

Nos. 12-60461

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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AARON GEARLDS, JR.  
Appellant,

v.

ENTERGY SERVICES, INC., ENTERGY MISSISSIPPI, INC.  
Respondents.

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On Appeal from the United States District Court for the  
Southern District of Mississippi (Jackson Division),  
Case No. 3:11-cv-269 (DPJ-FKB)

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BRIEF FOR THE SECRETARY OF LABOR, HILDA L. SOLIS,  
AS AMICUS CURIAE IN SUPPORT OF APPELLANT

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M. PATRICIA SMITH  
Solicitor of Labor

ELIZABETH HOPKINS  
Counsel for Appellate and  
Special Litigation

TIMOTHY D. HAUSER  
Associate Solicitor for  
Plan Benefits Security Division

MELISSA MOORE  
U.S. Department of Labor  
200 Constitution Ave., N.W.  
Room N-4611  
Washington, D.C. 20210  
(202) 693-5281

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## **STATEMENT OF THE ISSUES**

This appeal stems from an action brought by Aaron Gearlds, Jr. against Entergy Services, Inc., and others at Entergy ("Entergy"). The suit alleges that Entergy breached its fiduciary duties under ERISA by inducing Gearlds to take early retirement through the promise of continued health care benefits in his retirement, which turned out to be impermissible under the health care plan in which he had been a participant. Gearlds contends that he reasonably relied on misrepresentations that he could continue his health care coverage after retirement and, as a result, gave up the opportunity to be covered under his wife's policy when she retired. Gearlds sued for monetary damages in the amount of his past and future medical expenses and any other relief, including equitable relief, to which he was entitled. The questions addressed in the Secretary's brief are:

1. Whether the district court erred in holding that the monetary value of promised health care coverage was not recoverable as "appropriate equitable relief" under section 502(a)(3), 29 U.S.C. § 1132(a)(3).
2. Whether plaintiff adequately pled a claim for fiduciary breach when he alleged that he was harmed by fiduciary misrepresentations and made a general request for equitable relief.

## **STATEMENT OF INTEREST**

The Secretary of Labor has primary regulatory and enforcement authority for Title I of ERISA. Secretary of Labor v. Fitzsimmons, 805 F.2d 682, 692-693 (7th Cir. 1986) (en banc). This case presents an important remedial issue concerning the scope of monetary remedies available under section 502(a)(3) of ERISA. The Secretary has a strong interest in the proper resolution of this issue and the related pleading standard, an interest that is manifest both in private cases and in the Secretary's own litigation brought under a parallel provision of ERISA that allows the Secretary to sue for "appropriate equitable relief. 29 U.S.C. § 1132(a)(5).

The Secretary files this brief as amicus curiae under Federal Rule of Appellate Procedure 29(a).

## **STATEMENT OF THE CASE**

Plaintiff Aaron Gearlds, Jr. was employed by Entergy Mississippi, Inc. from 1976 through 1994. RE 20 (¶ 2). During that time, Gearlds received medical and other benefits under Entergy-sponsored plans. RE 22 (¶ 13). In 1994, Gearlds stopped working and began receiving long-term disability benefits. RE 22 (¶ 12).

In 2002, Gearlds stopped receiving long-term disability benefits. RE 22 (¶ 14). In 2005, Gearlds took early retirement. RE 23 (¶ 14). Upon retirement, he received a reduced retirement pension and full medical, dental and vision plan



benefits. RE 22 (¶ 14). Gearlds continued to pay premiums and receive medical and other coverage until 2010. Id.; RE 39. In 2010, Entergy terminated Gearlds' medical coverage based on the premise that he had not been eligible for coverage when he retired in 2005. RE 23 (¶ 14).

After Entergy terminated his coverage, Gearlds filed suit in district court. He alleged that Entergy breached its fiduciary duty by misleading him about his coverage under the plan. RE 21 (¶ 7); RE 22 (¶ 10). Gearlds asserted that he took early retirement in 2005 because Entergy personnel told him, orally and in writing, that he would continue to be covered under the Plans. RE 23 (¶¶ 16, 18); RE 24 (¶ 21). He also asserted that he waived coverage available under his wife's retirement plan in reliance on Entergy's representations, and now has no other means of obtaining such coverage. RE 23 (¶ 14).

