Supreme Court Cases Impacting Project Clients

List of Cases

Dudenhoeffer v. Fifth Third Bancorp, 692 F.3d 410, (6th Cir. 2012), *cert. granted*, 81 U.S.L.W. 3350 (U.S. Dec. 13, 2013) (No. 12-751)(argued but not decided).

U.S. Airways, Inc. v. McCutchen, 133 S. Ct. 1537 (2013).

Heimeshoff v. Hartford Life & Accident Ins. Co. , et. al., 134 S. Ct. 604 (2013).

Cigna Corp. v. Amara, 131 S. Ct. 1866 (2011).

Hardt v. Reliance Standard Life Ins. Co., 530 U.S. 242 (2010).

U.S. v. Windsor, 133 S. Ct. 2675 (2013).

The Supreme Court and ERISA

I. Cigna Corp. v. Amara (2012): Some Bad News and Possibly Some Surprising Good News for Participants

Factual Context: Cigna converts a traditional pension plan into a cash-balance plan, substantially reducing benefits for older employees. Summary plan description misrepresents effects of conversion, suggesting that the conversion will improve benefits. Amara brings a class action under Section 502(a)(1)(B) of ERISA on theory that the summary plan description controls over plan in cases of inconsistency. Federal courts had disagreed on whether participants needed to demonstrate that they relied on the summary plan description.

Supreme Court Speaks: Justice Breyer, writing for himself and five other judges, holds:

(1) The (really) bad news: There is no cause of action under Section 502(a)(1)(B) because that section provides jurisdiction to bring an action for benefits under the terms of the plan and the summary plan description is not the plan.

(2) The (surprising) good news: There is a plausible cause of action under Section 502a(a)(3), which provides equitable relief for participants harmed by fiduciary breach. Plan fiduciaries may have committed breach by creating misleading summary plan description. Amara did not focus on this theory because Supreme Court had consistently held that a plaintiff could only seek traditional equitable remedies under the Section 502(a)(3) and that an award of money was a legal not an equitable cause of action. At least three forms of equitable relief might be available: equitable estoppel, which requires reliance; and reformation and equitable surcharge, which do not.

Scorecard: The summary plan description is less important in benefit cases, even though it is typically the only document participants see. (Must prove that the error in the summary plan description resulted from a fiduciary breach.) But the idea that equitable relief includes equitable surcharge, reformation and estoppel can be used to enforce a representation in a summary plan description and has implications for other civil actions alleging a fiduciary breach.

II. US Airways v. McCutchen (2013): Plan Language Trumps Equity

Factual Context: McCutchen covered by health care plan, which provides that if health can plan "pays benefits for any claim you incur as the result of . . . actions of a third party . . . you will be required to reimburse [the plan] for amounts paid for claims out of any money recovered from the third party, including, but not limited to, your own insurance company, as the result of judgment, settlement, or otherwise."

McCutchen suffers more than one million dollars in injuries in an automobile accident. Health plan pays $66,866 in medical expenses. McCutchen sues poorly insured motorist, settles for $10,000 and receives $100,000 from his own insurance company, for a total of $110,000. Pays attorney $41,000, leaving him with $66,000 net. The plan claims right to $66,866.

McCutchen argues that he can raise equitable defenses: (1) plan only has right to double recovery; (2) plan must pay its share of attorney's fees.

Supreme Court Speaks, Unanimously (more or less): The plan is the contract and the plan's equitable remedy here is the right to enforcement contractual rights against a specific sum of money in which the plan has an interest. Cannot raise equitable defenses against a contract right.

Tiny Silver Lining for this Plaintiff: The contract was unclear on whether US Airways plan entitled plan to reimbursement net of fees. Ambiguity can be resolved in favor of a natural reading of contract, which is that plan shoulders its portion of attorney's fees. (Scalia and Thomas don't agree with this part of holding.)

Note: The Supreme Court approach is rejected by every state that has considered the issue and by every federal statute that provides for recoupment.

III. Heimeshoff v. Hartford Life Insurance (2013): Plan Language Trumps Statute

Factual Context: Heimeshoff diagnosed with lupus and fibromyalgia and filed for long-term disability. Hartford administers disability plan and rejects claim based on opinion of a doctor who did not conduct an examination. Heimeshoff requests administrative review, receives extension from plan. Claim rejected in 2007. Heimeshoff brings civil action in 2010, within three years of appeal's deadline. Plan document requires claim brought within 3 years of time proof of claim submitted.

