No. 17-1431

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RANDY D. PEARCE,

Plaintiff-Appellant,

v.

CHRYSLER GROUP LLC PENSION PLAN,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION
CASE NO. 10-14720

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE IN SUPPORT OF THE PLAINTIFF-APPELLANT

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QUESTION PRESENTED

Whether a plaintiff must show "an intent to deceive" by the defendant to obtain the equitable remedy of reformation under section 502(a)(3) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1132(a)(3).

STATEMENT OF INTEREST

The Secretary of Labor (Secretary) has primary regulatory and enforcement authority for Title I of ERISA. See Sec'y of Labor v. Fitzsimmons, 805 F.2d 682, 692–93 (7th Cir. 1986) (en banc). The Secretary has a substantial interest in ensuring that ERISA plans provide their participants with accurate, comprehensive, and understandable information about the plan so participants can make informed decisions about their benefits. This is especially true for information conveyed to participants in summary plan descriptions (SPDs)—the SPD being the primary document a plan must furnish to its participants by law, without cost, to explain their rights and obligations under the plan. See 29 U.S.C. §§ 1022, 1024, 1132, 1135; 29 CFR § 2520.102-3 (describing requirements for the contents of SPDs).[1] The Secretary likewise has a substantial interest, in both his own cases and private litigation, to ensure plan participants and beneficiaries have access to make-whole

[1] "ERISA §§ 102(a) and 104(b) [29 U.S.C. §§ 1022(a), 1024(b)] . . . require a plan administrator to provide beneficiaries with summary plan descriptions and with summaries of material modifications, 'written in a manner calculated to be understood by the average plan participant,' that are 'sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan'" CIGNA Corp. v. Amara, 563 U.S. 421, 432 (2011). ERISA section 102(b) specifically requires the SPD to contain information as to "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." 29 U.S.C. § 1022(b).

relief in the courts to adequately remedy ERISA violations, including misrepresentations to plan participants in SPDs.

The Secretary has authority to file this brief pursuant to Federal Rule of Appellate Procedure 29(a).

STATEMENT OF THE CASE

A. Factual Background[2]

Chrysler Group LLC (Chrysler) employed Pearce from 1976 to 2008. (ECF No. 69 ¶ 2.) Chrysler sponsored the Chrysler Group LLC Pension Plan (Plan), and Pearce is a Plan participant. (Id. ¶ 5.)

The Plan offered early retirement for qualifying participants. (ECF No. 73-2 at 2.) According to the SPD, a participant qualified for early retirement if he was between 55 and 62 years old, and either his age plus credited years of service totaled 85 points or more, or his credited service was more than ten years. (Id.) The Plan also offered an early retirement supplement, referred to as "30-and-out benefits." (Id. at 3–4; ECF No. 73-6 at 5.) According to the SPD, a participant qualified for 30-and-out benefits if she was "eligible for Early Retirement . . . and ha[s] 30 or more years of credited service." (ECF No. 73-2 at 4.) The SPD clarified, "You do not need to be *actively employed* at retirement to be eligible for a supplement. However, you must *retire* and begin receiving pension benefits *within five years of your last day of work* for the Company in order to receive any supplements for which you are eligible." (Id. (emphases added).)

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[2] The relevant facts summarized in this section are largely undisputed and taken from the appellant's district court filings. (ECF Nos. 73, 74, 79, 82.)

The Plan Document set out the same requirements as the SPD for 30-and-out benefits, but with one material difference. The Plan Document stated that "a Vested Terminated Participant who met the eligibility requirements for early retirement at the date his employment terminated shall not be eligible to receive an Early Retirement Supplement." (Id. at 7.) The Plan Document defined "Vested Terminated Participant" as "an individual whose employment with the Corporation ceased prior to the date he retired and who possessed a vested right to a Deferred Pension at the date of termination of his employment." (Id. at 30.) In other words, although the SPD promised 30-and-out benefits to *all* former Chrysler employees who qualified and retired within five years of their last day of work with the company, the Plan Document prohibited former employees from receiving the supplement if they had "ceased" working for Chrysler or had their employment "terminated" before they retired. The Plan leaves these terms undefined.

