

## SOMETIMES AN SPD REALLY IS JUST A SUMMARY

By: *Patricia M. McGrath, Esq.*  
Email: [pmcgrath@devinemillimet.com](mailto:pmcgrath@devinemillimet.com)  
Phone: 603.695.8537

MAY 11, 2012

In May, 2011, the United States Supreme Court issued its opinion in CIGNA Corp. v. Amara, 131 S. Ct. 1866 (2011). That opinion stated that a plan's summary plan description does not in itself "constitute the terms of the plan." For more information about that decision, see our [July 1, 2011 Email alert](#).

In Skinner v. Northrop Grumman Retirement Plan B, No. 10-55161 (2012, CA9), which can be found at <http://caselaw.findlaw.com/us-9th-circuit/1596098.html>, the 9th Circuit Court of Appeals relied on the Amara decision in deciding that a California employer did not need to reform the terms of its retirement plan to conform to the wording of the plan's summary plan description, or SPD. That Amara is being applied in a consistent matter is welcome news for employers that sponsor plans.

The Skinner case arose from the following facts. Northrop Grumman Corp. acquired Litton Industries, Inc. Litton, like other companies that Northrop had acquired, had sponsored a pension plan. Effective July 1, 2003, Northrop consolidated the Litton plan, along with other plans of other acquired companies, into a single cash balance formula, called the Northrop Plan B.

The Northrop Plan B Plan Document included an "annuity equivalent offset," which is used to reduce annual benefit amounts payable to retirees based on the age of retirees at retirement. This offset was described in the Plan's 2003 SPD. The SPD also told participants that it was only a summary and that they should look to other sources for information regarding the retirement benefit, including the Plan Document.

Prior to their retirements, two Litton employees, Charles Skinner and Gregory Stratton, each received pension calculation information that they believed did not properly apply the annuity equivalent offset. After comparing their pension benefit calculations with information contained in the SPD - not the Plan Document - they determined that Northrop was providing less of a retirement benefit than what they were entitled to receive. In 2009, Skinner and Stratton brought suit against Northrop. The District Court determined that the alleged inconsistencies between the SPD and Plan Document could not serve as the basis for an ERISA claim. On appeal, a pre-Amara Ninth

### Labor, Employment & Employee Benefits

**Mark Broth, Chair**  
603.695.8558  
[mbroth@devinemillimet.com](mailto:mbroth@devinemillimet.com)

**Newton Kershaw**  
603.695.8571  
[nkershaw@devinemillimet.com](mailto:nkershaw@devinemillimet.com)

**Patricia McGrath**  
603.695.8537  
[pmcgrath@devinemillimet.com](mailto:pmcgrath@devinemillimet.com)

**Margaret O'Brien**  
603.695.8631  
[mobrien@devinemillimet.com](mailto:mobrien@devinemillimet.com)

**Anne Scheer**  
603.410.1708  
[ascheer@devinemillimet.com](mailto:ascheer@devinemillimet.com)

**Laurel Van Buskirk**  
603.695.8565  
[lvanbuskirk@devinemillimet.com](mailto:lvanbuskirk@devinemillimet.com)

DEVINEMILLIMET.COM

EMPLOYMENT@DEVINEMILLIMET.COM

Circuit reversed the District Court, holding that the inconsistency between the SPD and the Plan Document caused the parties to have received “insufficient notice” of the offset application, and remanded the matter for further consideration.

On remand, the District Court again found for the Plan, holding that the retirees could not rely on the alleged inconsistency between SPD and Plan. The parties again appealed to the Ninth Circuit. By the time of the second appeal, the Supreme Court had issued the Amara opinion. The Amara opinion expressly stated that claims cannot be based on alleged inconsistencies between the SPD and a plan document, as the SPD is only a summary of the Plan, not the Plan itself. Denied that argument, plaintiffs relied on dicta (non-binding theorizing by the Justices) in Amara to argue that the plan should be “reformed” to comply with the SPD terms. Construing the Amara dicta, the Ninth Circuit held that plan reformation could only be sought where it was alleged that the differences between Plan Document and SPD were the result of fraud or mistake. As there was no allegation of fraud or mistake against Northrop, that argument was also denied. The court similarly rejected the plaintiffs’ claim that the Plan trustees should be “surcharged,” in the form of additional contributions to the Plan for their failure to administer the Plan in accordance with the SPD. The court, looking to Amara, determined that this argument lacked merit, in that the trustees’ obligation was to enforce the Plan, not the SPD.

After Amara, plan sponsors and trustees enjoy a higher level of comfort in relying on a plan’s terms as they are laid out in the actual Plan Document, even if there is a difference between those terms and an SPD. Nonetheless, as a preventive measure, plan sponsors and administrators should strive to have SPDs clearly and accurately reflect the Plan Documents that they summarize.

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#### Office Locations:

111 Amherst Street  
Manchester, NH 03101  
T 603.669.1000  
F 603.669.8547

43 North Main Street  
Concord, NH 03301  
T 603.226.1000  
F 603.226.1001