In-House Counsel

Enforcing Contractual Statutes of Limitations in ERISA Plans

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Last term's Supreme Court decision upholding time limitations to sue in ERISA employee welfare benefit plans, as well as the cases decided since by lower courts, provides important guidance to drafters of ERISA plan provisions. Those charged with drafting such plans would be well served to include contractual limitations on the time to sue in order to provide nationwide unanimity in enforcement, avoid the litigation of stale claims, and set expectations of plan participants.

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In *Heimeshoff v. Hartford Life & Accident, Ins. Co,* 134 S.Ct. 604, 187 L.Ed. 2d 529 (2013), the United States Supreme Court unanimously held under the Employee Retirement Income Security Act of 1974 ("ERISA") that a contractual limitation on the time to file suit (sometimes referred to as a contractual statute of limitations) is enforceable unless that period is "unreasonably short" or contrary to a controlling statute. Resolving a circuit split, the Supreme Court further held that the limitations period can begin to run before the participant's cause of action accrues.

Although ERISA Section 413 sets forth a three-year statute of limitations for breach of fiduciary duty claims that extends to six years in the case of fraud or concealment, 29 U.S.C. Section 1113, ERISA does not contain a statute of limitations for denial of benefits claims. *Heimeshoff*, 134 S.Ct. at 610. As a result, courts typically borrow the most analogous state statute of limitations, which is typically the state statute of limitations for breach of contract cases, as in *Hahnemann Univ. Hosp. v. All Shore, Inc.*, 514 F.3d 300, 305-06 (3d Cir. 2008).

Many ERISA Plans contain provisions that limit when a plan participant may file suit alleging denial of benefits. In *Heimeshoff*, the Court held that such provisions are generally enforceable. *Heimeshoff*, 134 S.Ct. at 611-12. The ERISA plan at issue in *Heimeshoff* provided that "Legal action cannot be taken . . . [more than] three years after the time written proof of loss is required to be furnished according to the terms of the policy." *Id.* at 609. The Supreme Court found the limitations provision to be enforceable, explaining that "employers have large leeway to design disability and other welfare plans as they fit."

The Court did not hold, however, that such leeway is without limits. Instead, the

Supreme Court set forth several grounds for declining to enforce limitations provisions in ERISA plans. First, the Court explained that a limitations provision might be unenforceable if it is unreasonably short. In *Heimeshoff*, the Supreme Court noted that the participant had one year remaining in the three-year limitations period after the administrative process had completed . The Court concluded that one year was not unreasonably short, reasoning that "[w]e cannot fault a limitations provision that would leave the same amount of time in a case with an unusually long internal review process while providing for a significantly longer period in most cases."

Several subsequent lower courts have held that limitations provisions are not unreasonably short when as little as nine months remain to file suit, such as in *Barriero v. N.J. BAC Health Funds*, No. 13-1501, 2013 U.S. Dist. LEXIS 181277 (D.N.J. Dec. 27, 2013), and *Tuminello v. Aetna Life Ins. Co.*, No. 13-938, 2014 U.S. Dist. LEXIS 20964 (S.D. N.Y. Feb. 14, 2014). These decisions suggest that plan participants will not find it easy to convince court that a typical ERISA Plan time limitation to sue is unreasonably short.

Second, the Supreme Court held that a limitations provision is unenforceable if it is contrary to a controlling statute. Since *Heimeshoff*, plan participants have not been successful in applying this exception, as in *Kienstra v. Carpenter's Health & Welfare Trust Fund of St. Louis*, No. 12-53, 2014 U.S. Dist. LEXIS 18156 (E.D. MO. Feb. 13, 2014).

Third, the Supreme Court explained that if the "administrator's conduct causes a participant to miss the deadline for judicial review, waiver or estoppel may prevent the administrator from invoking the limitations provision as a defense." Since *Heimeshoff*, lower courts have not been sympathetic to plan participants on this issue either. For example, in *Tuminello*, the court rejected a participant's claim that a letter from the defendants regarding his short-term disability benefits claim which told him that he "must file the action in court within one year of the date of the final denial of [his] claim," was grounds for estoppel with respect to his long-term disability claim (for which there was only nine months between the accrual date for the cause of action and the expiration of the limitations period).

Multiple courts have also rejected participant arguments that ERISA plans have an affirmative duty under governing ERISA regulations to specifically include the length of the limitation period for filing suit in their claim denial letters, as in *Upadhyay v. Aetna Life Ins. Co.*, No. 13-1368, 2014 U.S. Dist. LEXIS 27675 (N.D. Cal. Mar. 3, 2014) and *Wilson v. The Standard Ins. Co.,* No. 11-2703, 2014 U.S. Dist. LEXIS 12111 (N.D. Al., Jan. 31, 2014). And courts have refused to estop ERISA Plans from relying on a limitations provision even if the plan did not provide a copy of the summary plan description to the participant along with the denial letter absent a request to do so.

The most important element of the Supreme Court's ruling is the Court's holding that limitations period can run even before the participant has a right to file suit. This is particularly important in ERISA cases because plan participants are generally required to exhaust their administrative remedies before filing a lawsuit for judicial review of the administrator's decision. Therefore, a participant's right to sue typically does not accrue until the ERISA Plan issues its first denial on appeal. Prior to *Heimeshoff,* lower courts were split on the issue of whether an employee welfare benefit plan under ERISA could provide that the statute of limitations would begin to run before the participant's cause of action accrued. For example, compare *White v. Sun Life Assur. Co. of Canada,* 488 F.3d 240 (4th Cir. 2007), which held that the statute of limitations did not begin to run while during the administrative review process, with *Mogck v. Unum Life Ins. Co of Am.,* 292 F.3d 1025, 1028 (9th Cir. 2002), which held that the statute of limitations begins to run as defined by the plan's terms.

The Supreme Court has now resolved the split. In *Heimeshoff*, the administrative appeal process was not completed until two years of the ERISA Plan's limitations period had passed, leaving only one year for the participant to file suit. The Supreme Court found that the remaining year was not unreasonably short and, therefore, that the limitations provision was enforceable. In doing so, the Supreme Court held that an ERISA Plan may specify when the limitations period will commence, even if the commencement date precedes the date when the cause of action accrues before the administrative process has not been completed. In so doing, the court rejected prior precedents that "often construed statutes of limitations to commence when the plaintiff is permitted to file suit." The Court reasoned that because the duration of the limitations period can be measured only by its start date, both are "an integral part of the limitations provision, and there is no basis for categorically preventing the parties from agreeing on one aspect but not the other." And, in the unusual case where the length of the administrative process leaves a claimant with insufficient time to file suit, lower courts have the "unreasonably short" exception available.

Now that the Supreme Court has resolved these issues, there are many practical reasons why ERISA plan drafters should routinely include reasonable limitations periods within plan provisions. First, including a reasonable limitations period provides nationwide uniformity for ERISA Plans with participants in multiple states. For example, Pennsylvania's statute of limitations for contract claims is four years, New Jersey's is six years, and Louisiana's law is 10 years. Setting a uniform limitations provision in the ERISA plan would apply the same limitations to all participants and avoid the administrative headaches associated with the different laws in different states.

It would also discourage forum shopping by plan participants looking to file suit in jurisdictions with longer statutory limitations periods. Second, because some states have lengthy statutes of limitations for breach of contract claims, inclusion of a shorter limitations period will enable plans to avoid litigation of stale claims.

Third, providing a consistent Plan-wide limitation period allows the ERISA Plan to help its participants set their expectations appropriately. •