In August 2008, Chrysler offered Pearce a retirement buyout package. (ECF No. 73-6 at 3.) At that time, Pearce qualified for early retirement and 30-and-out benefits, as he was 60 years old with over 30 years of credited service. (ECF Nos. 68 ¶ 10, 69 ¶ 5.) Pearce reviewed his benefits statements, which referred him to the SPD "[f]or more detail on the benefit formula." (ECF No. 73-5 at 2.) He then reviewed the SPD. (ECF No. 73-6 at 6.) With information from the SPD and his benefit statements, Pearce declined the buyout, because he thought he "always had 30-and-out in my pocket" and wanted to "continue making money." Id.

On November 5, 2008, Chrysler offered Pearce a new buyout package—a $50,000 lump-sum payment and a $25,000 car voucher, in addition to the benefits he had already accrued under the Plan. (ECF No. 73-4.) Pearce reviewed updated benefits statements (ECF No. 73-6 at 4), which again referred him to the SPD for further details (ECF No. 73-2 at 10–20). On November 25, 2008, Pearce declined the buyout. (ECF 73-4 at 2.) Pearce testified that he did this in part "because I knew for a fact I had—based on the information on the plan that I had from Chrysler, that I had 30-and-out." (ECF No. 73-6 at 5.)

Later that day, Chrysler terminated Pearce, allegedly for improper use of company cars.[3] (ECF No. 73-2 at 29.) Pearce submitted his retirement papers the next day, but the Plan denied him 30-and-out benefits because his employment with Chrysler "ceased" prior to retirement, making him ineligible for the supplement under the Plan Document. (ECF Nos. 69 ¶ 13, 73-7 at 5.)

The Plan provided its participating employees with access to the Plan's SPD online, but it did not provide them online access to the Plan Document, as it "is a long and complex legal document that is not intended for normal human beings to read." (ECF No. 73-7 at 3.) (deposition of Plan's representative). The Plan did not otherwise provide Pearce with the Plan Document, except in the snippets cited in the benefits-denial letter the Plan sent him, and Pearce did not receive a copy of the entire Plan Document until after he filed suit in this case. (Id.; ECF No. 73-6 at 7.)

B. Procedural Background

In October 2010, Pearce filed a complaint in state court against the Plan,

[3] As this Court noted, "Pearce denied any wrongdoing, filed an age-discrimination claim, and settled that claim in Chrysler's bankruptcy proceeding." Pearce v. Chrysler Group, L.L.C. Pension Plan (Pearce I), 615 F. App'x 342, 343 n.2 (6th Cir. 2015).

alleging it violated ERISA by improperly denying him 30-and-out benefits. (ECF No. 1 at 8–12.) In November 2010, the Plan removed the case to the U.S. District Court for the Eastern District of Michigan. (Id. at 1–4.)

The district court remanded the case for further administrative proceedings to develop the record. (ECF No. 87 at 1.) After administrative proceedings concluded, Pearce reopened the case and moved to amend his complaint. (ECF Nos. 38, 39, 50.) As relevant, Pearce's amended allegations sought equitable relief under ERISA section 502(a)(3) in the form of a court order reforming the Plan to meet the SPD's promise regarding eligibility for 30-and-out benefits, and an order enforcing the Plan as reformed. (ECF No. 50-4 at 6–7.) The district court denied Pearce's motion on September 12, 2013, concluding the amendments were futile because they did not state a viable claim. (ECF Nos. 55, 60.)

Pearce appealed to this Court, which reversed and remanded in relevant part. This Court first noted that "a material conflict between the SPD and the Pension Plan can give rise to a claim for equitable relief" under ERISA section 502(a)(3). Pearce v. Chrysler Grp., L.L.C. Pension Plan (Pearce I), 615 F. App'x 342, 346 (6th Cir. 2015). Next, this Court explained that ERISA section 102, 29 U.S.C. § 1022, requires that SPDs be "written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan"; and that SPDs must include "the plan's requirements respecting eligibility for participation and benefits" and "*circumstances which may result in disqualification, ineligibility, or denial or loss of benefits*." (Id. at 347 (emphasis in original).) This Court then determined the Plan Document's limit on 30-and-out eligibility to participants who retired before their employment with Chrysler "ceased" was a "material limitation," which was "required" by ERISA to be included in the SPD. (Id. at 347, 349.) "[A] material conflict" therefore existed "between the SPD and the Pension Plan," and as such, "the SPD affirmatively 'misle[d] or fail[ed] to state additional requirements' for obtaining 30-and-Out benefits." (Id. at 349.) Thus, this Court held that Pearce's amended complaint stated a claim for equitable relief under ERISA section 502(a)(3), and that "the district court abused its discretion when it denied Pearce leave to amend his complaint on the basis of futility." (Id.)