Gearlds argued that due to Entergy's material misrepresentation, on which he reasonably relied, Entergy should be equitably estopped from denying coverage. RE 24 (¶¶ 19, 24). Gearlds also alleges that the Entergy defendants breached their fiduciary duties under ERISA section 404 by making these misrepresentations. RE 24 (¶ 25). Gearlds notes that he is bringing the action as "a plan participant or beneficiary under section 502(a) to recover appropriate relief under section 409(a) for ERISA violations and any profits of each fiduciary that have been accumulated through use of the assets of the plan by the fiduciary, ERISA equitable estoppel,

and such other equitable or remedial relief as the Court may deem appropriate under ERISA section 502(a)(3) that will redress violations and enforce the provisions of ERISA." RE 22 (¶ 10). In his prayer for relief, he seeks damages in the form of "any and all of Plaintiffs' past medical expenses, any and all of plaintiff's future medical expenses, pre-judgment interest and post-judgment interest, attorneys' fees and expenses, court costs and expenses, and any and all other damages and/or relief, equitable or otherwise, to which the Plaintiff may be entitled under federal law." RE 25 (¶ 31).

The district court dismissed the case under Federal Rule of Civil Procedure 12(b)(6), finding that Gearlds failed to allege that there was an available remedy for the harm he suffered. RE 14. Citing to the Supreme Court's decision in Mertens v. Hewitt Assocs., 508 U.S. 248 (1993), and the Fifth Circuit's decision in Amschwand v. Spherion Corp., 505 F.3d 342, 347 (5th Cir. 2007), the court concluded that Gearlds' request for the monetary equivalent of his past and future medical expenses was a "classic form of legal relief" and could not constitute "appropriate equitable relief" under 502(a)(3). RE 14. The court also dismissed Gearlds' general prayer for "[a]ny and all other . . . relief equitable or otherwise, to which the Plaintiff may be entitled under federal law", concluding that Gearlds' failure to specify a particular equitable remedy doomed his claim. Id. at 15 n.1. Finally, the court rejected Gearlds' claim for estoppel, reasoning that Gearlds failed

to plausibly allege "extraordinary circumstances" that would justify estoppel. Id. at 16.

### **SUMMARY OF THE ARGUMENT**

1. The district court in this case relied on the same perceived obstacle to relief under section 502(a)(3) of ERISA that the Supreme Court rejected in CIGNA Corp. v. Amara, --- U.S. ---, 131 S.Ct. 1866 (2011), namely that the plaintiff is seeking make-whole monetary relief against the plan fiduciaries that is legal and not equitable in nature under the Supreme Court's analysis in Mertens. By correcting this misreading of Mertens and authorizing monetary relief to restore a plaintiff to the position he would occupy absent a fiduciary's breach of duty, Amara explicitly authorized the surcharge remedy that Amschwand and the district court in this case erroneously barred. The Supreme Court distinguished the factual situation in Amara, which involved claims by plan participants against fiduciaries to remedy fiduciary breaches, from the situation at issue in Mertens, which involved claims against a non-fiduciary third party. The Court recognized that in the former context, courts of have the equitable power to award make-whole monetary relief to plan participants and beneficiaries who are harmed by fiduciary breaches. Thus, the district court's reliance on Amschwand and Mertens to disallow Gearlds' claim for monetary relief is no longer justified.

2. The district court set the pleading standard too high when it dismissed Gearlds' fiduciary breach claim in part because he failed to identify a specific equitable remedy. Gearlds sufficiently pleaded a claim under ERISA by plausibly alleging that plan fiduciaries breached their duty to him by misleading him about his health care coverage, thereby causing him to forego other coverage. These allegations, along with a general prayer for all other appropriate equitable relief, were sufficient to state a claim under applicable pleading standards.

### **ARGUMENT**

#### I. ERISA Section 502(a)(3) Permits the Court to Surcharge Entergy For the Monetary Equivalent of Gearlds' Medical Coverage

ERISA was designed to protect the interests of participants and beneficiaries of employee benefit plans by establishing standards of conduct, responsibility, and obligations for fiduciaries, 29 U.S.C. § 1001(b), "invoking the common law of trusts to define the general scope of" these duties. Central States, Southeast & Southwest Areas Pension Fund v. Central Transp. Inc., 472 U.S. 559, 570 (1985) (citations omitted). At the core of ERISA's fiduciary obligations are the familiar trust-law duties of loyalty and prudence, which are among the "highest known to the law." Donovan v. Bierwirth, 680 F.2d 263, 272 n.8 (2d Cir. 1982).

