a)(3) was premised on CIGNA's summaries that were "*significantly incomplete and misled the employees*" and that CIGNA "*intentionally misled*" its employees, the case should still serve as a cautionary tale to plan sponsors to be very accurate in SPDs, SMMs and 204(h) notices. Given this case, it is likely more litigation on even negligently misleading summaries, or misleading benefit statements may arise. Instances where a participant receives an inaccurate benefit statement showing a higher benefit than he ends up with have spawned litigation already. In these cases, the participant retired relying on the higher income shown in the statement only to find out his benefits were lower and he could not afford to retire.

The equitable powers under Section 501(a)(3) also apply to health and welfare plans. So, plan sponsors of health plans should also be careful to send out accurate summaries. Remember, this case involved extra bad summaries, so plan sponsors shouldn't get "spooked" too much but be inspired to be extra diligent in plan participant communications.

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