

CIGNA CORP. v. AMARA: SUPREME COURT PROVIDES A UNANIMOUS DECISION – WITH MIXED IMPLICATIONS

On May 16, 2011, the Supreme Court handed down a unanimous decision concerning the status of a plan's Summary Plan Description ("SPD"). The case involved benefits claimed by participants in CIGNA's cash balance pension plan. The detailed formal plan document described minute details of the plan's benefit formula, including a provision that provided that many participants would earn no further benefits for a period of time after the plan transitioned from a traditional benefit formula to a cash balance formula. The SPD provided to participants did not mention the detailed transition provisions and several participants sued CIGNA. The lower courts found in favor of the plaintiffs, concluding that they were entitled to recover benefits under a provision of ERISA that permits participants to "recover benefits due under the terms of the plan." They reasoned that the language in the SPD and summary materials that were provided to the participants constituted the terms of the plan, mislead participants, and that participants suffered "likely harm" as a result.

The Supreme Court disagreed with the lower courts and concluded that, while the SPD is an important document, it provides communications about the plan; but the statements in the SPD or other summary documents do not constitute the terms of the plan (emphasis provided by the Court). Plan terms are contained only in the formal plan document itself. The Court then focused on another section of ERISA that permits participants to "obtain other appropriate equitable relief." While previous Supreme Court decisions had interpreted the "equitable relief" section to generally allow ONLY non-monetary relief, this Court did not. However, the Court pointed out that the plaintiffs

would have to demonstrate actual harm in order to obtain money damages and sent the case back to the lower court.

The decision was viewed as favorable to employers because it reinforces the idea stated in most Summary Plan Descriptions to the effect that the SPD is merely a summary and in the event of any conflict with the actual terms of the plan, the plan document will control. This protects employers from inadvertent errors or incomplete statements in the SPD being used against them, as long as the formal plan document clearly describes the plan. However, the idea that participants can sue for money damages as part of "equitable relief" is a new concept that will probably open the doors for new law suits from participants.

FORM 5500EZ 2010 FILING: DEADLINE NEARS WITH NO FORM AVAILABLE

Last year, for the first time, Form 5500 for retirement plans covering the 2009 plan year had to be filed electronically under the EFAST2 program. As required by the Pension Protection Act of 2006, information from the filed form must be available for display on the Department of Labor web site within 90 days after the form is filed. This public availability is required for Form 5500; but not for Form 5500EZ. The latter form is exclusively available to plans that cover only an owner and/or an owner's spouse. Last year, Form 5500EZ was filed on paper with the IRS.

Here's the complication: while an owner-only plan is *permitted* to use Form 5500, most owners wish to avoid the public disclosure associated with the Form and opt for filing Form 5500EZ. However, as of the date of this article, no 2010 plan year Form 5500EZ has been released, and it is questionable whether the IRS will accept the 2009 form as a

substitute. Although the 5500EZ is due by July 31, 2011, extensions of 2.5 months can be granted. Requests for extensions are processed on a plan by plan basis and blanket extensions have historically not been entertained by the IRS. If the 2010 Form 5500EZ is not available by the end of June, NRS intends to file for extensions on behalf of clients to avoid the risk of \$25 per day penalties and possible other sanctions. It is likely that many other third party administrators will follow the same strategy for their clients with one person plans.

U.S. LABOR DEPARTMENT TO INCREASE INTERNET USE

The DOL issued a notice in late April that it intends to expand the use of the internet as a means of “interacting with the public.” Currently, individuals can contact the Department by phone at a toll free number or they may leave their name, address, and phone number on the DOL web site. The Department is considering expanding the types of plans that can be investigated via the internet and expanding the types of problems that are examined. In addition, the internet may be used for transmission of documents and other communications to and from the public.

The notice included a report of DOL activities during its 2010 fiscal year. During the year, they conducted 3,112 civil investigations; 74% of which involved monetary sanctions. They also conducted 281 criminal investigations, resulting in 96 indictments for employee benefit plan related offenses.

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CENTRAL & EASTERN TIME

Jim Houpt

Executive Vice President

T| (800) 627-1610 x 2207

E| jim.houpt@NRServices.com

PACIFIC & MOUNTAIN TIME

Kevin Spaeth

Sales Representative

T| (800) 350-2172 x 260

E| kevin.spaeth@NRServices.com