ERISA provides enforcement of its stringent fiduciary duties and other requirements through a number of "carefully integrated" remedial provisions. Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 146 (1985). This case

concerns one of those provisions, ERISA section 502(a)(3), which allows a participant, beneficiary, or fiduciary to sue "to enjoin any act or practice which violates" ERISA or "to obtain other appropriate equitable relief . . . to redress such violations." That provision is designed as a "catchall" that "act[s] as a safety net, offering appropriate equitable relief for injuries caused by violations that § 502 does not elsewhere adequately remedy." Varity Corp. v. Howe, 516 U.S. 489, 512 (1996). In Mertens, the Supreme Court explained that "equitable relief" under section 502(a)(3) means relief that was "typically available in equity," and held that equity would not have permitted a suit to recover money damages from a plan's non-fiduciary actuary. 508 U.S. at 256.

In Amschwand, this Court considered whether, in light of Mertens, a widow had a remedy under section 502(a)(3), other than the return of premiums, for a plan fiduciary's breaches of duty in misleading the decedent about the requirements for his life insurance coverage, thus leading to the loss of such coverage. Amschwand v. Spherion Corp., 505 F.3d 342, 347 (5th Cir. 2007). As his medical condition deteriorated, her husband continued to pay premiums and repeatedly sought – and received – confirmation that he was covered by the company's life insurance policy. Id. at 344. When he died, however, the company denied the widow's claim for the policy proceeds. Id. The widow sued for a fiduciary breach and asked for surcharge in the amount of the policy proceeds. Id.

Reasoning that the only remedy available to the widow under Mertens and its progeny was a constructive trust or equitable lien, the Amschwand court limited the widow's recovery to a return of her husband's premiums. Id. at 348. In doing so, the court rejected the widow's argument that the court should distinguish her case from Mertens because, unlike the plaintiff in Mertens, who sought monetary relief from a non-fiduciary third party, which the Supreme Court disallowed as legal and not equitable relief, 508 U.S. at 256, Amschwand was seeking monetary compensation from a fiduciary responsible for administering the plan for losses she suffered as a result of that fiduciary's breaches of its duty under ERISA.

Amschwand, 505 F.3d at 347-48.

This conclusion is no longer justified in light of Amara, the Supreme Court's most recent decision addressing the scope of equitable remedies under section 502(a)(3), which now makes clear that the kind of make-whole monetary relief from a breaching fiduciary that Amschwand sought, and which Gearlds seeks, is available equitable relief under section 502(a)(3) of ERISA. In Amara, plan participants sought to be made whole for harm caused to them when they received misleading and false information with regard to the conversion of their defined benefit plan to a "cash balance" plan. Amara, 131 S.Ct. at 1872-74. The district court found that the disclosures violated CIGNA's duties as a fiduciary under ERISA, and that the plaintiffs were "likely harm[ed]" by these violations. Id. at

1871. Consequently, it ordered the plan reformed and benefits paid under ERISA section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), and it declined to decide whether it could provide the same relief under section 502(a)(3). Id. After the Second Circuit affirmed, the Supreme Court granted certiorari to decide "whether a showing of 'likely harm' is sufficient to entitle plaintiffs to recover benefits based on faulty disclosures." Id. at 1876. Thus, the dispute in the case was about "the appropriate legal standard in determining whether members of the relevant employee class were injured." Id. at 1880.

The Supreme Court resolved this dispute in Amara by concluding that the provision upon which the district court relied, "namely, the provision for the recovery of plan benefits," section 502(a)(1)(B), did not provide any authority to impose this remedy, which essentially rewrote the plan. 131 S. Ct. at 1876. The Court instead found such authority in section 502(a)(3), observing that "[t]he district court strongly implied, but did not directly hold, that it would base its relief upon [502(a)(3)] were it not for (1) the fact that [§ 502(a)(1)(B)] provided sufficient authority; and (2) certain cases from this Court that narrowed the application of the term 'appropriate equitable relief[.]' Amara, 131 S. Ct. at 1878 (citing Mertens and Great-West). Having determined that section 502(a)(1)(B) did not provide the authority, and thus resolved the first concern, the Court found the district court's concern about the limitations on 502(a)(3) remedies "misplaced." Id.

