

# PUBLICATION

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## Ready To Be Sued For Expected Benefits?

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The United States Supreme Court recently issued an opinion which discussed the circumstances under which a participant in an ERISA-covered retirement plan *might* be allowed to obtain benefits to which they think they are entitled, even where the participant's understanding is contrary to the plan document.

ERISA is the body of federal law that is administered and enforced by the U.S. Department of Labor for a variety of types of employee benefit plans, rather than being part of the Internal Revenue Code which contains tax rules administered and enforced by the Internal Revenue Service. Although the Internal Revenue Code provides no remedies to plan participants, but rather prescribes taxation consequences for noncompliance, ERISA contains rules such as those dealing with fiduciary responsibility, reporting and disclosure, and civil enforcement provisions which include remedies that can be asserted by plan participants.

The Court's decision dealt with retirement plan benefits; however, it is important to recognize that the ultimate result of the decision may apply to any type of ERISA-covered plan, such as a medical or disability plan. While broad in scope, the case included an unusual set of facts, and the Court stressed that its written opinion "rests in important part upon the circumstances present here."

In analyzing this decision and determining its impact, it is essential to differentiate between the holding and dicta. A court decision can be divided into a "holding" (which has the effect of law) and "dicta" (opinions expressed by the court which are not necessary to address the issues presented and that may be influential to other courts but are not legally binding). The Supreme Court *held* that a summary plan description (SPD), which is required to be prepared and distributed by the plan administrator of a qualified retirement plan, is not part of the plan document and cannot alter the terms of the plan, even where the SPD itself may be part of a misleading communication. This may be a benefit to employers, both because it alleviates concerns about a need to produce longer and more complex SPDs in order to avoid exposure, and because it may suppress the tendency of some courts to defer to the SPD when it is more generous than the plan document. The Court also *held* that ERISA Section 502(a)(1)(B), which in some cases provides a legal remedy to participants for benefits provided under the written plan, cannot be used to change the terms of a plan based upon extraneous communications.

In the view of the Justices who wrote a concurring opinion, the remainder of the language in the majority opinion is dicta and thus is not binding. The majority opinion offered that, even though a court may not "reform" a plan under ERISA Section 502(a)(1)(B) as a legal remedy, it may provide "other appropriate *equitable* relief" under ERISA Section 502(a)(3). At least where some misleading communication by an employer is involved, the majority opinion indicated that various forms of traditional equitable relief might be available, though the Court did not resolve what equitable remedy would actually be available. Instead, the case was sent back down to the lower federal courts for decisions on any available equitable remedies under these circumstances.

Thus, we are left with a Supreme Court decision that, for now, tells us that an SPD won't alter a plan, and suggests that, at least where misinformation regarding plan changes is present, it might be possible for a court to grant some relief to a participant. For now, it is not possible to say what circumstances must be present for a court to provide "other appropriate equitable relief" nor what form that relief might take. The plaintiff's burden of proof would depend upon the equitable theory being asserted.

The impact of this decision in terms of available equitable remedies may, or may not, turn out to be very narrow. Equitable remedies may be available only in egregious circumstances, or perhaps may become more widely available. Time will tell, but it is very likely that this will be an area where plaintiffs will push the boundaries of permissible claims under varying theories of equity for many years to come. What is clear, however, is that employers need to be accurate in their communications because, even though these communications may not alter the plan's terms, they could provide grounds for participants to recover "equitable relief."

Should you have questions regarding this recent Supreme Court decision, or should you wish to discuss any other ERISA-related issues, please contact an attorney in the Firm's Tax Department.