



Remedies for Plan Communications Errors Clarified

08.31.2011

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By Brydon M. DeWitt The Supreme Court of the United States recently clarified the relief available to plan participants and beneficiaries for inaccurate plan descriptions. Although it confirmed that plan documents control over conflicting plan descriptions, the Court also held that a participant or beneficiary may seek monetary damages if he or she can show actual harm.

The plaintiffs in *CIGNA Corp. v. Amara* claimed that CIGNA failed to give proper notice of changes to CIGNA's defined benefit pension plan. In 1998, CIGNA converted its traditional pension plan to a cash balance plan. The plaintiffs asserted that communications to employees about the conversion failed to describe the negative impact on benefits and the additional risks associated with the cash balance plan. The district court agreed and "reformed" the plan's terms to provide greater benefits to the plaintiffs.

The Supreme Court held that the Employee Retirement Income Security Act (ERISA) did not authorize the district court to modify the plan's terms. Plan summaries, the Court explained, are merely summaries and are not part of a plan's terms. Language in a summary plan description, therefore, is not legally binding.

The Court also held, however, that a participant may recover monetary damages if he can show "actual harm" caused by a misrepresentation of a plan's terms. Actual harm may be, but need not always be, detrimental reliance on a misstatement. A participant could recover damages, for example, if a plan summary misrepresentation deprived a participant of an ERISA right.

CIGNA Corp. v. Amara, therefore, provides good news and bad news for plan sponsors. The good news is that summary plan descriptions and other informal plan communications cannot be used to alter the terms of a plan. The bad news is that plaintiffs who show actual harm caused by a misstatement may be able to recover monetary damages. As always, plan sponsors should confirm that summary plan descriptions and other plan communications accurately and fully describe plan terms. Such

communications also should be reviewed and revised periodically to conform to any plan amendments.

For more information about this topic, please contact Brydon M. DeWitt, 804.420.6917 or , or any member of the Employee Benefits and Executive Compensation team.

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