Noting the maxim that "[e]quity suffers not a right to be without a remedy," Amara, 131 S. Ct. at 1879 (quoting R. Francis, *Maxims of Equity* 29 (1st Am. ed. 1823)), the Court held that section 502(a)(3) provided a broad range of equitable remedies for such fiduciary misconduct, including make-whole relief or "surcharge." Id. In the Court's view, its previous cases denying a loss remedy under section 502(a)(3) were distinguishable because they involved non-fiduciaries, while CIGNA was a fiduciary. Id. at 1880 ("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").

The Court further explained that surcharge, or monetary compensation by a fiduciary for loss resulting from "a trustee's breach, or to prevent the trustee's unjust enrichment," is a "traditional equitable remed[y]" falling within the category of "traditionally equitable relief" that Mertens previously held to be authorized by section 502(a)(3). Amara, 131 S. Ct. at 1880 (citations omitted). The Court thus rejected the conclusion, adopted by a number of courts, including this one, that equitable monetary relief under 502(a)(3) was available to compensate only for a trustee's unjust enrichment, and not for losses caused by a trustee's fiduciary breach.

For this reason, the district court erred in dismissing this case on the grounds that Gearlds failed to state a claim for equitable relief because he requested



monetary compensation in the form of past and future medical expenses as promised. Instead of acknowledging that Amara altered the landscape of ERISA remedies, the district court relied on the Fifth Circuit's pre-Amara Amschwand decision to hold that "make-whole" monetary relief equivalent to the value of the lost insurance benefits is "not equitable in derivation," but instead constituted the "classic form of legal relief" that Mertens had held was unavailable under section 502(a)(3). RE 14. Contrary to the district court's conclusion, the Amara decision now makes clear that suits by plan participants and beneficiaries against fiduciaries for monetary redress of the losses caused by fiduciary breaches are fully consistent with the Supreme Court's decision in Mertens, and are thus permitted as suits seeking "appropriate equitable relief" under ERISA section 502(a)(3).

Recognizing that Amara had effected a sea change in remedial law under ERISA, the Fourth Circuit recently granted rehearing and vacated its earlier decision holding that surcharge and equitable estoppel were not available remedies under 502(a)(3). McCraavy v. Metropolitan Life Ins. Co., --- F.3d ----, 2012 WL 2589226, at \*7 (4th Cir.). McCraavy involved a plan participant who had a life insurance policy on her daughter through an ERISA-covered welfare plan, which she first obtained when her daughter was a minor. Id. at \*1. McCraavy continued to renew her coverage yearly and pay annual premiums until her daughter's death at age 25, at which time MetLife, the insurer and administrator of the plan, denied

McCravy's claim for benefits. Id. According to MetLife, McCravy's daughter had aged out of coverage under the plan's "eligible dependent children" provision. Id.

McCravy filed suit, alleging that MetLife's actions in accepting the premiums and otherwise misleading her as to coverage on her daughter caused her to forego the opportunity to convert to individual coverage under the plan. Id. at \*2. McCravy alleged that these actions were a breach of MetLife's duties as an ERISA fiduciary under the plan and she sued for recovery under section 502(a)(3), claiming entitlement to either a make-whole surcharge recovery or equitable estoppel. Id.

As in Amschwand, the district court and Fourth Circuit initially limited McCravy's recovery under section 502(a)(3) to a return of the premiums. Id. The case was reheard by the Fourth Circuit, however, after the Supreme Court decided Amara. Id. at \*3. In reversing its earlier decision, the Fourth Circuit concluded that the Supreme Court had made it "quite clear" that monetary compensation for a loss resulting from a fiduciary's breach is available under section 502(a)(3). Id. at \*5.<sup>1</sup> The court "agree[d] with McCravy that her potential recovery is not limited,

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<sup>1</sup> The court also noted that, "even assuming for the sake of argument that this portion of Amara is dictum, we cannot simply override a legal pronouncement endorsed just last year by a majority of the Supreme Court." 2012 WL 2589226, at \*5 n.2. Because the Supreme Court's discussion of surcharge under section 502(a)(3) was essential to answer the question on which it granted certiorari – the applicable standard in determining whether the members of the class had been harmed – it is not dicta that the lower courts are free to ignore, as the concurring

as a matter of law, to a premium refund," but stated that it was for the district court, on remand, to determine whether MetLife in fact breached its duties and whether surcharge or equitable estoppel were appropriate remedies under the facts of the case. Id. at \*12. Thus, the Fifth Circuit would create a split with the Fourth Circuit's McCraavy decision if it affirms the district court's conclusion that monetary compensation is not available under 502(a)(3). See also Skinner v. Northrop Grumman Retirement Plan B, 673 F.3d 1162, 1167 (9th Cir. 2012) (recognizing surcharge as an available equitable remedy for a fiduciary breach).

