

ERISA, Amara, and McCutchen - Arrows in Your Quiver? What a Plaintiff's Attorney Needs to Know.

By Scott Kalkin

Introduction

When many plaintiff's attorneys hear the word ERISA mentioned, they cringe and politely look the other way. Yet knowing about recent court cases can give you arrows in your legal quiver when representing a client with ERISA issues in a personal injury claim.

ERISA stands for the Employee Retirement Income Security Act of 1974 codified at 29 U.S.C. § 1001, et seq. It is a body of federal law that affects almost all employee benefits, including employer provided medical insurance, disability insurance, 401(k) benefits and pension plans. ERISA also preempts most state laws that relate to employer-provided benefits. (See 29 U.S.C. § 1144). In almost all instances, it deprives individuals of the right to trial by jury, the right to testify in court on matters concerning their ERISA covered benefits, and precludes the recovery of emotional distress or punitive damages. (See, for example, *Thomas v. Oregon Fruit Prods. Co.*, 228 F.3d 991 (9th Cir. 2000); *Kearney v. Standard Ins. Co.*, 175 F.3d 1084 (9th Cir. 1999).)

You'd be hard pressed to find a plaintiff's attorney who thinks ERISA-related law provides individuals with a level playing field upon which to adjudicate their claims against the employee benefit plans and insurance companies who make decisions about their benefits. Yet ERISA is a fact of legal life we all have to deal with at one time or another.

The United States Supreme Court recently issued two important ERISA-related opinions. These cases, discussed below, can significantly impact your practice and the rights of your clients, with respect to any liens an

employee benefit plan may hold on their personal injury cases. This article is intended to make you aware of these developments and explain how to best use them to your advantage in your day to day practice.

CIGNA Corporation v. Amara

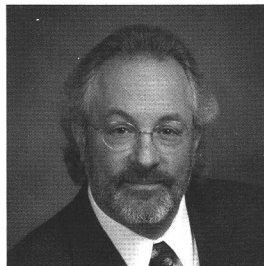
The first significant case is *CIGNA Corporation v. Amara*, 563 U.S. (2011); 131 S.Ct. 1866 (2010). The case was argued on November 30, 2011, and decided by the United States Supreme Court on May 16, 2011. This was a pension plan case in which CIGNA attempted to change the nature of the pension plan it provided to its employees from a defined benefit type plan to a defined contribution type plan. The details are not particularly relevant for our purposes. Suffice it to say that this change essentially shifted the burden of a fluctuation in interest rates and stock prices from CIGNA to its employees, saving the company approximately \$10,000,000 annually. During the course of implementing the new plan, certain misrepresentations about the nature of the changes were made. A group of CIGNA employees challenged these changes. The federal district court found for the employees, and ordered certain reformation made to the terms of the plan. The case ultimately wound up in front of the United States Supreme Court on

the issue of whether the remedies the lower court imposed were proper under ERISA.

By now you may be wondering what any of this has to do with litigating personal injury cases. The short answer is: not much. However, as part of its analysis of the remedies question, the Supreme Court found it necessary to decide exactly what documents the pension plan consisted of. And it is here that the *Amara* case becomes relevant to the personal injury practitioner.

When many people go to work for a company, they are given a booklet describing their benefits. This, in the ERISA world, is known as a summary plan description or an "SPD." Almost all SPDs make reference to other documents which are the actual "plan documents" and which are rarely shown to the employee. In fact, most employees don't even know they exist. However, it is these plan documents which in large part govern your client's rights under the plan.

During briefing in *Amara*, the Solicitor General argued that certain language in the CIGNA summary plan description was, in fact, a part of the pension plan, and that the SPD language authorized the district court to impose the type of remedy it ordered. The Supreme Court disagreed and held that:



Scott Kalkin is a past president of SFTLA and a former editor of this magazine. He has been a partner at Roboost-off & Kalkin since 1988 where he practices primarily ERISA litigation with an emphasis on disability, pension and other employee benefit claims. Scott can be contacted at robokalk@earthlink.net.