U.S. Supreme Court Speaks On SPD v Plan Document... The Good, The Bad and the Ugly

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On May 16, 2011, the U.S. Supreme Court decided *Cigna Corp. v Amara*. Many commentators have cited the case as being "good" for employers and plan administrators because the Court found that a Summary Plan Description (SPD) is not a plan document. Therefore, the SPD cannot alter the plan provisions if the language in the plan is different. However, some of these commentators fail to note that the Court still found a way to compensate plan participants based on the SPD and other employee disclosures rather than the actual plan document.

The Facts

For years Cigna provided a defined benefit pension plan for its employees, with benefits based on a participant's final average salary and years of service. In 1997, Cigna announced the plan would be changed to a "cash balance" plan. The announcement said the revised plan would be better for participants and would provide an improvement in retirement benefits.

The announcement indicated current plan participants would have an opening account balance in the new plan equal to the "full value" of the benefit the employee had earned prior to 1998. A new SPD was issued for the amended plan, but the lower court found that Cigna's description of the new plan was "incomplete and inaccurate," and did not describe how some employees might not earn any additional benefits for several years. Finally, the lower court found that Cigna had intentionally misled its employees. Some had asked for additional information, but Cigna made a decision not to provide further details.

As a result, the lower court found Cigna had violated the Employee Retirement Income Security Act ("ERISA") disclosure rules, and that employees were likely harmed by the violations. Both parties appealed to the 2nd Circuit Court of Appeals, which affirmed the lower court's decision. An appeal then went to the Supreme Court.

The "Good"

The Supreme Court first held that a SPD is not a "plan" document. Therefore, in a positive holding for plan sponsors, the Court clarified that the SPD cannot take the place of the plan, so a conflict between the provisions of the Summary and the writing of the plan will be settled in favor of the plan document. This is a "good" holding for employers because sometimes the plan and the SPD are inconsistent. According to this case, the plan language controls. The SPD is written in simpler

language, and often will not set forth all of the details and/or exceptions which might be written into the plan document. So a decision by the Court that the SPD is not part of the plan, and therefore the SPD language cannot be enforced under ERISA, is comforting to plan sponsors.

The "Bad"

On the other hand, bad facts can often be blamed for bad law. In this case, the misrepresentations by the plan sponsor were so egregious that the lower court felt it had to find a way to remedy the situation. The lower court held that the disclosures made to employees should form the basis of the new plan. Accordingly, the lower court "reformed" the plan document to permit employees to receive benefits in line with what the disclosures seemed to explain, but which were definitely different from the actual plan document. Finally, after "reforming" the plan document, the lower court ordered enforcement of the reformed plan by Cigna. In effect, the lower court amended the plan to be as disclosed to employees and then ordered Cigna to pay benefits under the terms of the amended plan. To its credit, the Supreme Court said the lower court could not do that under ERISA.

The "Ugly"

If the Supreme Court had stopped there, the case could have gone back to the lower court for further proceedings. However, a majority of the Court did not stop there. Instead, the Court's opinion goes on to explain to the lower court how the case might have been handled. The Court advised the lower court that any one of several alternatives might be used to reach the same result by using an "equitable" remedy to provide compensation to participants who were actually harmed, even if they did not rely on the misleading disclosures made by Cigna. The Court then indicated that failure to provide proper information, in violation of ERISA, constitutes harm to employees, even if they don't rely on the misleading information.

This is "ugly" because it gives no useful guidance to employers. The Court's decision can be interpreted as allowing a lower court, which finds that employees have been harmed by errors in communication with respect to benefits, to fashion any reasonable remedy under the guise of "equitable" relief.

The "Take Away" From this Case

The Good – SPDs and other communications to employees do not trump plan documents. For benefits to be enforceable they must be provided by the plan document.

The Bad – It is "bad" for a court to rewrite the terms of a plan as a means of providing benefits as described in an SPD or other communication. The law does not authorize the court to fashion that type of remedy.

The Ugly – Notwithstanding the "good" and the "bad," a court MAY provide for payment of compensation to participants as an equitable remedy; such compensation just might equal the amount of benefit the participants thought they would receive from the misleading or inadequate written disclosures. This is "ugly" because according to this decision, a court can always find a way to do what the Supreme Court said, in the first instance, it could not do.

The *Cigna* case is dangerous to plan sponsors. It holds that a court can compensate employees in a manner never intended under the plan.

The importance of SPDs and other benefit disclosures and communications has never been greater. Notices, disclosures, communications and SPDs must be written and reviewed carefully before being delivered to your employees. If they are not written correctly, the mistake can be very costly.