Like the McCraavy and Amara fiduciaries, Entergy was charged with the highest, trust-law based duties of loyalty and care. Bierwirth, 680 F.2d at 272 n.8. Gearlds alleges that Entergy breached these duties when it misled him about his health care coverage by making representations, both orally and in writing, that Gearlds was covered under the health care plan when Entergy knew or should have known that he was not covered. RE 23 (¶ 14); RE 24 (¶ 22); RE 39. Gearlds asserts that he had the opportunity to obtain coverage under his wife's plan, and would have done so but for Entergy's misleading actions. RE 23 (¶ 14).

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Justices asserted. See Amara, 131 S. Ct. at 1884 (Scalia & Thomas, JJ., concurring in judgment). But even if the discussion is viewed as dicta, as the Fourth Circuit in McCraavy recognized, it is ordinarily the duty of lower courts to follow recent Supreme Court dicta so long as it is not contradicted by subsequent Supreme Court cases. See Croft v. Perry, 624 F.3d 157, 164 (5th Cir. 2010); United States v. Becton, 632 F.2d 1294, 1296 n.3 (5th Cir. 1980); Reich v. Continental Casualty Co., 33 F.3d 754, 757 (7th Cir. 1994); Gaylor v. United States, 74 F.3d 214, 217 (10th Cir. 1996).

To remedy the harm caused by his reliance on Entergy's misrepresentations, Gearlds asks the court to order Entergy to pay his past and future medical expenses. While Gearlds does not specifically request the equitable remedy of "surcharge," he is clearly seeking this type of relief in asking for a monetary remedy that would put him in the position he would have been in, i.e., with coverage for his medical bills, had it not been for Entergy's breach of trust. See Skinner, 673 F.3d at 1167. The district court erred in concluding that this relief was unavailable.

II. Plaintiff Adequately Pled a Claim Under Section 502(a)(3) When He Alleged That He Was Harmed By Fiduciary Misrepresentations And Requested Appropriate Equitable Relief

The district court also erred in dismissing Gearlds' fiduciary breach claim because he failed to identify a specific equitable remedy.<sup>2</sup> The court noted that it "reviewed the complaint for any equitable relief" and found that even though Gearlds asked for "[a]ny and all other . . . relief, equitable or otherwise to which Plaintiff may be entitled under federal law," the only specific remedies he requested were monetary – past and future medical expenses, fees, costs and expenses. RE 15 n.1. The court dismissed the case because "the heart of the plaintiff's prayer for relief is a legal remedy," a conclusion that is erroneous for the

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<sup>2</sup> The court acknowledged that Gearlds had specifically sought a remedy based on equitable estoppel, but dismissed that claim on the grounds that Gearlds failed to allege facts that would constitute "extraordinary circumstances." RE 15-16. In light of the availability of make-whole relief to plaintiff under such equitable doctrines as surcharge after the Supreme Court's decision in *Amara*, the Secretary is not addressing Gearlds' request for equitable estoppel.

reasons discussed above, and because "Gearlds suggests no specific equitable remedy in response to Entergy's motion challenging the nature of the relief he seeks." Id.

Particularly in the post-Amara world, where the applicability of equitable remedies is determined after factual development and with reference to the particular requirements of trust law, Gearlds' failure to specify particular equitable remedies such surcharge or reformation should not be fatal to his claim. The question at the motion to dismiss stage is whether, "with every doubt resolved in the pleaders behalf, the complaint states any legally cognizable claim for relief." 5B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1357, at 640 (3d ed. 2004). By dismissing Gearlds' claim on the basis that he had failed to adequately specify the remedies for the alleged violations, the court set the pleading standard for asserting a fiduciary breach claim under ERISA too high. Federal Rule of Civil Procedure 8(a) requires, in relevant part, "a short and plain statement of the claim showing that the pleader is entitled to relief" and "a demand for the relief sought, which may include relief in the alternative or different types of relief." The Supreme Court's decisions in Bell Atlantic v. Twombly, 550 U.S. 452, 570 (2009) and Ashcroft v. Iqbal, 555 U.S. 662, 679-80 (2009) additionally require that pleadings meet a threshold of "plausibility" by raising the right to relief "above the speculative level." Twombly, 550 U.S. at 555 (citation omitted).