The Supreme Court Speaks: ERISA has no statute of limitations and in such statutes parties may agree to a statute of limitations so long as it is reasonable. In ERISA, then, the plan language controls. Here the limitation period is reasonable, even though it begins running before final plan decision.

Some Questions: When is a plan provision unreasonable? Can a plan require binding arbitration?

IV. Hardt v. Reliance Standard Life Insurance Co. (2010): Supreme Court Wades Into Attorney's Fee issues and Barely Gets Its Feet Wet

Factual Context: Hardt files for long-term disability. Her doctors say she is disabled and Social Security Administrator agrees. Reliance rejects claim based on opinion of its doctor, who did not examine Hardt or review all of her medical records. Hardt brings civil action and district court reverses and remands in strongly worded opinion. On remand, Reliance reverses itself and grants Hardt disability benefits. Hardt now files motion in court for attorney's fees under Section 502(g). District Court awards fees on theory that Hardt is prevailing party and that she is entitled to fees based on five-factor test. Fourth Circuit reverses award of fees, holding that Hardt was not a prevailing party because all she obtained was a remand.

Some background: The five-factor test enumerates factors that district court should consider in exercising its discretion. The factors are (1) degree of opposing parties' bad faith; (2) ability of party to satisfy a fee award; (3) deterrence of bad conduct by others; (4) helps other plan participants of plan or to resolve significant ERISA question; (5) relative merits of positions. The five-factor test is court-made.

The Supreme Court Speaks But Forgets to A Key Question: In opinion for Court, Justice Thomas holds that ERISA does not require that a party prevails, but does require that an award of fees be appropriate. Thus, "some degree of success on merits" is required. If some degree of success, then district court has discretion. But Court fails to decide whether court five-factor test applies, but does write: "Because these five factors bear no obvious relation to 1132(g)(1)'s test or to our fee-shifting jurisprudence, they are not required for channeling a court's discretion."

Open questions: Five factor test good law? Can court award pre-suit attorney's fees?

V. Windsor and Same Sex Marriage

Questions:

1) Does Windsor require that ERISA statutory provisions relating to marriage include same-sex marriage? Yes.

2) Does Windsor apply retroactively? IRS says no in Notice 2014-19. But plan can amend retroactively as an elective matter.

3) Is IRS position on retroactivity the law? Maybe not, but wait and see.

4) Is validity of same-sex marriage determined in state of ceremony or state of domicile? IRS and DOL say state of ceremony?

5) Does same-sex marriage include domestic partnerships? IRS says no.

6) Can plans provide non-statutory subsidized benefits and forms of benefits only for opposite-sex marriages? Probably, plan interpretation issue.

7) How does Windsor apply to federal and state plans? Applies to federal plans. Unclear to extent it applies to state plans.

8) Will this set of questions and answers be obsolete next year? Almost certainly?

VI. Fifth Third Bancorp. v. Dudenhoeffer: The Court's Next (Mis-)Step into the ERISA Quagmire,

Factual Context: Defendant sponsors 401(k) plan, with employer stock fund investment option. Plaintiff alleges that the plan's fiduciaries were imprudent in continuing to invest the fund in employer stock because they knew or should have known that the stock was overvalued. Federal circuit courts have adopted a presumption of prudence when investing employer stock. Most circuits have held that the presumption is satisfied unless the fiduciaries knew or should have known that the company is in imminent financial peril or in dire financial predicament. The district court held that even though the defendant had "embarked on a disastrous foray into subprime lending," resulting in significant loss of value, that it was not in a dire financial predicament (or at least the complaint had not so alleged) and dismissed. The Sixth Circuit reversed, holding that it was inappropriate to invoke the presumption in the pleading stage and noting that it had not yet defined the contours of the presumption. The Supreme Court granted certiorari.

Some Statutory Background: ERISA's diversification requirements do not apply to an individual account plan whose purpose is to invest primarily in employer stock but the general prudence requirement does apply except with respect to diversification. (There are also exemptions to the prohibited transaction rules permitting investment in employer stock and permitting the plan to purchase such stock from the employer.)

Note: The Department of Labor wrote a strong amicus brief arguing against any presumption of prudence.