

## The Supreme Court rules on SPDs

The U.S. Supreme Court ruling in *Cigna Corp v. Amara* (No. 09-804, May 16, 2011) could have a major impact on employers who sponsor qualified retirement plans subject to ERISA.

### Background

The case involved the Cigna defined benefit plan. In November 1997, Cigna provided participants with a newsletter explaining that their existing pension plan was being converted into a cash balance plan. The newsletter also detailed how employees would see an improvement in retirement benefits after the conversion. A class action lawsuit was brought on behalf of approximately 25,000 plan participants alleging that the Cigna cash balance plan provided participants with fewer benefits than previously communicated, thus representing an illegal cutback.

The district court agreed with the plaintiffs' contention and ordered Cigna to pay additional benefits. When issuing its judgment, the district court applied ERISA Section 502(a)(1)(B), which permits participants to sue to recover benefits due under the terms of a plan. Although Cigna admitted that the participant communication was misleading, it disputed the idea that all employees had suffered harm as a result.

### Ruling on SPDs and plan terms

The Supreme Court unanimously (8-0 with Judge Sotomayor not participating) rejected an argument that misrepresentations in a summary plan description (SPD) could be considered as actual plan terms. Thus, the SPD would not be enforceable under ERISA Section 502(a)(1)(B).

For years, lower courts have held that discrepancies between SPD language and actual plan document language are controlled by the SPD if the participants showed they would otherwise be harmed (i.e., if the SPD were not followed). In this case, the Supreme Court makes it clear that courts may not rewrite the terms of the plan by having the terms of the SPD override the terms of the plan document. In other words, the language in the SPD may not be used to rewrite the terms of the plan document.

The Court explained that there is a division of authority between the role of the *plan sponsor as settlor* — the person who creates the plan's basic terms and conditions and executes the written instrument containing these terms and conditions, including a provision for plan amendments — and the role of the *plan administrator* — the person who has the fiduciary responsibility of providing participants with SPDs. The Court states that these roles are distinguished by ERISA, and there is no reason to believe that ERISA intends to mix the responsibilities by giving the administrator the power to set plan terms in the SPD, even if the plan sponsor *is* the plan administrator, as is the case in *this* case.

The Supreme Court stated that it is impossible to interpret the SPD's language as legally binding because the objective of the SPD is to provide clear, simple communication. However, inaccurate or misleading communications by the plan administrator in performing their disclosure duties could be found to violate ERISA's fiduciary requirements.

### **Ruling on appropriate equitable relief**

The majority opinion (delivered by Justice Breyer and agreed to by six Justices) agreed with the district court's ruling that plan participants who were provided with an inaccurate description of a change being made to their pension benefits were entitled to equity relief, but under a different section of ERISA — Section 502(a)(3). This section provides for relief based on a violation of ERISA where plan participants or beneficiaries actually show they were harmed and authorizes "appropriate equitable relief" such as reformation, estoppel, and surcharge for violations of ERISA.

The Court stated that it is not difficult to imagine how the failure to provide proper summary information here, in violation of ERISA, injured employees, even if they themselves did not act in reliance on the summaries. A plan participant or beneficiary must show that the violation caused injury, but need show only actual harm and causation. They are not required to show any detrimental reliance. The Supreme Court remanded the case to the district court to revisit its determination of an appropriate equitable relief remedy for the ERISA violations it found.

### **An important case**

Employers will generally be happy with the Supreme Court's Cigna decision because the Court found that plan participants may not bring lawsuits for misleading or inaccurate ERISA plan communications under ERISA Section 502(a)(1)(B). The requirement that participants must show actual harm to receive an award may reduce the initiation of future class action lawsuits where SPD or plan communication issues arise.

This ruling is also significant because the Supreme Court explicitly rejected the SPD as enforceable over the plan when the SPD contradicts the terms of a plan document. Further, the Court made clear that the language in summary plan communications cannot be treated as the terms of the official written plan document.

### **Best practices**

Although the SPD is not seen as an extension of the plan terms in this decision, misinformation in an SPD can still cause harm. Plan administrators and plan sponsors still need to exercise extreme care in preparing an SPD and in establishing procedures for reviewing the SPD relative to the terms of the plan.

If we can help by answering your questions, please contact us.