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2nd Circ. OKs Plan Reformation In Cigna ERISA Class Action

By **Ben James**

Law360, New York (January 07, 2015, 8:28 PM ET) -- A recent Second Circuit opinion rejecting Cigna Corp.'s challenge to a ruling reforming its pension plan in a massive Employee Retirement Income Security Act class action answered a question left open by the nation's highest court, holding that plan reformation resulting in monetary relief may be permissible under a class action rule providing for injunctive and declaratory remedies.

The appellate panel's Dec. 23 decision came in a long-running legal battle that centered on the 1998 conversion of Cigna's defined benefits plan to a cash balance plan. The case, brought on behalf of some 25,000 plan beneficiaries, made its way up to the U.S. Supreme Court, which vacated and remanded in May 2011 and said the relief the district court had awarded the workers wasn't available under a particular section of ERISA.

The high court directed the district court to consider whether the plan participants were entitled to relief under another section of ERISA that provides for “appropriate equitable relief.” The trial court refused to decertify the class and, as it had done the first time around, ordered Cigna to provide benefits accrued under the defined benefit plan at the time of conversion, plus benefits under the cash balance plan.

Both sides appealed, and last month, the Second Circuit affirmed the lower court, concluding that the plan should be reformed to be consistent with representations made by the plan administrator.

“It should not be surprising that Cigna's fraud, coupled with its deception of its employees, would justify reformation of the pension plan,” said Harris Wiltshire & Grannis LLP's Christopher Wright, an attorney for the plaintiffs. “But prior to this decision, that was not as clear as it ought to be.”

An attorney for Cigna declined to comment, and the company could not immediately be reached. But in a brief filed with the Second Circuit, the company had urged reversal on both class certification and reformation.

After finding fault with Cigna's argument that the class should be decertified because the lower court's remedy actually hurt, rather than benefited, certain class members, the panel went on to reject Cigna's claim that “the district court’s reformation remedy and award of monetary damages are simply not permitted under Rule 23(b)(2)."

Cigna argued that reformation cannot form the basis for a request for monetary relief under the rule, as it is not a form of injunctive relief. But the Second Circuit found that reformation is essentially an injunction and a declaration of the plaintiffs' rights and that the money plaintiffs receive as a result is incidental and therefore permissible.

“It is certainly an extension of the law in the Second Circuit to say you can use 23(b)(2) in an ERISA context to reform a plan and then issue an injunction,” said Ronald Richman, co-head of Schulte Roth & Zabel LLP's employment and employee benefits group. “It's the first time, as I understand it, that the Second Circuit has taken that position, and it was certainly an issue left open by the Supreme Court.”

Whether “incidental monetary relief” can be sought on a classwide basis under Rule 23(b)(2) hasn't been resolved by the high court, the opinion said.

While the landmark Dukes decision nixed the standard for monetary relief in Rule 23(b)(2) class actions that had been laid out in a Second Circuit decision called Robinson v. Metro-North, it did not rule out a monetary award that is incidental to a final injunctive or declaratory remedy, according to the appeals court, which cited "persuasive" decisions from other circuits.

Other courts that have tackled the question of whether reformation is available to a Rule 23(b)(2) class in an ERISA suit, including the Seventh Circuit, have said the answer is yes, the Dec. 23 ruling said.

The Second Circuit ruling also represents a broader view of the relief available under ERISA's Section 502(a)(3) than had existed before the Supreme Court's May 2011 ruling on the matter in the case Cigna v. Amara, Thompson Hine's Timothy McDonald said. That provision authorizes plan participants, beneficiaries and fiduciaries to seek “appropriate equitable relief” to redress violations of ERISA or a plan's terms.

“The general trend of ERISA cases before Amara was that relief under 502(a)(3) was very narrow, and the language in Amara, regardless of what you may think of the opinion, clearly broadened the relief that was available,” McDonald said.

But while the Second Circuit's recent decision might seem like a boon for workers who bring ERISA suits over inaccurate information, that's not actually the case, Mayer Brown LLP's Nancy Ross said.

While the Supreme Court left it for lower courts to ascertain exactly when reformation might be appropriate, the Second Circuit's ruling sets a high bar for plaintiffs and won't be much use to anyone arguing that mistaken information that was inadvertently given won't be enough, Ross said.

“I think this is a pretty narrow decision, frankly,” Ross said. “We all knew that reformation was a viable, equitable remedy under [Section 502(a)(3)].”

The Second Circuit panel ruled last month that the district court, which ruled for the second time in December 2012, "did not err in determining that Cigna committed fraud or inequitable conduct against all of the class members.”

In the lawsuit, brought back in 2001, the plan beneficiaries said Cigna Corp. and the Cigna Pension Plan had failed to give them proper notice of changes to their benefits. The district court found that Cigna intentionally misled its employees, the Supreme Court opinion noted.

The lower court reformed the plan and ordered Cigna to pay benefits accordingly under ERISA Section 502(a)(1)(B). While the high court concluded that relief wasn't authorized by that particular section of ERISA, a different provision “authorizes forms of relief similar to those that the court entered,” the Supreme Court said, referring to Section 502(a)(3).

McDonald pointed out that the high court's Cigna decision came with a concurrence delivered by Justice Antonin Scalia and joined by Clarence Thomas. According to Scalia, the majority's discussion of available relief under 502(a)(3) was “purely dicta.”

“The district court need not read any of it — and, indeed, if it takes our suggestions to heart, we may very well reverse,” the concurrence said.

The Dec. 23 ruling in the Cigna case could be setting the stage for further high court review and putting Scalia's admonition to the test.

“I don't think the Second Circuit adds much new law to the district court's opinion, but I think we're finally teed up to see whether there was any heft behind Justice Scalia's warning or not,” McDonald said.

--Editing by Kat Laskowski and Emily Kokoll.
