GROOM LAW GROUP
CHARTERED

BENEFITS BRIEF

May 19, 2011 www.groom.com

Amara leaves us with many open litigation issues. Please contact one of the following, or the Groom attorney you regularly contact, if you have any questions about this decision:

Hisham M. Amin
hamin@groom.com
(202) 861-5430

Thomas S. Gigot
tgigot@groom.com
(202) 861-6624

Lonie A. Hassel
lhassel@groom.com
(202) 861-6634

Michael J. Prame
mprame@groom.com
(202) 861-6633

Edward A. Scallet
escallet@groom.com
(202) 861-5422

Julia E. Zuckerman
jzuckerman@groom.com
(202) 861-6605

Supreme Court Vacates Order to Reform Pension Plan, But May Have Opened the Door to Expanded Equitable Remedies

In a long-anticipated decision, the Supreme Court this week in Cigna Corp v. Amara, 536 U.S. ___, 2011 WL 1832824 (May 16, 2011), vacated a District Court order, which had been affirmed on appeal, requiring CIGNA to reform its cash balance plan and pay increased benefits based on a claim under section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA").

In its opinion, the Court held that the remedy under ERISA section 502(a)(1)(B) to enforce "the terms of the plan," does not afford or authorize a remedy for alleged misrepresentation of the terms of a plan in that plan's summary plan description ("SPD"). Provisions of SPDs, the Court determined, are not themselves "terms of the plan" enforceable under section 502(a)(1)(B). However, the Court then opined that relief for the notice violations instead fell within ERISA section 502(a)(3), which authorizes "other appropriate equitable relief," and then went on to enunciate a surprisingly broad interpretation of that phrase, thereby opening the door to claims for relief that many practitioners had assumed had been foreclosed by prior Supreme Court decisions on the scope of relief under section 502(a)(3).

Background

In 1998, CIGNA amended its traditional formula defined benefit plan to provide a cash balance formula. For participants with accrued benefits under the traditional formula, the amendment converted the traditional formula benefits into cash balance benefits and provided participants with the greater of their traditional formula benefit or their cash balance benefit – a so-called "greater of A and B" benefit. Under this formulation, some participants would not accrue any additional benefits for a period of time until their cash balance benefit exceeded their traditional formula benefit.

A group of participants filed a class action lawsuit in 2001, contending, among other things, that CIGNA's communications regarding the conversion did not comply with the notice requirements under ERISA section 204(h) and had led them to believe that their benefit under the amended plan was the value of their traditional formula benefit plus additional accruals under the cash balance formula – a so-called "A plus B" benefit.

The District Court granted relief by reforming the plan and requiring CIGNA to provide more generous benefits that it found were more consistent with the communications CIGNA had made to the participants. The District Court had grounded this remedy in section 502(a)(1)(B), which allows a participant to recover benefits "due to him under the terms of the plan, to enforce his rights under the plan, or to clarify his rights to future benefits

under the terms of the plan." As a threshold matter, the District Court applied a presumption of "likely harm" as a result of the alleged misrepresentations suffered by class members and ruled that CIGNA had failed to rebut this presumption. The District Court considered but did not rely upon ERISA section 502(a)(3), which provides that a participant, beneficiary, or fiduciary may sue to obtain "appropriate equitable relief," but ultimately declined to apply that statutory section in light of several Supreme Court opinions that, in its view, had "severely curtailed" section 502(a)(3) relief. The U.S. Court of Appeals for the Second Circuit affirmed the lower court's decision without explaining its decision.

Supreme Court's Opinion

Justice Breyer wrote on behalf of a unanimous Court in rejecting the District Court's reliance on section 502(a)(1)(B) to reform the plan's terms to provide an A plus B benefit. The statutory language of section 502(a)(1)(B) speaks of *enforcing* the terms of a plan, but not of *changing* them, the Court noted. Thus, while section 502(a)(1)(B) allows a court to look outside a plan's written language in deciphering the plan's terms, that provision does not permit the court to alter the terms.

The Solicitor General, as amicus, argued that the remedy was appropriate under section 502(a)(1)(B) as an enforcement of the SPD, which, unlike the plan document, could be read to provide the A plus B benefit. The Court rejected that argument, finding that the SPD is a communication *about* the plan and therefore cannot constitute the "terms" of the plan for purposes of section 502(a)(1)(B). A finding that the SPD language constituted plan terms, the Court reasoned, "could well lead plan administrators to sacrifice simplicity and comprehensibility in order to describe plan terms in the language of lawyers."