Back in the district court, after conducting discovery on the claims in the amended complaint, both parties moved for summary judgment. (ECF Nos. 67, 72, 73.) On February 14, 2017, the magistrate issued a report that recommended denying Pearce's motion and granting the Plan's motion. (ECF No. 87 (Pearce II).) The magistrate determined Pearce failed to establish a reformation claim because he did not show he was mistaken as to the Plan Document's terms as a result of fraud or inequitable conduct by the Plan. (Id. at 18–19.) "Even assuming that plaintiff is correct that his interpretation of the SPD can properly constitute a mistake for purposes of reformation," the magistrate reasoned, Pearce had not shown inequitable conduct on the Plan's part, as he "ha[d] not offered any evidence of an intent to deceive." (Id. at 19.) On March 27, 2017, the district court adopted the magistrate's recommendation over Pearce's objection and granted summary judgment to the Plan. Pearce v. Chrysler LLC Pension Plan

(Pearce III), No. 10-14720, 2017 WL 1130087, at *1–2 (E.D. Mich. Mar. 27, 2017). Pearce again appeals to this Court.

SUMMARY OF THE ARGUMENT

The district court erroneously held that Pearce's reformation claim failed because he did not show the SPD's misrepresentations constituted intentional deception. The SPD is vital to achieving ERISA's purposes, as it is often the only document a participant receives to explain her rights and responsibilities under her ERISA plan. Furthermore, SPDs must be written in a manner that ordinary participants can understand, as opposed to the more complicated and technical language often employed by underlying plan documents. Because of this, material misrepresentations and omissions in SPDs can cause serious harm to the participants who rely on them to explain their benefits. When this occurs, ERISA section 502(a)(3) provides a remedy in the form of "appropriate equitable relief." 29 U.S.C. § 1132(a)(3). One possible equitable remedy is reformation of the plan document to meet the SPD's promises.

To obtain reformation under ERISA section 502(a)(3), a plaintiff must show she was reasonably mistaken as to the plan document's terms because of a defendant's fraud or inequitable conduct. The concept of "inequitable conduct" in equity, based on case law and treatises, has no intent-to-deceive requirement. In equity, the concept of fraud is also broader than its counterpart at law. Based on case law and treatises on equity jurisdiction, fraud in equity also does not require a showing of an intent to deceive. See, e.g., SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 193 (1963); Deschamps v. Bridgestone Ams., Inc. Salaried

Emps. Ret. Plan, 840 F.3d 267, 274 (6th Cir. 2016). The district court therefore erred when it granted the Plan summary judgment on Pearce's reformation claim because he failed to establish the Plan had an intent to deceive.

ARGUMENT

I. Failure to Disclose Material Plan Information Justifies Equitable Relief

One of ERISA's primary objectives is to protect participants' interests by requiring the disclosure of information about their plans. 29 U.S.C. § 1001(b). To achieve this purpose, ERISA requires that the plan administrator provide each participant a copy of the SPD, free of charge. 29 U.S.C. § 1024(b). The SPD's purpose is to convey "the essential information about the plan," Curtiss-Wright Corp. v. Schoonejongen, 514 U.S. 73, 83 (1995), in a "clear, simple communication," CIGNA Corp. v. Amara (Amara III), 563 U.S. 421, 437 (2011). By law, the SPD must contain "the plan's requirements respecting eligibility for participation and benefits," and "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits." 29 U.S.C. § 1022(b).

Significantly,

> [a]lthough the Summary is not itself legally binding, Amara III, 563 U.S. 421, 437–38 (2011), it provides important information for beneficiaries about the plan. In Pettaway v. Teachers Ins. & Annuity Ass'n of Am., [the D.C. Circuit] noted that a Summary Plan Description is an "ERISA-mandated, plain-language document upon which plan participants may rely to understand their benefits." 644 F.3d 427, 433 (D.C. Cir. 2011).

Foster v. Sedgwick Claims Mgmt. Servs., Inc., 842 F.3d 721, 731 (D.C. Cir. 2016). Furthermore, Department of Labor (DOL) regulations reinforce the SPD's critical role, mandating that it "must not have the effect [of] misleading, misinforming or failing to inform participants," and that "[a]ny description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized." 29 C.F.R. § 2520.102-2(b).

