



Conflicts between the Plan and SPD: What Terms Control

At first glance, the U.S. Supreme Court's ruling in *CIGNA Corp v. Amara* in May of this year is a huge win for employers. The court held that a summary plan description (SPD) is not part of the "Plan" that could be enforced under ERISA. However, the court went on to note that while participants do not have a contractual right to enforce conflicting provisions found in an SPD, participants may pursue equitable relief under ERISA when actual harm is suffered.

Rights under the Plan. CIGNA converted a defined benefit plan to a cash balance plan. As part of the conversion, the SPD did not adequately disclose that benefits would be subject to a "wear away." The participants sued, attempting to enforce their rights "under the terms of the plan," and argued that the SPD constituted part of the Plan. In an amicus brief, the Department of Labor (DOL) supported the plaintiffs' argument that the terms of the SPD are Plan terms, a position the DOL has historically taken when conflicts exist between SPDs and Plan terms.

The Supreme Court disagreed with the DOL and the Court's ruling has two important implications for plan sponsors, fiduciaries, and administrators. First, claims for benefits or attempts to enforce rights under the Plan pursuant to ERISA § 502(a)(1)(B) cannot be based on the terms of an SPD. Additionally, the Court held that ERISA does not empower courts to modify the terms of a Plan, only enforce them.

Had the Court's analysis stopped with 502(a)(1)(B), the case would have been a boon for plan sponsors. However, the Supreme Court opined on "appropriate equitable relief" under ERISA § 502(a)(3) and created some uncertainty regarding available remedies in the process.

Actual Harm required for Equitable Relief. The Court rejected the notion that it is sufficient to demonstrate "likely harm" to pursue equitable relief, holding that actual harm must be demonstrated. Plaintiffs now have to show that they suffered a loss.

Equitable Remedies. The Court's discussion of available equitable remedies opens the doors to litigation under ERISA 502(a)(3); doors that were believed to be closed by previous cases, including *Mertens v. Hewitt Associates*. In *Mertens*, for example, the court held that "equitable relief" was restricted to traditional equitable remedies like restitution and injunction, and excluded monetary forms of compensation referred to as "surcharges." The Court in *CIGNA* noted that conflicts between Plan and SPD terms may give rise to other equitable claims such as surcharges.

Next Steps.

- Ensure terms of the Plan and SPD are consistent
- Review participant communications and notices for accuracy
- Carefully craft participant communications and notices—be certain that negative implications are shared, as well as, the good news when there are changes to the Plan

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