Nothing in those cases, however, changes the longstanding rule that a court can grant any relief to which a prevailing party is entitled, whether or not that relief was expressly sought in the complaint. Fed. R. Civ. P. 54(c). See also Laird v. Integrated Resources, Inc., 897 F.2d 826, 841 (5th Cir. 1990); Kent v. Walter E. Heller & Co., 349 F.2d 480, 481 (5th Cir. 1965). This is particularly true in an equitable context. See, e.g., Scioto Terrace Manor, Inc. v. United States, 265 F.2d 38 (6th Cir. 1959). Thus, rather than evaluate the specificity of Gearlds' prayer for relief, the court should have determined whether Gearlds alleged sufficient facts to support a claim that entitled him to any kind of equitable remedy.

Instead, the district court relied on a number of cases decided before Amara, when many courts, including this one, erroneously believed that the scope of available equitable relief was constrained by the Supreme Court's decisions in Mertens, to find that a general request for equitable relief was insufficient to get past the pleadings stage. RE 15 n.1 (citing Crosby v. Bowater, Inc. Ret. Plan, 382 F.3d 587, 589 (6th Cir. 2004); West v. AK Steel Corp., 484 F.3d 395, 403 (6th Cir. 2007)). The court failed to recognize that these pre-Amara cases did not address the same situation presented here – a complaint with plausible allegations of a breach and resulting harm, a request for monetary relief (now recognized as equitable by the Supreme Court), and a general plea for "such other equitable or

remedial relief as the Court may deem appropriate under ERISA 502(a)(3)." RE 3 (¶ 10).

Here, Gearlds plausibly alleges that defendants breached their fiduciary duties under ERISA section 404, 29 U.S.C. § 1104, by negligently misrepresenting that he could take early retirement and continue coverage under Entergy's medical plan. RE 23 (¶¶ 14, 16). He alleges that he passed up the opportunity to obtain medical coverage on his wife's policy in reliance on Entergy's assurances that he would continue to be covered under the health care plan (as he was for more than seven years after retiring until Entergy learned of its mistake and cut him off), and that he has no other benefits options. *Id.* at 23 (¶ 14). Neither the court nor the defendants challenged the plausibility of these allegations, except that Entergy asserts that it was not acting as a fiduciary when it made its misrepresentations to Gearlds, an issue the district court declined to address. RE 15.

In his prayer for relief, Gearlds asks for monetary damages in the form of payment for past and future medical expenses, as well as for "relief, equitable or otherwise, to which Plaintiff may be entitled under federal law . . . and whether or not otherwise specifically demanded pursuant to Fed. R. Civ. P. 54(c). RE 25 (¶ 31). In another paragraph of his complaint, Gearlds states that he is bringing the case as a "plan participant or beneficiary under section 502(a) to recover appropriate relief under section 409(a) for ERISA violations and any profits of

each fiduciary that have accumulated through the use of the assets of the plan by the fiduciary, ERISA equitable estoppel, and such other equitable or remedial relief as the Court may deem appropriate under ERISA section 502(a)(3) that will redress violations and enforce the provisions of ERISA." RE 22 (¶ 10). Finally, in his response to defendants' motion to dismiss, Gearlds asks to continue his coverage under the plan, or for monetary compensation in an equivalent amount or that the court order the defendants to "'override' or 'amend' the plan to allow the plaintiff to continue to receive benefits to which he was accustomed." Doc. 20 at \*3.

Thus, although Gearlds may not have asked for a "specific equitable remedy in response to Entergy's motion challenging the nature of the relief he seeks," RE 15 n.1, by asking for make-whole monetary relief and amendment or reinstatement to the plan, he is clearly seeking forms of relief that are equitable in nature. See Amara, 131 S. Ct at 1879. Gearlds therefore presents a sufficient demand for relief consistent with that is consistent with the requirements of Rule 8(a). See Levine v. World Financial Network Nat'l Bank, 473 F.3d 1118, 1123-24 (11th Cir. 2006) ("Having specifically cited § 1681n in his complaint with the request for 'any and all relief' deemed appropriate, Levine was not required to repeat all the available damages contained in § 1681n"); Z.D. v. Group Health Cooperative, 829 F. Supp. 2d 1009, 1012, 1016 (W.D. Wash. 2011) (request for



"any other equitable relief the Court deems appropriate" in addition to request for injunctive relief satisfied the plain statement requirement necessary to bring a cause of action under section 502(a)(3)).