This Court already concluded in Pearce I that the Plan's SPD violated ERISA when it "omitted the material limitation [for 30-and-out benefits] that appears in the Pension Plan regarding 'Vested Terminated Participants.'" Pearce I, 615 F. App'x at 349. Thus, the remaining question is whether this ERISA violation gives rise to a remedy under ERISA section 502(a)(3). Under ERISA section 502(a)(3), a plan participant may bring a civil action "to obtain other appropriate equitable relief" to redress ERISA violations. 29 U.S.C. § 1132(a)(3). The U.S. Supreme Court has interpreted the phrase "equitable relief," as used in ERISA section 502(a)(3), to refer only "to 'those categories of relief that were typically available in equity.'" Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 210 (2002) (quoting Mertens v. Hewitt Assocs., 508 U.S. 248, 256 (1993)). The Court thus instructed litigants and courts to construe section 502(a)(3) as allowing only those forms of relief available in courts of equity, and not in the courts of law, during "the days of the divided bench." Id. at 210–18. In determining the "contours" of equitable relief, the Court consults the standard treatises on equity. Id. at 217.

II. Equitable Reformation Is Available Without Establishing an Intent to Deceive

In Amara III, the Supreme Court confronted a similar claim for equitable relief arising from an SPD's misrepresentation of plan terms. 563 U.S. 421, 432

(2011). In Amara, the district court below had found, "after a lengthy trial," that those misrepresentations violated ERISA sections 102(a) and 104(b). Id. at 426, 432. The Supreme Court recognized, "[t]he 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." Id. at 440–41. Thus reformation was potentially an available equitable remedy under ERISA section 502(a)(3) for the misrepresentations, and the Supreme Court remanded the case so the district court could "revisit its determination of an appropriate remedy for the violations of ERISA it identified." Id. at 445.

On remand, the district court determined that reformation was indeed an available and appropriate remedy for the ERISA violations it had found. Amara v. CIGNA Corp. (Amara IV), 925 F. Supp. 2d 242, 251–55 (D. Conn. 2012). The U.S. Court of Appeals for the Second Circuit affirmed the district court's decision. Amara v. CIGNA Corp. (Amara V), 775 F.3d 510 (2d Cir. 2014). Both courts agreed that, to obtain the equitable remedy of reformation, plaintiffs must show by clear and convincing evidence that a defendant "committed fraud or similar inequitable conduct and that such fraud reasonably caused plaintiffs to be mistaken about the terms of the pension plan." Amara V, 775 F.3d at 526. In these Amara decisions, the courts found that the fiduciaries had committed intentional fraud, which was sufficient for the remedy of reformation in that case, but the courts did not generally hold that intentional fraud was a necessary element to obtain reformation. Neither court expounded on what a plaintiff must show to demonstrate the commission of "fraud or similar inequitable conduct."

In this case, the court below granted the Plan's summary judgment motion after concluding that no equitable remedy was available, because (as relevant here) Pearce had not demonstrated an "intent to deceive," a showing the court held was required in order to obtain the equitable remedy of reformation. (ECF No. 87 at 20.) Notably, the magistrate was "not convinced, as defendant advances, that plaintiff must prove fraud in the drafting of the Pension Plan document," but then agreed with the defendants that Amara requires Pearce to offer "evidence of an intent to deceive." Pearce II, ECF No. 87 at 20. Neither the magistrate nor the district court provided any authority for this requirement.

The court's ruling is contrary to recent, post-Amara district court decisions that directly address the question presented. The ruling also conflicts with longstanding, binding case law on the requirements for equitable reformation, as well as the leading treatises on equitable jurisdiction. Since Amara V, two other federal district courts have held no intent requirement exists in ERISA cases where plaintiffs seek reformation. In Osberg v. Foot Locker, Inc., a case involving ERISA violations related to misrepresentations in the SPD, the district court held that the "fraud" needed to obtain reformation was "equitable fraud," which "does not require a showing of intent to deceive or defraud." 138 F. Supp. 3d 517, 557–58 (S.D.N.Y. 2015), aff'd, ___ F.3d ____, No. 15-3602, 2017 WL 2871358 (2d Cir. July 6, 2017). The Osberg court also defined "inequitable conduct" to "include[] deception or even mere awareness of the other party's mistake combined with superior knowledge of the subject of that mistake." Id. at 558–59 (quoting DS Parent, Inc. v. Teich, No. 5:13-CV-1489 LEK/DEP, 2014 WL

