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AMARA AFTER TEN YEARS - PART 2: EXPLORING THE "HOST" OF EQUITABLE REMEDIES AVAILABLE UNDER ERISA FOR PLAN PARTICIPANTS AND BENEFICIARIES IN THE SIXTH CIRCUIT BY ERIC L. BUCHANAN[i]

In our January 2022 newsletter, we noted that 2021 marked the tenth anniversary of *CIGNA Corp. v. Amara,* 563 U.S. 421, 440–41 (2011), the case clarifying that a wide variety of causes of action and remedies are available to plan participants when fiduciaries breach their duties under ERISA.[ii] In that article, we explored the history of the Supreme Court's rulings on ERISA breach of fiduciary duty claims, including the limit that such claims must be "equitable," as that word was used in the days of the divided bench.

The *Amara* Court explained that "chancellors [judges in equity courts] developed a *host of other "distinctively equitable" remedies*—remedies that were "fitted to the nature of the primary right" they were intended to protect. …Indeed, a maxim of equity states that '[e]quity suffers not a right to be without a remedy.'" *Id.*, 563 U.S. at 440 (emphasis added).

In this newsletter, we further explore the various causes of action and remedies available in equity that can provide a cause of action under ERISA for plan participants and beneficiaries harmed by ERISA fiduciaries breaching their duties.

When a contract does not reflect the agreement of the parties, whether due to mistake or fraud, equity courts have the power to reform contracts.

Reformation of the contract, the remedy for fraud or mistake, is the first example of an equitable remedy the *Amara* Court said would be available. *Amara*, 563 U.S. at 440. ("The power to reform contracts (as contrasted with the power to enforce contracts as written) is a traditional power of an equity court, not a court of law, and was used to prevent fraud.") The Supreme Court cited leading cases and textbooks on equity to support this proposition:

> *Baltzer v. Raleigh & Augusta R. Co.,* 115 U.S. 634, 645, 6 S.Ct. 216, 29 L.Ed. 505 (1885) ("[I]t is well settled that equity would reform the contract, and enforce it, as reformed, if the mistake or fraud were shown"); *Hearne v. Marine Ins. Co.,* 20 Wall. 488, 490, 22 L.Ed. 395 (1874) ("The reformation of written contracts for fraud or mistake is an ordinary head of equity jurisdic-

> tion"); *Bradford v. Union Bank of Tenn.,* 13 How. 57, 66, 14 L.Ed. 49 (1852); J. Eaton, Handbook of Equity Jurisprudence § 306, p. 618 (1901) (hereinafter Eaton) (courts of common law could only void or enforce, but not reform, a contract); 4 Pomeroy § 1375, at 1000 (reformation "chiefly occasioned by fraud or mistake," which were themselves concerns of equity courts); 1 Story §§ 152–154; see also 4 Pomeroy § 1375, at 999 (equity often considered reformation a "preparatory step" that "establishes the real contract").

Amara, 563 U.S. at 440–41.

Estoppel is a "traditional equitable remedy" to provide the benefits promised.

The *Amara* Court next explained that the remedy of providing the plaintiffs the benefits promised could have also been found under estoppel. Amara, 563 U.S. at 441. The remedy was available to hold Cigna "to what it had promised, namely, that the new plan would not take from its employees benefits they had already accrued." Id. This principle of equitable estoppel, "operates to place the person entitled to its benefit in the same position he would have been in had the representations been true." Id. The Court further explained, "as Justice Story long ago pointed out, equitable estoppel 'forms a very essential element in ... fair dealing, and rebuke of all fraudulent misrepresentation, which it is the boast of courts of equity constantly to promote.' *Id*, citing 2 Story § 1533, at 776.

An injunction to order a breaching trustee to pay money owed, (sometimes called a surcharge), under a reformed plan is a permitted remedy in equity.

The third equitable remedy the *Amara* Court held could be used was an injunction to pay money owed; such a remedy against a breaching trustee was sometimes called a "surcharge" and was "exclusively equitable." *Amara*, 563 U.S. at 441-442. Some prior cases dealing with claims by fiduciaries against beneficiaries, like *Great-West Life & Annuity Ins. Co. v. Knudson,* 534 U.S. 204 (2002), had limited the remedy a fiduciary could obtain in equity only to specifically identifiable funds; however, in *Amara*, a monetary payment is available where a beneficiary has a claim against a breaching trustee. *Id.*

> The surcharge remedy extended to a breach of trust committed by a fiduciary encompassing any violation of a duty imposed upon that fiduciary. Thus, insofar as an award of make-whole relief is concerned, the fact that the defendant in this case, unlike the defendant in *Mertens,* is analogous to a trustee makes a critical difference.

Id., 563 U.S. at 442, citing Second Restatement § 201; Adams 59; 4 Pomeroy § 1079; 2 Story §§ 1261, 1268.

The harm required in equity varies based on the claim and remedy; detrimental reliance is not required unless a particular equitable remedy requires it.

The Supreme Court rejected the argument that detrimental reliance is required in every claim in equity; "there is no general principle that 'detrimental reliance' must be proved before a remedy is decreed. To the extent any such requirement arises, it is because the specific remedy being contemplated imposes such a requirement. *Amara*, 563 U.S. at 443.

