

Hot Topics in ERISA Litigation

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Presentation Overview

- **The Shifting Scope of Equitable Relief Under ERISA § 502(a)(3):**
 - Financial recovery against the plan?
CIGNA v. Amara
 - Financial recovery for the plan?
Zurich v. O’Hara / U.S. Air v. McCutchen
- **Right of Payment v. Rate of Payment**
Davila / Montefiore Medical

ERISA Civil Enforcement Mechanisms

- **ERISA § 502 (a)(1)(B):** Allows a participant or beneficiary to bring an action (1) to recover benefits due under the plan, (2) to enforce rights under the terms of the plan, or (3) to clarify rights to future benefits under the terms of the plan.
- **ERISA § 502(a)(3):** Allows a participant, beneficiary, or fiduciary (1) to enjoin any act or practice which violates ERISA, or (2) to obtain **other appropriate equitable relief** to redress violations.

CIGNA v. Amara, 131 S.Ct. 1866 (2011)

Recovery against the Plan?

- **Factual Overview**

- CIGNA changed pension plan system from an annuity basis to a lump sum / cash balance basis
- As part of the change, CIGNA released Summary Plan Descriptions (“SPDs”) as required under ERISA
- After change, employees filed class action claiming CIGNA had failed to provide proper notice of the benefit changes and misled participants regarding the detrimental effects of the change

- **District Court granted plaintiffs relief pursuant to § 502(a)(1)(B) (not pursuant to § 502(a)(3))**

- Reformed plan to ensure that employees received both their old benefits and new benefits, rather than a choice between the two
- Ordered CIGNA to enforce the plan as reformed

CIGNA v. Amara

Recovery against the Plan?

Issues and Holdings

- Did the District Court have authority pursuant to § 502(a)(1)(B) to reform the terms of the plan?
 - No, § 502(a)(1)(B) only allows participants to recover benefits or enforce rights under the plan, not to reform the plan
 - Further, SPDs are not part of the plan and thus not analyzed under § 502(a)(1)(B)
- Did the court have authority to provide the relief granted under § 502(a)(3)?
 - Maybe...

CIGNA v. Amara

Recovery against the Plan?

The Court provides “guidance” on what *may* constitute “appropriate equitable relief” on remand

- Emphasized trust nature of plans under ERISA.
- Leads into three equitable theories discussed by the Court:
 - Reformation – reform terms of the plan to reflect SPDs
 - Estoppel – hold CIGNA to what they promised via SPDs
 - **Surcharge – equitable monetary award to make a trust or beneficiary “whole” (upon preponderance showing of actual harm)**
- Justice Scalia, concurring:
 - Frustrated by apparent majority “eagerness to demonstrate” that “plan members misled by an SPD will be compensated”
 - Everything regarding the scope of equitable relief is “blatant dictum” and need not be followed by the District Court, and “if it takes our suggestions to heart, we may very well reverse”

Applying CIGNA v. Amara

- Matter since heavily briefed on appropriate remedies and re class certification issues, but still no substantive District Court opinion
- Early cases show continuing judicial resistance to awarding money under § 502(a)(3) / surcharge theory:
 - Skinner v. Northrop Grumman, 673 F.3d 1162 (9th Cir. 2012)
 - Plaintiffs sought equitable relief pursuant to § 502(a)(3) to redress alleged harm caused by ambiguities between SPDs and plan terms
 - Court addressed plaintiff's various equitable theories under CIGNA v. Amara, but noted Plaintiffs established no actual harm and otherwise struck each claim down with little discussion
 - Stocks v. Life Ins. Co. of N. Am., 2012 WL 781756 (E.D. Wis. 2012)
 - Plaintiff sought equitable relief pursuant to 502(a)(3) after being denied claim for benefits from husband's life insurance policy.
 - Court found that plaintiff was simply trying to portray a claim for legal, monetary relief as a claim for equitable relief under CIGNA v. Amara and granted dismissal as to employer.

Applying CIGNA v. Amara: Now What?

- “Equitable relief” yielding a financial return to plaintiffs may now be available for SPD and other ERISA violations related to the plan.
- Be cautious with Summary Plan Descriptions and other disclosures regarding plan terms
- Be on the lookout for plaintiffs who are dressing up legal claims for monetary relief as “appropriate equitable relief” under § 502(a)(3)

Third-Party Recovery and Reimbursement Under § 502(a)(3) – Recovery for the Plan?