546358, at *4 (N.D.N.Y. Feb. 10, 2014)).[4] And in Frommert v. Becker, another case involving similar ERISA violations, the district court followed Osberg as to the meaning of "fraud or inequitable conduct," stating that "a finding of fraudulent intent is not required for the court to impose the remedy of reformation." 153 F. Supp. 3d 599, 608 (W.D.N.Y. 2016), appeals filed, Nos. 17-114 & 17-738 (2d Cir. Jan. 11, 2017 & Mar. 13, 2017). No other district courts opined on this specific issue until the district court reached a contrary conclusion in this case.

Imposing a fraudulent-intent requirement is also inconsistent with relevant authorities from this Court, the Supreme Court, and the treatises on equitable jurisdiction. First, the lower court's holding that one must demonstrate an "intent to deceive" to show "fraud" is inconsistent with the definition of "fraud" adopted by this Court in equity. For instance, this Court has held in the equitable estoppel context that the term "fraud" includes "either intended deception *or such gross*

[4] On appeal, the appellants in Osberg did not challenge the district court's holding that a plaintiff need not demonstrate intent to defraud to obtain reformation. Osberg v. Foot Locker, Inc., ___ F.3d ____, No. 15-3602, 2017 WL 2871358 (2d Cir. July 6, 2017). However, the U.S. Court of Appeals for the Second Circuit's reasoning on a separate issue is informative. ERISA section 413 provides a six-year limitations period from the date the plaintiff discovers a fiduciary breach in cases involving "fraud or concealment." 29 U.S.C. § 1113. When interpreting "concealment," the court construed the term based on doctrines developed in equity, Osberg, 2017 WL 2871358, at *7 ("grew from the soil of equitable estoppel"), in contrast to common-law doctrines, id. n.11. Based on its equitable foundation, the court read "concealment" to not require proof of the "elements of common law fraud," id., including the element of "fraudulent intent," id. Likewise, in interpreting the "fraud or inequitable conduct" element for equitable reformation under ERISA, this Court should look to reformation's equitable foundations and reject any requirement to establish common-law fraud, including its element of fraudulent intent.

negligence as to amount to constructive fraud." Deschamps v. Bridgestone Ams., Inc. Salaried Emps. Ret. Plan, 840 F.3d 267, 274 (6th Cir. 2016) (emphasis added) (citation omitted). This accords with the U.S. Supreme Court's view of fraud in equity as well: "Fraud has a broader meaning in equity (than at law) and intention to defraud or to misrepresent is not a necessary element." SEC v. Capital Gains Research Bureau, Inc., 375 U.S. 180, 193 (1963) (quoting De Funiak, Handbook of Modern Equity at 235 (2d ed. 1956)).

This Court has stated, "Constructive fraud may be established where there is a breach of legal or equitable duty, whether or not fraudulent intent be present." A & B Food Servs. Corp. v. Judy's Foods, Inc., 798 F.2d 468, 468 (6th Cir. 1986) (per curiam) (quoting Maxwell v. Land Developers, Inc., 485 S.W.2d 869, 875 (Tenn. App. Ct. 1972)); see also Guy v. Lexington-Fayette Urban Cnty. Gov't, 57 F. App'x 217, 224 (6th Cir. 2003). Other federal circuit courts agree. See, e.g., Joyce v. Morgan Stanley & Co., 538 F.3d 797, 800 (7th Cir. 2008) ("Unlike actual fraud, constructive fraud 'requires neither actual dishonesty nor intent to deceive, being a breach of legal or equitable duty which, irrespective of the moral guilt of the wrongdoer, the law declares fraudulent because of its tendency to deceive others.'"); Morrison v. Back Yard Burgers, Inc., 91 F.3d 1184, 1187 (8th Cir. 1996) (same); Lightning Lube, Inc. v. Witco Corp., 4 F.3d 1153, 1182–83 (3d Cir. 1993) (same).

Thus, even where a plaintiff seeks reformation based on a defendant's "fraud," she need not show that a misrepresentation in an SPD was motivated or caused by an "intent to deceive" to obtain relief. The treatises on equitable jurisprudence agree with this position.

