The Impact of *Cigna Corp. v. Amara* for ERISA Plan Sponsors, Administrators and Participants

The U.S. Supreme Court (the "Court") recently issued an opinion in *CIGNA Corp. v. Amara ("Amara")*.[1] The case addressed what remedies a court may award when, with respect to a pension plan that is subject to the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), (i) there is a conflict between the terms of (A) the technical plan document that sets forth the plan's provisions and (B) the summary plan description ("SPD") or summary of material modifications ("SMM") (collectively, "Summary Documents") which simplify and summarize the plan document, and (ii) plan participants and beneficiaries suffer harm as a result of the false or misleading terms in the Summary Documents. In a unanimous decision, the Court vacated the lower court's opinion, which would have forced CIGNA to reform the terms of its pension plan and provide additional benefits to the plaintiff class of participants and beneficiaries who suffered "likely harm" as a result of the defective Summary Documents. The Court further remanded the case to the Connecticut District Court (the "District Court") to determine whether appropriate remedies may be imposed, consistent with the Court's opinion. As will be discussed below, however, the decision was not a clear victory for either side, and the opinion poses potentially serious consequences for plan sponsors, administrators and participants.

I. Background

The *Amara* case arose as a result of CIGNA's decision to convert its traditional defined benefit pension plan into a cash balance plan in 1998. Pursuant to ERISA, CIGNA gave its employees notice about the change and provided them with Summary Documents which explained the new plan's features.[2] A class of approximately 25,000 pension plan participants and beneficiaries later sued CIGNA, arguing that CIGNA had deliberately violated ERISA disclosure requirements by downplaying how the new plan would be less beneficial for them (*e.g.*, by not explaining that benefits would be subject to "wear away").[3] In 2008, the District Court agreed and found that "CIGNA's summary plan descriptions and other materials were inadequate under ERISA and in some instances, downright misleading."[4] The District Court also found that the evidence presented by the plaintiffs raised a presumption that members of the relevant employee class had suffered "likely harm," because the Summary Documents likely and reasonably led plan participants to believe that "wear away" was not a likely result of the transition to the new plan. Insofar as CIGNA had failed to rebut the presumption of "likely harm," the District Court concluded that class-applicable relief was warranted. It subsequently ordered CIGNA to reform the plan document to accord with the terms in the Summary Documents and to pay benefits according to these more generous terms. The District Court grounded its authority to order reformation of the plan in § 502(a)(1)(B) of ERISA, which permits a plan "participant or beneficiary" to bring a "civil action" to "recover benefits due ... under the terms of [the] plan." The Second Circuit affirmed the District Court's decision.[5]

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1 *CIGNA Corp. v. Amara*, 179 L. Ed. 2d 843 (2011). Justice Sotomayor took no part in the consideration or decision of the case.

2 Notice was provided pursuant to ERISA § 204(h); the Summary Documents were provided pursuant to ERISA §§ 102(a) and 104(b).

3 "Wear away" refers to a situation where a plan benefit formula is changed in a manner that would result in an amount of accrued benefits for participants that is lower than the amount of their accrued benefits under the old plan formula immediately prior to the change. Since plans cannot be amended to reduce accrued benefits, there will be a period of time in which participants will not accrue additional benefits, *i.e.*, no additional benefits would be accrued until the amount determined under the new benefit formula exceeds the amount accrued at the time of the change under the old formula (*i.e.*, the old protected benefit is "worn away" by the accrual of benefits under the new formula).

4 *Amara v. Cigna Corp.*, 534 F. Supp. 2d 288, 296 (D. Conn. 2008).

5 *See Amara v. CIGNA Corp.*, 348 Fed. Appx. 627 (2d Cir. 2009).

II. The Supreme Court's Decision and its Potential Impact

CIGNA petitioned for certiorari, and the Court granted its request.[6] The Court held that although plan reformation may be an appropriate remedy under the circumstances, the authority to provide such relief could not be found in the particular section of ERISA applied by the District Court.[7] In dicta, however, a majority of the justices concluded that the basis for such a remedy could be found in nearby ERISA § 502(a)(3), which authorizes courts to provide "appropriate equitable relief" for violations of ERISA.[8]

On the more narrow issue of whether a court could properly "require the plan administrator to pay to already retired beneficiaries money owed them under the plan as reformed," the Court opined that plan participants may in fact be entitled to equitable relief in the form of a "surcharge" (*i.e.*, monetary damages) pursuant to ERISA § 502(a)(3) in cases where the terms of Summary Documents conflict with the terms of the actual plan document and are misleading.[9] This position arguably conflicts, however, with a prior line of Court decisions and expands the relief available to plaintiffs under § 502(a)(3) of ERISA. Prior to *Amara*, the Court had interpreted the term "appropriate equitable relief" authorized by § 502(a)(3) as referring to traditional equitable remedies such as restitution, injunction and mandamus, but not damages or other remedies historically awarded by equity courts in trust cases.[10] Indeed, in prior cases, monetary recovery had primarily been allowed under § 502(a)(3) to prevent unjust enrichment and to allow specific funds to be traced and disgorged. As a consequence, ERISA fiduciaries had generally been successful in avoiding payment of monetary damages to plaintiffs who sustained damages, so long as such fiduciaries could show that they were not unjustly enriched by the claimed breach of fiduciary duty. If the Court's discussion of remedies in *Amara* is ultimately followed by the lower courts, however, plaintiffs might have an easier time recovering monetary damages for breaches of fiduciary duty. This could lead to an increase in the amount of ERISA plan litigation.