Up to this point, the Court's opinion seemed consistent with the traditional, restrictive reading of ERISA's "reticulated" enforcement scheme. But the majority did not stop there. Although it found that section 502(a)(1)(B) did not authorize relief here, a majority of the Court agreed that the types of remedies the District Court granted fall within the scope of section 502(a)(3), which allows a plan participant "to obtain other appropriate equitable relief" for ERISA violations. The Court reasoned that the phrase, "appropriate equitable relief," contemplates categories of relief that were traditionally available in equity courts, and that any of three possible such remedies could be ordered in this case: reformation of contract, estoppel, and monetary compensation against a trustee (known as a "surcharge"). Moreover, essentially of its own volition, the majority entertained an expansive discussion of these various remedies. While it did not require the District Court to apply any particular remedy, the majority provided the District Court with a menu of options that would appear to be viable under section 502(a)(3).

Turning to the standard of harm required to establish a remediable notice violation, the Court determined that class members must show "actual harm" in the sense that the violation injured individual participants because causation is an element of any possible equitable remedy. However, certain of the possible remedies would not require a plaintiff to demonstrate "detrimental reliance" in order to obtain relief. The standard of harm depends on the kind of equitable relief sought, the Court found, which is an analysis for the District Court "to conduct . . . in the first instance" on remand.

Justice Scalia, in a concurring opinion joined by Justice Thomas, agreed with the majority that section 502(a)(1)(B) does not permit the reformation of the plan authorized by the district court. He found, however, that this holding was sufficient to dispose of the case, and that the majority's discussion of section 502(a)(3) was mere dicta.

This publication is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. To comply with U.S. Treasury Regulations, we also inform you that, unless expressly stated otherwise, any tax advice contained in this communication is not intended to be used and cannot be used by any taxpayer to avoid penalties under the Internal Revenue Code, and such advice cannot be quoted or referenced to promote or market to another party any transaction or matter addressed in this communication.

© 2011 Groom Law Group, Chartered • 1701 Pennsylvania Ave NW • Washington, DC 20006. All rights reserved.

GROOM LAW GROUP CHARTERED

Analysis

The Court's decision presents a mixed bag of rulings on a host of ERISA litigation issues. Plan sponsors will benefit from the Court's ruling that SPDs do not themselves constitute "plan terms," as this holding overrules the opinions of other courts that have found SPDs enforceable as plan documents. The Court's opinion appropriately construes SPDs as summaries not intended to provide or capable of containing all of the provisions described in the plan document itself.

On the other hand, the ERISA plaintiffs' bar will undoubtedly view Amara as a major victory in suggesting the availability of a broad range of equitable relief – including monetary compensation in the form of a surcharge – to individual plan participants as a remedy for notice violations. Plaintiffs are also likely to contend that Amara significantly broadens the scope of equitable relief available under section 502(a)(3) to include, at a minimum, those remedies arguably authorized in the Court's opinion. We would expect to see arguments that Amara undermines the Court's cases restricting the relief available under section 502(a)(3), such as Mertens v. Hewitt Associates, 508 U.S. 248 (1993), and Great-West Life & Annuity Insurance Co. v. Knudson, 534 U. S. 204 (2002). While we would expect defendants to cite Justice Scalia's opinion that the section 502(a)(3) discussion is *dicta,* it is noteworthy that six Justices (Justice Sotomayor did not participate) have now expressed a view on the scope of equitable relief that is arguably much broader than what practitioners in both the plaintiffs' and defense bar had assumed.

Finally, Amara should also be viewed along with the Supreme Court's endorsement of an ERISA duty to disclose in Varity Corp. v. Howe, 516 U.S. 489 (1996). Given the amount of communications about benefits made by plan sponsors and their service providers, and the complexity of many benefits issues, one can certainly imagine that plaintiffs' attorneys will be looking for discrepancies between plan terms and participant communications, and will be able to find them. We have long recommended that plan sponsors carefully examine their participant communications for consistency with plan terms. With the Amara decision, that best practice becomes even more important.

This publication is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. To comply with U.S. Treasury Regulations, we also inform you that, unless expressly stated otherwise, any tax advice contained in this communication is not intended to be used and cannot be used by any taxpayer to avoid penalties under the Internal Revenue Code, and such advice cannot be quoted or referenced to promote or market to another party any transaction or matter addressed in this communication.

© 2011 Groom Law Group, Chartered • 1701 Pennsylvania Ave NW • Washington, DC 20006. All rights reserved.