> Whether the party thus misrepresenting a material fact knew it to be false or not is wholly immaterial . . . . The whole doctrine turns upon this, that he who misleads the confidence of another by false statements as to the substance of a purchase, and not his victim, shall be the sufferer. And this is true whether the misrepresentation be willfully and designedly false, or ignorantly or negligently untrue.

E. Merwin, Principles of Equity & Equity Pleading, § 502, at 270–71 (1895). "The motive of the person making the misrepresentation is immaterial." Id. § 506, at 273–74 (listing elements for when equity will relieve party who suffered misrepresentation); 1 J. Story, Commentaries on Equity Jurisprudence § 193, at 195 (10th ed. 1870) ("And even if the party innocently misrepresents a material fact by mistake, it is equally conclusive, for it operates as a surprise imposition upon the other party."). This approach also accords with this Court's jurisprudence respecting fiduciary misrepresentations. "[A] fiduciary breaches its duties by materially misleading plan participants, regardless of whether the fiduciary's statements or omissions were made negligently or intentionally." Krohn v. Huron Mem'l Hosp., 173 F.3d 542, 547 (6th Cir. 1999); Haviland v. Metro. Life Ins. Co., 730 F.3d 563, 573 (6th Cir. 2013) (applying the "principles" established in Krohn and other decisions).

Notwithstanding the meaning of fraud in equity, there exists a second category of conduct sufficient to justify equitable reformation: "inequitable conduct." Under longstanding case law, reformation is permitted "where there is a mutual mistake, or mistake on one side and fraud *or inequitable conduct* on the other." Simmons Creek Coal Co. v. Doran, 142 U.S. 417, 435 (1892) (emphasis added). Courts have noted differences between the concepts of fraud and inequitable conduct. See, e.g., Langley v. Credit Suisse First Bos. Corp., 89 F. App'x 938, 947 (6th Cir. 2004) (reciting the same rule under Kentucky law and construing "fraud" and "inequitable conduct" as separate requirements); Conn. Fire Ins. Co. v. Oakley Improved Bldg. & Loan Co., 80 F.2d 717, 719 (6th Cir. 1936) ("[Equity's] jurisdiction to reform written instruments where there is a mistake on one side and inequitable conduct on the other is undoubted.").

Similarly, some of the treatises on equitable jurisdiction and related caselaw make a clear distinction between "fraud" and "inequitable conduct." See 3 John Norton Pomeroy, A Treatise on Equity Jurisprudence as Administered in the United States of America § 1376 (5th ed. 1941) ("Equity has jurisdiction to reform written instruments . . . [w]here there has been a mistake of one party accompanied by fraud or other inequitable conduct of the remaining parties"). Under this framework, inequitable conduct does not require any intent to deceive. Pomeroy, for example, states that "[i]t is not necessary that such inequitable conduct should be intentionally misleading, much less that it should be actual fraud; it is enough that the misconception of the law was the result of, or even aided or accompanied by, incorrect or misleading statements, or acts of the other party." Id.; see id. § 847. Other treatises agree with this approach. See, e.g., 76 C.J.S. Reformation of Instruments § 45 (for reformation, inequitable conduct includes "concealing, or failing to disclose, what of right, or under duty, should have been disclosed"). Courts have applied this distinction in finding "inequitable conduct" sufficient to require reformation without also finding any intentional deception. E.g., Gross v.

Stone, 197 A. 137, 143 (Md. 1938); Exch. Nat. Bank v. Barron, 31 S.W.2d 420, 421 (Ark. 1930); Blair v. Kingman Implement Co., 117 N.W. 773, 776 (Neb. 1908).