Background: Great-West v. Knudson, 534 U.S. 204 (2002)

- Factual Overview
 - Knudson was injured in a car accident and received medical benefits from Great-West pursuant to benefit plan
 - Knudson then sued third-party tortfeasor and received settlement. As part of settlement, most of Knudson's recovery was placed in a Special Needs Trust, with only a small amount going to Great-West.
 - Great-West brought suit pursuant to § 502(a)(3), seeking to enforce provision of plan requiring beneficiaries to reimburse prior payments made by Great-West after receiving any third-party recovery
- Holding: Applying traditional equitable principles, the Court denied Great-West the relief it sought because the funds it was attempting to recover were not particularly identified as belonging to Great-West but stood simply on the imposition of personal liability owed by Knudson.

Third-Party Recovery and Reimbursement Under § 502(a)(3) – Recovery for the Plan?

Background: Sereboff v. Mid-Atlantic Med. Services, Inc., 547 U.S. 356 (2006)

- Factual Overview
 - Sereboff was injured in car accident and received benefits from Mid-Atlantic. Sereboff then sued various third-party tortfeasors and received settlement.
 - Prior to settlement, Mid-Atlantic filed a lien in order to secure its right to recovery pursuant to plan documentation. When Sereboff wouldn't pay, Mid-Atlantic filed suit pursuant to § 502(a)(3).
- Holding: Court granted Mid-Atlantic the equitable relief it sought, distinguishing Great-West and finding that Mid-Atlantic had an enforceable lien by agreement based on the third-party recovery provision in the plan. Because Mid-Atlantic sought **specifically identifiable funds, distinct from general assets, in Sereboff's possession and a particular share of those funds measured by amounts previously paid**, it was properly entitled to equitable relief under § 502(a)(3).

Third Party Recovery and Reimbursement Under § 502(a)(3)

Question left open by Sereboff Court: If § 502(a)(3) entitles plan administrators to equitable relief in these scenarios, can beneficiaries claim traditional equitable defenses to limit or prevent reimbursement?

Answer: Circuits are split.

Examples of Equitable Defenses

Common Examples of Equitable Defenses in Reimbursement Claims:

- Make-whole doctrine – an insured who has settled with a third-party tortfeasor is liable to the insurer-subrogee only for the excess received over the total amount of his loss
- Unjust enrichment principles – limiting or preventing a trustee's recovery if it would result in unjust enrichment to plan administrator
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- Funds not in beneficiary's possession – if funds subject to plan administrator's lien are not in beneficiary's possession, the lien may not attach.

Defining “appropriate equitable relief” – Applicability of Equitable Defenses

Majority View: Zurich Am. Ins. Co. v. O’Hara, 604 F.3d 1232 (11th Cir. 2010)

- Factual Overview
 - O’Hara was injured in car accident and received benefits from Zurich. O’Hara sued third-party tortfeasors and received large settlement.
 - Zurich sought to recover for benefits paid pursuant to the plan’s reimbursement provision, which imposed an equitable lien and constructive trust over any third-party recovery the beneficiary may receive. O’Hara refused to pay.
 - Third-Party recovery provision expressly prohibited deduction of attorney’s fees or costs from any reimbursement and denied applicability of various equitable defenses.

Defining “appropriate equitable relief” – Applicability of Equitable Defenses

Majority View: Zurich Am. Ins. Co. v. O’Hara, 604 F.3d 1232 (11th Cir. 2010)

- Holding: Reimbursement provision should be applied as agreed to in plan, thus O’Hara is not entitled to assert equitable defenses like the make-whole doctrine.
 - “Applying federal common law to override the Plan’s controlling language, which expressly provides for reimbursement regardless of whether O’Hara was made whole by his third-party recovery, would frustrate, rather than effectuate, ERISA’s repeatedly emphasized purpose to protect contractually defined benefits.” Zurich at 1237.
 - Relieving O’Hara of his reimbursement obligation would ultimately just shift costs onto other plan members and beneficiaries. Zurich at 1238.

Defining “appropriate equitable relief” – Applicability of Equitable Defenses

Minority View: US Airways, Inc. v. McCutchen, 663 F.3d 671 (3d Cir. 2011)

- Factual Overview
 - McCutchen was injured in car accident and received medical expenses from US Airways (self-administered and financed benefit plan). McCutchen then sued third-party tortfeasors and received recovery that initially exceeded amount of benefits paid.
 - However, after attorney was paid contingency fee, McCutchen’s net recovery was less than amount of benefits initially paid by US Airways.
 - McCutchen refused to reimburse US Airways, who then filed suit seeking to recover the full amount of benefits paid pursuant to § 502(a)(3) and the reimbursement provision in plan documentation. The provision entitled US Airways to recover benefits out of **any amounts paid**, without regard for attorney’s fees or costs

Defining “appropriate equitable relief” – Applicability of Equitable Defenses

Minority View: US Airways, Inc. v. McCutchen, 663 F.3d 671 (3d Cir. 2011)

- Holding: Noting that Congress limited relief available to fiduciaries under § 502(a)(3) to “**appropriate** equitable relief,” the Court held that equitable defenses should also be available to limit or prevent reimbursement. “Applying the traditional equitable principle of unjust enrichment, we conclude that the judgment requiring McCutchen to provide full reimbursement to US Airways constitutes inappropriate and inequitable relief.” Id. at 679.