The Court further opined that when considering a just remedy for § 502(a)(3) violations, the standard of harm that courts should apply depends on the equitable theory under which the court would provide relief.[11] The Court clarified that although litigants must at least demonstrate "actual harm" in order to recover under §502(a)(3),[12] there is no general requirement in equity that plaintiffs prove "detrimental reliance" to recover in all cases. The Court noted that while detrimental reliance may be required for certain remedies, such as estoppel, only "actual harm" would need to be shown for reformation or surcharge. The Court did not clearly define what constitutes "actual harm." The majority opinion notes, however, that actual harm may come in the form of

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6 Both parties had filed cross-petitions for writs of certiorari to the Court, but the Court ultimately granted the request in CIGNA's petition to consider whether a showing of "likely harm" by the District Court was sufficient to entitle plan participants to recover benefits based on faulty disclosures.

7 *See CIGNA Corp. v. Amara*, 179 L. Ed. 2d 843, 854 (2011). The Court held that § 502(a)(1) should only be used to enforce existing plan terms, not to reform them.

8 In a concurring opinion which Justice Thomas joined, Justice Scalia opined that the majority had gone too far in its decision. He felt that the case could have been sufficiently disposed of by finding that the District Court had exceeded its authority under § 502(a)(1)(B). He found the majority's discussion about the use of ERISA § 502(a)(3) to fashion an appropriate remedy unnecessary, since the case was being remanded to the District Court to make such determinations.

9 *See* 179 L. Ed. 2d at 858.

10 *See, e.g., Sereboff v. Mid Atlantic Medical Services, Inc.*, 547 U.S. 356 (2006); *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204 (2002); *Mertens v. Hewitt Associates*, 508 U.S. 248 (1993).

11 ERISA does not itself contain a standard for determining harm. As a result, the Court reasoned that "any requirement of harm must [therefore] come from the law of equity."

12 The District Court had applied a more lenient, "likely harm," standard.

detrimental reliance, but "it might also come from the loss of a right protected by ERISA or its trust-law antecedents."[13] This lower standard of proof could arguably allow more class actions to survive.

If *Amara* results in more litigation and more class action litigation, it could make employers more reticent to adopt or continue employee benefit plans, particularly defined benefit plans. That is, because defined benefit plans tend to be the most complex plans to administer and therefore present the greatest risks for compliance and disclosure errors, companies may be particularly reluctant to offer these plans, even though such plans arguably provide the most stable benefits for employees.

In its opinion, the Court also addressed the relationship between Summary Documents and plan documents. Specifically, the Court opined that unless a plan document so provides, Summary Documents do not constitute part of the plan document and the disclosures set forth therein may not be enforced as terms of the plan itself for purposes of § 502(a)(1)(B). The Court came to this conclusion after first considering how the syntax of ERISA § 102(a), which requires that participants and beneficiaries be apprised of their rights and obligations "under the plan," necessarily implies that the disclosures in the Summary Documents are not also terms of the actual plan document. The Court further noted that plan sponsors and plan administrators have different roles, even if both functions are performed by the same entity. That is, plan sponsors are responsible for establishing the basic terms and conditions of the plan, while plan administrators are responsible for managing the plan and providing participants with Summary Documents that describe the plan and any amendments in a readily understandable form. The Court reasoned that it would not be appropriate to permit a plan administrator to have the ability to set plan terms indirectly merely by incorrectly describing them in the Summary Documents. In addition, the Court noted that ERISA § 102(a) requires SPDs to be "written in a manner calculated to be understood by the average plan participant." The Court reasoned, however, that "[t]o 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."[14] Further to the point, Justice Scalia stated in his concurrence that an SPD "would not fulfill its purpose of providing an easily accessible summary of the plan if it were an authoritative part of the plan itself."[15] Thus, for all these reasons, the Court concluded that while Summary Documents provide communication about the plan, they do not generally constitute terms of the plan.

Because the Court's discussion of § 502(a)(3) was largely, if not entirely, dicta, that must now be applied by the District Court on remand, it remains unclear what the full impact of *Amara* will be. At the very least, however, the case underscores the need for plan sponsors and plan administrators to ensure that all plan communications to participants are clear and accurate.

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If you have any questions about the issues addressed in this memorandum or if you would like a copy of any of the materials mentioned, please do not hesitate to call or email Michael Macris at 212.701.3409 or mmacris@cahill.com; Glenn Waldrip at 212.701.3110 or gwaldrip@cahill.com; or Abigail Darwin at 212.701.3240 or adarwin@cahill.com.

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13 179 L. Ed. 2d at 859. Contrarily, however, Justice Scalia argues in his concurrence that "actual harm" must result from reliance or lost opportunity.

14 179 L. Ed. 2d at 855.

15 *Id.* at 861.

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