Other treatises on equity simply fold "inequitable conduct" into "fraud" by expanding the definition of "fraud" in the equitable context, in contrast to "fraud" as defined in the courts of law. They reach the same result, noting that "[w]hat constitutes fraud at law will always be treated as fraud in equity, but there are many acts deemed fraudulent in equity which are not so considered at law. Equity will not only relieve against actual deception, but will extend its interference in all cases of unfair dealing, and prevent the dishonest circumvention of one person by another." J. Eaton, Handbook of Equity Jurisprudence § 120, at 286 (1901); 1 J. Story, Commentaries on Equity Jurisprudence § 187, 213–14 (4th ed. 1846) ("Fraud, indeed, in the sense of a Court of Equity, properly includes all acts, omissions, and concealments, which involve a breach of legal or equitable duty, trust, or confidence, justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another."). For instance, Justice Story's treatise makes a distinction between "actual fraud," "where there is an intention to commit a cheat or deceit upon another to his injury," and "the large class of implied or constructive frauds" "within the remedial jurisdiction of a Court of Equity." 1 J. Story, supra § 187, at 213 (4th ed. 1846); see also Christopher G. Tiedeman, A Treatise on Equity Jurisprudence § 226, at 267 (1893) ("*Constructive fraud* . . . is a term employed to include all those cases of wrongful advantage obtained by one person over another, under circumstances which do not prove that the party obtaining the advantage has been guilty of any willful misrepresentation or untruth; but in consequence of a wrongful advantage obtained, a court of equity considers it inequitable, and affords relief from such undue advantage by the employment of appropriate remedies."); id. § 507, at 595 (reformation available when mistake of one party is combined with the fraud of the other); John Willard & Platt Potter, A Treatise on Equity Jurisprudence, § 210, at 258 (2d ed. 1875) (for "constructive or implied frauds," "the design is not to deceive the individual with whom the contract is made, but to gain some advantage inconsistent with fair dealing or the rights of third persons").[5]

In applying the principles articulated above to claims of equitable reformation, at least one Supreme Court case and a Sixth Circuit case have held that an award of reformation was appropriate without requiring a showing of intentional deception. In Bradford v. Union Bank of Tennessee, 13 How. 57, 66 (1852), a case cited by Amara III, 563 U.S. at 441, the Supreme Court specifically declined to rely on fraud to reform the contract, Bradford, 13 How. at 66, and instead relied on the fact that "the case falls within the established principles of equity, in granting relief against contracts entered into upon a mistake, and misapprehension of the facts, and where the enforcement of which would enable one of the parties to obtain a most unconscientious advantage over the other." Id. at 68; accord Bush v. Merriman, 49 N.W. 567, 569 (Mich. 1891) (citing Bradford).

This Court's decision in Connecticut Fire is also instructive. 80 F.2d 717.

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[5] The Supreme Court relied on treatises by Pomeroy, Story, and Eaton in its description of reformation as an equitable remedy. Amara III, 563 U.S. at 441.

There, the insured attempted to update the addenda that were attached to her unexpired policy. Id. at 718. Instead of following her request, the insurance company sent her a policy with materially different addenda, without her requested addenda, and the company did not notify her of the changes it made. Id. at 719. She accepted the policy, believing her instructions were followed. Id. (holding that the insured "had the right to assume that if [the insurer] returned the policy . . . its provisions and conditions would be similar to those of the old one"). The Court permitted reformation because the insurer failed to provide notice of the changed policy as required by "law and equity," and the change was "advantageous" to the insurer and "disadvantageous" to the insured. Id. at 719. In absence of any intent to deceive, the insurer's conduct constituted "inequitable conduct" sufficient for reformation. Id.

Furthermore, the Sixth Circuit precedent relied on by this Court in Pearce I, Edwards v. State Farm Mutual Automobile Insurance Co., supports this interpretation as well, though the decision did not specifically discuss equitable reformation. 851 F.2d 134, 136 (6th Cir. 1988), abrogated on other grounds by Amara III, 563 U.S. 421. There, an "SPD contained an 'obviously misleading' statement regarding sick leave, and we held in favor of the employee because the employer 'should have realized that the explicit language of the [SPD] could or would have caused [the employee] and similarly situated unsophisticated lay employees to rely upon [the plan administrator's] inadvertant [sic] misrepresentation to their detriment.'" Pearce I, 615 F. App'x at 347–48 (quoting Edwards, 851 F.2d at 136)). In other words, in Edwards this Court determined that it did not matter whether the employer knew the SPD was incorrect or misleading, nor whether the employer intended such a result, because the employer should have known the SPD was inaccurate, given the asymmetry of information between the knowledgeable employer and the less knowledgeable employees who relied on the SPD.

The binding authorities, the treatises on equity, and decisions from other circuits all agree: a plaintiff need not show an intent to deceive in order to obtain the equitable remedy of reformation.

