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EEOC Fishing Expeditions—How Wide is the Net?

In *EEOC v. Konica Minolta Business Solutions USA, Inc.*, the Seventh Circuit Court of Appeals permitted the Equal Employment Opportunity Commission ("EEOC") to use its subpoena powers to conduct a company-wide investigation based on a single employee's charge of discrimination. Elliot Thompson, an African American employee, worked in one of Konica's four Chicago offices. Thompson filed an EEOC charge alleging race discrimination.

During the investigation, the EEOC issued a subpoena to Konica seeking a plethora of information regarding its hiring practices at all four Chicago offices. The subpoena sought:

- information about every person who expressed an interest in sales work at any of those offices;
- the applications Konica reviewed to fill sales positions;

(EEOC continued on page 6)



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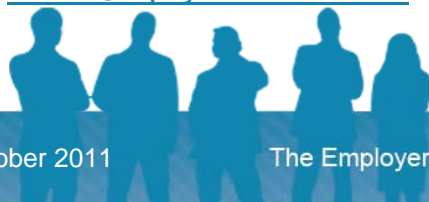
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CIGNA Corp. v. Amara et al: U.S. Supreme Court Expands the Remedies Provided by ERISA for Improper Notice Regarding Changes in Benefits

On May 16, 2011, the Supreme Court of the United States issued a landmark decision in *CIGNA Corp. v. Amara et al.*, which deviates from nearly twenty years of precedent and now expands the potential forms of liability of plan Administrators. Although the case arose from the employer's defective notification of changes to its retirement plan, the Court's reasoning has far reaching implications for employers. The Court's previous decisions had severely limited a participant's right to recover monetary compensation for a fiduciary breach; however, the Court in *CIGNA* expressly "removes... the obstacle" to recovery of "compensation" by recognizing that an equitable "surcharge remedy" that can be imposed for any violation of a fiduciary duty.

In November 1997, CIGNA sent a newsletter to its employees which notified them that it planned to substitute an "account balance plan" for CIGNA's pre-existing defined-benefit pension plan, which had paid benefits in the form of an annuity based on the employee's salary and length of service. Under the new plan, CIGNA promised to make an initial contribution to an employee's account equal to the value of that employee's already-earned benefits. In the November 1997 newsletter and other communications (according to the published decision), CIGNA told its employees in that the new plan would "significantly enhance" the retirement program, produce an "overall improvement" in retirement benefits, and would provide "the same benefit security" while giving "steadier growth." CIGNA also said that the initial deposit made under the new plan "represent[ed] the full value of the benefit [they] earned for service before [January 1, 1998]." CIGNA also told its employees that CIGNA was not obtaining any cost savings under the new plan.

According to the Court, the evidence before the lower court arguably showed those statements were inaccurate. First, CIGNA did not disclose that employees, who elected to retire early starting at age 55, would be worse off because of the formulas in the new plan. The Court noted, for example, that the plaintiff Amara had accrued a benefit of \$1,833 per month under the old plan, but CIGNA's initial deposit into Amara's account was based on the value of only \$900 per month under the new plan. Second, CIGNA did not disclose that the new plan adjusted the initial deposit downward to account for the ability of the employee's survivors to receive benefits under the new plan. Third, CIGNA did not disclose that the new plan shifted the risk of falling interest rates to the employees. Fourth, the new plan actually saved CIGNA \$10 million per year, contrary to its communications.

A class action lawsuit was brought against CIGNA on behalf of approximately 25,000 beneficiaries. The beneficiaries alleged that CIGNA violated ERISA by failing to give them proper notice of the change in benefits. The District Court found that CIGNA violated its disclosure obligations under ERISA. Specifically, the District Court found that CIGNA's conduct caused "likely harm" to the beneficiaries. The District Court cited § 502(a)(1)(B) of ERISA as authority to reform the terms of the new plan. The District Court then reformed the terms of the new plan and ordered CIGNA to comply. On appeal, the Supreme Court had to determine whether the "likely harm" standard was the proper standard to apply to determine whether CIGNA violated its disclosure obligations under ERISA, and whether § 502(a)(1)(B) granted the District Court authority to do so. The Supreme Court found that § 502(a)(1)(B) did not grant the District Court authority to reform the terms of the plan. The Supreme Court reaffirmed the longstanding interpretation that under ERISA § 502(a)(1)(B), a court has authority to "enforce" the terms of a plan, not change its terms.

However, the Supreme Court did not stop there -- it went on to announce a new and broader interpretation of § 502(a)(3) of ERISA, holding that this provision provides sufficient authority to grant the various forms of relief that had been granted by the District Court, including reformation, estoppel, and monetary compensation. The language of § 502(a)(3) allows a participant, beneficiary, or fiduciary to obtain "other appropriate relief" to address violations of the terms of a plan or ERISA. Although the Supreme Court had previously followed a narrow interpretation of "other appropriate relief" under § 502(a)(3), in *CIGNA* the Supreme Court determined that the types of relief ordered by the District Court are available under § 502(a)(3) because "the relief entered here... closely resembles ... traditional equitable remedies."

(*CIGNA* continued on page 4)



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