Detrimental reliance is required for estoppel.

The Court agreed that for the equitable remedy of estoppel to apply, a plaintiff must make "a showing akin to detrimental reliance, *i.e.,* that the defendant's statement "in truth, influenced the conduct of" the plaintiff, causing "prejudic[e]." *Id.*, citing Eaton § 61, at 175; see 3 Pomeroy § 805. Thus, the Court explained, when considering whether a particular set of facts gives rise to a valid claim under ERISA § 502(a)(3), "to impose a remedy equivalent to estoppel, a showing of detrimental reliance must be made." *Id.*

Detrimental reliance is not required for other equitable remedies, like reformation or surcharge.

Detrimental reliance is not always required for other equitable remedies. Equity courts could, for example, reform contracts to reflect the mutual understanding of the parties where a fraudulent suppression, omission, or insertion materially affected the contract. *Id.*, citing 1 Story § 154, at 149. Even if the complaining party was negligent in not realizing the mistake, as long as the negligence did not fall below reasonable prudence, the remedy of reformation was available. *Id.*, citing 3 Pomeroy §§ 856, 856b, at 334, 340–341. See *Baltzer,* 115 U.S., at 645, 6 S.Ct. 216; Eaton § 307 (b). Thus, the test of whether the equity court could reform the contract was not whether the plaintiff had

detrimentally relied on a misrepresentation, but whether the plaintiff was not so negligent in not catching the misrepresentation as to "fall below reasonable prudence."

Detrimental reliance is also not required for the remedy of surcharge; rather, a trustee who breaches a trustee's fiduciary obligations is required to make the trust or beneficiary whole.

The Court in *Amara* further explained that equity courts did not require "a showing of detrimental reliance in cases where they ordered 'surcharge.'" *Amara*, 563 U.S. at 444. "Rather, they simply ordered a trust or beneficiary made whole following a trustee's breach of trust." The Supreme Court explained, that equity courts would "mold the relief to protect the rights of the beneficiary according to the situation involved." *Id.*, citing Bogert § 861, at 4. The Court concluded, "This flexible approach belies a strict requirement of 'detrimental reliance.'" *Id.*

Harm is still required, but it can be measured by the loss of an ERISA right or a right in equity, and is not limited to detrimental reliance."

Harm is an element of equitable remedies, but "detrimental reliance" is not the only form of harm. *Id.* The *Amara* Court explained that harm "might also come from the loss of a right protected by ERISA or its trust-law antecedents." *Amara*, 563 U.S. at 444. As an example, the Court explained that the Cigna fiduciary's "failure to provide proper summary information, in violation of the statute, injured employees *even if they did not themselves act in reliance* on summary documents." *Id* (emphasis added). Harm under the facts in *Amara* could come from the fact the documents did not provide information required from ERISA, even if the plaintiffs each did not even see the documents, because the lack of information may have hampered workplace discussions. *Id.* Yes, some harm is required, like a violation of ERISA's notice requirements, but "it is not always necessary to meet the more rigorous standard implicit in the words "detrimental reliance." *Id.*

Conclusion:

In equity, the remedies available to a fiduciary are somewhat limited; the remedies available to a beneficiary against a fiduciary are more numerous. When an ERISA fiduciary breaches its duties, courts can look to any of the wide range, or "host," of remedies that were available in equity courts to provide relief for beneficiaries who were the victims of such breaches.

In part 3 on this topic, we will explore how the Court of Appeals for the Sixth Circuit has addressed the remedies available for breaches of fiduciary duties under ERISA.

End Notes:

[i] Eric Buchanan and his firm represent disabled people and other policyholders across the United States in both ERISA and non-ERISA disputes, focusing primarily in the areas of disability, life, and health insurance. Eric served as President of the Tennessee Trial Lawyers Association (TTLA, also known as the Tennessee Association for Justice, or TAJ) from 2015 to 2016 and is a lifetime member of that organization.

Eric Buchanan regularly chairs conferences and speaks to both national and local audiences on disability insurance, ERISA, insurance law, and social security disability. Eric has represented hundreds of people in social security and ERISA disputes in federal court. Eric is the past-chair (2007-2008) of the AAJ Social Security Disability Section, past chair (2006-2007) of the AAJ ERISA Health Care Finance and Disability Litigation Group, past President of the Chattanooga Trial Lawyers, and past-chair (2005-2006) of the Tennessee Bar Association Disability Law Section.

Eric graduated from the Washington and Lee University School of Law *magna cum laude* in the top 10% of his class. While in law school he was inducted into the Order of the Coif and the Omicron Delta Kappa honorary leadership fraternity. Eric is a graduate of the Virginia Military Institute and served as an officer in the U.S. Navy from 1989 to 1994, where he served as a naval aviator (pilot), plane commander, and mission commander of P-3C Orion aircraft.

[ii] ERISA is the "Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et.seq.

Eric Buchanan & Associates, PLLC is a boutique plaintiffs' firm located in Chattanooga, Tennessee. We help individuals nationwide obtain disability insurance benefits and other ERISA employee welfare benefits (such as life, health or disability benefits offered through work). Attorneys are our number one source of cases. If you have a client who could use our help, we would appreciate your referral.

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