III. Equitable Reformation May Be Appropriate Here

While the district court correctly noted that reformation is not automatically available for any conflict between an SPD and the Plan document, see Pearce III, 2017 WL 1130087, at *2 (reformation not available based "solely on the fact that a conflict exists between the SPD and the plan documents"), requiring an "intent to deceive" is not a proper basis for drawing a line between meritorious and meritless claims. District courts have some discretion to determine if reformation is "appropriate" in a particular case, taking into consideration other relief requested and the facts and circumstances of the violation. See 29 U.S.C. § 1132(a)(3) ("appropriate" equitable relief). But public policy supports some remedy here. Quoting Congress, Pearce I noted that "[i]t is grossly unfair to hold an employee accountable for acts which disqualify him from benefits if he had no knowledge of these acts or if these conditions were stated in a misleading or incomprehensible manner in the plan booklets." 615 F. App'x at 348 (quoting H.R. Rep. No. 93-533, 93d Cong., 2d Sess. (1973), reprinted in 1974 U.S.C.C.A.N. 4639, 4646). The court should also weigh the fact that reformation may be directed at only the plaintiff and other participants who are similarly mistaken and suffered from the inequitable conduct. E.g., Eaton, supra § 309 (recognizing that reformation may not apply against some parties while applying to others); see also Young v. Verizon's Bell Atl. Cash Balance Plan, 615 F.3d 808, 822 (7th Cir. 2010) (recognizing equitable defenses may defeat equitable reformation claims). As the Second Circuit held in Osberg, reformation can also be applied to an entire class of participants. See Osberg v. Foot Locker, Inc., ___ F.3d ____, No. 15-3602-cv, 2017 WL 2871358, at *9–11 (2d Cir. July 6, 2017) (affirming district court's award of reformation "to all participants" because evidence showed they all were reasonably mistaken as to the plan's terms, based on class-wide misrepresentations made by fiduciaries).

Three additional considerations exist to separate this case from others involving more run-of-the-mill misrepresentations about plan terms, all of which appellant discusses in his opening brief. Appellant's Br. at 31, 34, 36–37, 44–45. First, as this Court has already held, the SPD was "directly inconsistent with the Pension Plan," and the discrepancy was "material." Pearce I, 615 F. App'x at 347–348; see E. Merwin, Principles of Equity & Equity Pleading § 502, at 270–271 (1895) (reformation may be appropriate where one party "misrepresent[s] a material fact"); see also Krohn, 173 F.3d at 547 ("[A] fiduciary breaches its duties by materially misleading plan participants"). Second, the misrepresentations in this case, which concern a significant and readily identifiable condition on the availability of 30-and-out benefits, arose from the SPD, the primary document that

ERISA expects participants to rely on to gain an understanding of the benefits they are owed. Supra Part I; see 1 J. Story, Commentaries on Equity Jurisprudence § 187, at 201 (13th ed. 1886) ("Fraud, indeed, in the sense of a Court of Equity, properly includes all acts, omissions, and concealments which involve a breach of legal or equitable duty, trust, or confidence, *justly reposed,* and are injurious to another, or by which an undue and unconscientious advantage is taken of another." (emphasis added)); see also Connecticut Fire Ins. Co., 80 F.2d at 719 (reformation appropriate where insurance policy holder had reasonable expectation that new policy would be the same as her prior policy, based on the company's representations to her). Third, although a plaintiff need not show detrimental reliance to obtain reformation, Amara III, 563 U.S. at 443 (equity courts did not require a showing of detrimental reliance for award of reformation); cf. Osberg, 2017 WL 2871358, at *8 (detrimental reliance need not be shown to obtain reformation for ERISA section 404(a) violation), the fact that Pearce did rely on the Plan's misrepresentations about 30-and-out benefits when he declined the 2008 retirement buyouts remains a relevant factor weighing in favor of awarding him equitable relief, see Lemon v. Kurtzman, 411 U.S. 192, 203 (1973) ("It is well established that reliance interests weigh heavily in the shaping of an appropriate equitable remedy."); see also id. (citing cases).

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Based on the foregoing, an ERISA plaintiff need not show an intent to deceive on the defendant's part to obtain plan reformation. The district court therefore erred when it dismissed Pearce's reformation claim based on his failure to show that the Plan acted with an "intent to deceive."

CONCLUSION

The Secretary respectfully requests that this Court reverse the district court's grant of the Plan's motion for summary judgment.

Date: July 28, 2017

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1. This amicus curiae brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 6,025 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii).

2. This amicus curiae brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it was prepared in a proportionally spaced typeface using Microsoft Word and Times New Roman 14 typeface.

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I hereby certify that a copy of the foregoing was filed electronically using the CM/ECF system, which will send notification of such filing to the following:

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