

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

JANICE C. AMARA, GISELA R.	:	
BRODERICK, ANNETTE S. GLANZ,	:	
individually and on behalf of all others	:	
similarly situated,	:	
	:	Civil No. 3:01-CV-2361 (MRK)
Plaintiffs,	:	
	:	
vs.	:	
	:	
CIGNA Corp. and CIGNA Pension Plan,	:	
	:	
Defendants.	:	

Key Quotes from the February 15, 2008 *Amara v. CIGNA* Decision

“The questions raised in this case are vitally important to both employers and employees (and their families). Given how profoundly significant retirement plans and planning are to the great majority of Americans—employees and employers alike—this is one area where the answers should be clear, explicit, and definite.” Slip Op. at 2-3.

“in effectuating the conversion to the cash balance plan, CIGNA did not give a key notice to employees that is required by ERISA; and CIGNA’s summary plan description and other materials were inadequate under ERISA and in some instances, downright misleading.” Id. at 3.

“ERISA ... emphasizes the importance of disclosure by employers to employees regarding the details of the company’s pension plan, to enable employees to plan for their retirement and to make decisions of profound importance for their lives. This is where CIGNA failed to fulfill its obligations; the company did not provide its employees with the information they needed to understand the conversion from a traditional defined benefit plan to a cash balance plan and its effect on their retirement benefits.” Id. at 3-4.

Even if the statute “did not require the additional information regarding reductions that Plaintiffs request, the statute certainly does not permit CIGNA to avoid providing such information and to offer material misrepresentations suggesting benefit increases instead.” Id. at 78-79.

“CIGNA offered statements that misled plan participants into believing that significant reductions in the rate of future benefit accrual were not a component or a possible result....” Id. at 80.

“nothing in the Newsletter indicated to plan participants that their rate of benefit accrual might decrease, much less by a significant margin. And yet that is exactly what happened.” Id.

“the problem lies not with the volume of information CIGNA chose to provide, but rather with some of the statements made in CIGNA’s disclosures, which the Court finds were not written in a manner calculated to be understood by the average plan participant and which failed to include important details regarding the transition to Part B [the cash balance formula] that reasonable employees would have wanted to know.” Id. at 82.

“CIGNA employees suffered from the lack of accurate information in CIGNA’s disclosures and CIGNA was aware of this fact.” Id. at 83.

“Despite these requests for further information, and the wealth of evidence indicating that CIGNA was well aware of the true effects on the rate of benefit accrual ..., CIGNA chose not to inform its employees about those effects in order to ease the transition to a less favorable retirement program.” Id. at 85.

“The reason for this reticence becomes clear in light of several internal CIGNA documents, which highlight CIGNA’s desire to ‘[q]uickly dispel perceptions of ‘take aways’ and ‘focus on the potential additional benefits.’ ... The risk of an adverse employee reaction ... was real....” Id. at 86.

“the Court concludes that CIGNA was aware of the significant reduction in the rate of future benefit accrual that would affect at least a substantial proportion of its employees ..., that CIGNA wished to avoid the employee backlash likely to result from a thorough discussion of these aspects of Part B, and that CIGNA sought to negate the risk of backlash by producing affirmatively and materially misleading notices regarding Part B.” Id. at 87.

“CIGNA admits that it nowhere informed its employees that they might not be accruing benefits under Part B, despite [its own expert’s] testimony that it would have been ‘predictable and known to CIGNA’ that ‘opening balances for some sizeable group of employees’ ‘would be less than their protected benefit under the old plan.’” Id. at 90.

“wear away was both a structural phenomenon and one that CIGNA could, and

did, predict, despite the fact that it resulted from the interaction of several plan provisions and falling interest rates.... A necessary precondition to wear away was CIGNA's use of a 'greater of A or B' system, because if CIGNA had chosen an 'A plus B' approach instead, there would be no catch-up period or wear away effect at all." Id. at 92.¹

"the Court finds that CIGNA had a duty to inform plan participants of the possibility of wear away in its notices and disclosures CIGNA created a pension plan that was structurally susceptible to the wear away effect, and should have known, given the current state of interest rates, that further declines were of sufficient likelihood that wear away needed to be disclosed." Id. at 93.

"the dramatic effect that wear away had on the pension benefits of certain named Plaintiffs, in some cases causing them to accrue no additional benefits at all from the time of Part B's implementation to their retirement, weighs against determining that the effects of wear away were sufficiently unimportant not to require attention in CIGNA's notices." Id. at 95.

"Even assuming, however, that CIGNA did not have an affirmative duty to inform participants regarding wear away, it nevertheless could not provide, instead of no information, materially misleading disclosures. Yet that is exactly what CIGNA did." Id. at 95-96.

"Nowhere in any of the notices is the phenomenon of wear away, or any substantive equivalent, discussed or described.... As CIGNA's counsel admitted to the Court, he could point to no statement in the notices that told employees 'they were actually not earning retirement benefits.'" Id. at 97.

"Plaintiffs reasonably could have believed that their early retirement benefits were fully protected as part of their minimum benefit and/or opening account balance under Part B." Id. at 98.

"it was reasonable for CIGNA employees to conclude that all of their early retirement benefits were included in the protected minimum benefit, and that the employees would receive the full value of those benefits, regardless of whether they chose an annuity or a lump sum." Id. at 99.

"The effect of these misleading statements was compounded by CIGNA's failure

¹ The "wear away" effect is described in more detail at pages 15-21 of the decision.

to inform its employees when the annuity option had a greater present value than the lump sum option, despite its representations that it would do so.” Id.

“the notices provided by CIGNA ‘likely and quite reasonably, led plan participants to believe’ that wear away was not a likely result of the transition to Part B, that the full value of the accrued benefits under Part A, including early retirement benefits, would be included in the opening account balances, and that the accrual rates for both short- and long-term employees under Part B were at least roughly equivalent to those under Part A.” Id. at 104

“CIGNA’s successful efforts to conceal the full effects of the transition to Part B ‘deprived [plaintiffs] of the opportunity to take timely action ...’ whether that action was protesting at the time Part B was implemented, leaving CIGNA for another employer with a more favorable pension plan, or filing a lawsuit like this one.” Id.

“Looking at the terms of the Treasury regulations, the Court agrees with Plaintiffs that CIGNA was required to notify its employees that the subsidized early retirement benefits were available only through the annuity option.... [E]ven CIGNA’s own expert agreed that CIGNA failed to provide this information in its election forms.” Id. at 114.

“CIGNA was required as a result of its promises in the SPDs, affirmatively to notify its employees if the present value of their retirement benefits under Part A exceeded those available under Part B.” Id. at 118.

“Especially in light of the difficulty employees (and even experts) had in evaluating the comparative value of the different retirement options, CIGNA could only comply with its obligation by pointing out explicitly that the Part A annuity had the greater present value.”