Third-Party Recovery and Reimbursement Lessons for Plans

- Structure contracts to attempt to preclude the applicability of any equitable defenses in reimbursement claims
- Provide notice to counsel representing beneficiaries in third-party litigation regarding reimbursement provisions in plan documentation and assertion of lien / constructive trust
- Monitor third-party litigation to try to ensure that any judgment or settlement does not result in funds being placed beyond control of beneficiary

ERISA Civil Enforcement Mechanisms

Section 502 (a)(1)(B): Allows a participant or beneficiary to bring an action (1) to recover benefits due under the plan, (2) to enforce rights under the terms of the plan, or (3) to clarify rights to future benefits under the terms of the plan.

Section 502(a)(3): allows a participant, beneficiary, or fiduciary (1) to enjoin any act or practice which violates ERISA, or (2) to obtain other appropriate equitable relief to redress violations.

Preemption Under Davila: Right to Payment v. Rate of Payment Disputes

Background: AETNA Health Inc. v. Davila, 542 U.S. 200 (2004)

- Expansive View of ERISA preemption: “When the federal statute completely preempts the state law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law. ERISA is one of these statutes” Id. at 207-8.
- Preemption Test – a cause of action is completely preempted by § 502(a)(1)(B):
 - If an individual, at some point in time, could have brought the claim under § 502(a)(1)(B); and
 - There is no other independent legal duty that is implicated by the defendant’s actions.

Pre-emption Under Davila: Right to Payment v. Rate of Payment Disputes

Montefiore Medical Center v. Teamsters Local 272, 642 F.3d 321 (2d Cir. 2011)

- Factual Overview
 - Plaintiffs were a non-profit hospital and doctors who had been assigned benefit claims by participants in health plan administered by Teamsters Union.
 - Plaintiffs claimed they were owed over \$1 million in unpaid claims and filed suit against plan administrator in state court.
 - Defendant sought to remove the case to federal court, claiming the dispute was preempted by ERISA § 502(a)(1)(B).
- Issue: Are the plaintiffs' claims preempted by § 502(a)(1)(B), and thus removable to federal court?

Right of Payment v. Rate of Payment

Prong One of Davila Test: Could the plaintiffs, at some point in time, have brought their claim under § 502(a)(1)(B)?

Right of Payment Claims: “[C]laims that implicate coverage and benefits established by the terms of the ERISA plan.”

- preempted by ERISA § 502(1)(a)(B) because they are claims to recover benefits under terms of the plan.

Rate of Payment Claims: “[C]laims regarding the computation of contract payments or the correct execution of such payments”

- Usually deemed to be contractual disputes NOT pre-empted by ERISA.

Holding: Plaintiff’s claims relate to “right of payment” and thus could have been brought under § 502(a)(1)(B). Claims in question were denied for reasons such as lack of pre-certification, performance of services not covered under the plan, and lack of member eligibility.

Right of Payment v. Rate of Payment

Prong One of Davila Test: Could the plaintiffs, at some point in time, have brought their claim under § 502(a)(1)(B)?

Holding: Plaintiffs' claims relate to "right of payment" and thus could have been brought under § 502(a)(1)(B). Claims in question were denied for reasons such as lack of pre-certification, performance of services not covered under the plan and lack of member eligibility.

Other Circuits / Cases Re This "Right" v. "Rate" Point:

- Blue Cross of Cal. v. Anesthesia Care Assocs. Med. Grp., Inc., 187 F.3d 1045 (9th Cir. 1999)
- Pasack Valley Hosp., Inc. v. Local 464 UFCW, 388 F.3d 393 (3d Cir. 2004)
- Lone Star OB/GYN Assocs. v. Aetna Health Inc., 579 F.3d 525 (5th Cir. 2009)

Rate of Payment v. Right of Payment: Common Claims Preempted or Not

- Rate of Payment Claims – likely not removable to federal court
 - Fee schedule disputes
 - Fee computation disputes
 - Timeliness of payment disputes
 - Proper form of payment disputes
- Right of Payment Claims – likely removable to federal court
 - Non-payment of benefits
 - Denials of coverage
 - Pre-certification requirements
 - Services not covered by plan
 - Lack of eligibility under plan
- Proper for court to look at the claims themselves (including supporting documentation) in removal / remand proceedings; need not be limited by allegations of the complaint.

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