In Smith v. Medical Benefit Administrators Group, Smith alleged that a plan administrator had breached its fiduciary duties by denying payment after preauthorizing Smith's surgery. 639 F.3d 277, 281 (7th Cir. 2011). Smith sought monetary damages and declaratory and injunctive relief. Id. at 284. The district court dismissed the complaint, concluding that Smith could not obtain monetary relief because such relief was not "equitable." The court also rejected Smith's claim for injunctive relief, finding that it was "another form of extracontractual relief that ERISA did not authorize." Id. at 284

The court of appeals reversed. Id. Focusing on the plausibility of Smith's fiduciary breach allegations and taking a broad view of potential equitable remedies, the court noted that the case should move forward because Smith had "set forth a plausible claim that [the plan administrator] had breached its fiduciary obligations to him and because there are forms of equitable relief that are available to address that breach." Id. The court found it irrelevant that Smith, citing 502(a)(2) instead of 502(a)(3), had failed to identify the applicable remedial provision of ERISA. Id. at 284 n.2 ("federal rules do not require [plaintiff] to plead legal theories in his complaint").

Here, similarly, it was irrelevant that Gearlds failed to identify "surcharge" or "reformation" as specific equitable remedies that he was seeking. Under the pleading rules, Gearlds was required to do no more than plausibly allege that Entergy had breached its fiduciary duties, that he suffered harm as a result, and that there was some kind of equitable relief available to remedy that harm. The court did not have to determine which equitable remedy was most suitable at the motion to dismiss stage. Amara itself offered several possible remedies for one factual situation, recognizing that courts determine the suitability of particular equitable remedies after factual development of the case and with reference to the particular requirements of trust law. Id. at 1882; see also Levine, 437 F.3d at 1123-24 (11th Cir. 2006); Bacon v. Stiefel Laboratories, Inc., 714 F.Supp.2d 1186, 1190 (S.D. Fla. 2010); Estate of Hirata v. Ida, 2010 WL 2179812, \*8 (D. Hawaii 2010) (unpublished); Z.D., 829 F.Supp.2d at 1016.

## **CONCLUSION**

For the foregoing reasons, the Court should reverse the district court's order dismissing the case, and remand the case for further proceedings.

Respectfully submitted,

M. PATRICIA SMITH  
Solicitor of Labor

TIMOTHY D. HAUSER  
Associate Solicitor of Labor

/s/ Elizabeth Hopkins  
ELIZABETH HOPKINS  
Counsel for Appellate and  
Special Litigation

MELISSA MOORE  
Attorney  
U.S. Department of Labor  
Office of the Solicitor  
Plan Benefits Security Division  
P.O. Box 1914  
Washington, D.C. 20013  
Phone: (202) 693-5281  
moore.melissa@dol.gov

**CERTIFICATE OF COMPLIANCE WITH RULE 32(a)**

This brief complies with the type-volume limitation of Fed. R. App. P. 32(a)(7)(B) because this brief contains 4,872 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word with 14-point Times New Roman font.

Dated: September 4, 2012

/s/ Elizabeth Hopkins  
Counsel for Appellate and  
Special Litigation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 4th day of September, 2012, I caused the foregoing brief to be served electronically on the following through the ECF System:

Steven R. Cupp, Esq.  
Jones, Walker, Waechter, Poitevent  
Carrere & Denegre  
Post Office Drawer 160  
Gulfport, Mississippi 39502  
scupp@joneswalker.com

Robert O. Waller  
Waller & Waller, Attorneys  
220 South President Street  
Post Office Box 4  
Jackson, Mississippi 39205

Robert Rachal, Esq.  
Proskauer Rose, LLP  
650 Poydras Street, Suite 1800  
New Orleans, Louisiana 70130  
rrachal@proskauer.com

/s/ Elizabeth Hopkins  
Counsel for Appellate and  
Special Litigation