

EMPLOYEE BENEFITS ALERT

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

Supreme Court Decision Raises Stakes for Summary Plan Descriptions

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A recent United States Supreme Court decision expands the scope of remedies potentially available to plan participants harmed by inaccurate summary plan descriptions ("SPDs") and other informal plan communications.

In *CIGNA Corp. v. Amara*, the employer had converted its traditional defined benefit pension plan to a "cash balance" plan. In the course of the conversion, the employer distributed various materials to participants, including an SPD and a newsletter stating that the new cash balance plan would produce an "overall improvement in ... retirement benefits" and that the company would not realize any cost savings from the conversion. In fact, these statements were inaccurate and, as applied to some participants, untrue. The communications also failed to describe a "wear away" period that would prevent some participants from accruing additional benefits for a period of time.

The Supreme Court was asked to decide what remedies were available to participants and whether benefits should be calculated as described in the informal communications, rather than under the actual plan document. The participants requested calculation as described in the communications (which had the potential to increase benefits) if they could show that "likely harm" resulted from the miscommunications. The Court rejected the request but noted that participants who could show "actual harm" from the miscommunications could seek "equitable" relief, if the miscommunication constituted intentional misrepresentation or other fiduciary misconduct actionable under Section 502(a)(3) of ERISA. The Court observed that the exact nature of equitable relief may vary from case to case.

The *Amara* ruling is somewhat of a surprise to many in the benefits community, given prior decisions from the Court interpreting Section 502(a)(3) very narrowly. Since the lower court decision being reviewed by the Supreme Court in *Amara* had not specifically addressed liability under Section 502(a)(3), some observers believe the portion of the Court's opinion allowing possible liability under that section is non-binding "dicta." Even so, the Court has provided would-be plaintiffs with powerful ammunition, and the Department of Labor also has already used the Supreme Court decision to argue for greater responsibility on the part of fiduciaries. The decision could result in increased claims against plan fiduciaries under Section 502(a)(3), and employers would be well advised to review their participant communications (including, but not limited to, SPDs) for consistency with existing plan documents.

If you have questions regarding the information in this alert, please contact any of the attorneys in our Employee Benefits Practice Group listed below.

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