Reasonable Contractual Timing Limitations are Enforceable in ERISA Plans

by Matthew G. Kleiner and Dawn N. Valentine

While the Employee Retirement Income Security Act of 1974, 29 U.S.C. sec. 1001 et seq. ("ERISA") allows a claimant to bring a civil action under section 502(a)(1)(B) to recover plan benefits, it does not identify a time limitation for bringing such claims. Consequently, courts have typically applied the most closely analogous state limitation period. *Munro-Kienstra v Carpenters' Health & Welfare Trust Fund of St. Louis,* 2014 U.S. Dist. LEXIS 18156, *5 (E.D. Mo. February 13, 2014) *citing Northlake Reg'l Med. Ctr. v. Waffle House Sys. Employee Benefit Plan,* 160 F. 3d 1301, 1303 (11th Cir. 1998). Group disability and health plan documents subject to ERISA also commonly specify a deadline within which a claimant must file suit. Under the current state of the law, and thanks to a recent Supreme Court opinion, such timing provisions are likely to be enforced with just a few specific exceptions.

Application of the contractual limitation period found within an ERISA plan often results in a different deadline than when the limitation period drawn from state law is applied. Statutes of limitation borrowed from state law begin to run when the cause of action "accrues" or when the plaintiff is free to file suit and obtain relief. *Heimeshoff v. Hartford Life & Accident Ins. Co.,* 134 S. Ct. 604, 610 (2013) *citing Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal.,* 522 U.S. 192, 201 (1997). An ERISA plan participant's claim does not accrue until administrative review has been exhausted and the plan issues a final denial. *Heimeshoff,* 134 S. Ct. at 610.

As a result, the contractual deadline contained within an ERISA plan will often begin to run *before* an action accrues. For instance, the contractual deadline most often begins to run when proof of claim is due, which would be before the action accrued, *i.e*., before the plan issued a final denial. This led to a conflict between some circuit courts which held that such ERISA plan timing provisions were unenforceable (*see, e.g., White v. Sun Life Assurance Co. of Canada,* 488 F.3d 240, 245-248 (4th Cir. 2007)) and other circuit courts which maintained the enforceability of such contractual timing provisions (see*, e.g., Burke v. PriceWaterHouseCoopers LLP Long Term Disability Plan,* 572 F. 3d 76, 79-81 (2d Cir. 2009) (provision requiring suit within three years of proof of loss enforceable)).

The Supreme Court in *Heimeshoff v. Hartford Life & Accident Ins. Co.,* 134 S. Ct. 604 (2013) recently addressed this conflict between the circuits, confirmed the enforceability of ERISA plan timing provisions, and held that "[a]bsent a controlling statute to the contrary, a participant and a plan may agree by contract to a particular limitations period, even one that starts to run before the cause of action accrues, as long as the period is reasonable." *Heimeshoff,* 134 S. Ct. at 610. Referred to as the *Wolfe* rule, the holding in *Heimeshoff* derived from the holding in *Order of United Commercial Travelers of America v. Wolfe,* 331 U.S. 586, 608 (1947) ("In the absence of a controlling statute to the contrary, a provision in a contract may validly limit, between the parties, the time for bringing an action on such contract to a period less than that prescribed in the general statute of limitations, provided that the shorter period itself shall be a reasonable period."). A necessary corollary to the *Wolfe* rule is that parties can agree, by contract, to not only the length of the limitations period, but also its commencement. *Heimeshoff,* 134 S. Ct. at 611.

Heimeshoff emphasized that enforcing a contractual limitations period is particularly appropriate in the ERISA context. The plan, the Court explained, is at the heart of ERISA and once established, an administrator's duty is to see that the plan is "maintained pursuant to [that] written instrument...[and] focus on the written terms of the plan is the linchpin of 'a system that is [not] so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place.'" *Id.* at 612 *quoting Varity Corp. v. Howe,* 516 U.S. 489, 497 (1996).

Further, enforcement of a contractual limitation period does not require notice to the claimant upon an adverse benefit determination. ERISA regulation 29 C.F.R. section 2560.503.1(g)(iv) specifies the information that must be provided to the claimant upon an adverse benefit determination and it does not include a requirement that a claim administrator supply notice of a contractual limitations period. *See Wilson v. Std. Ins. Co.,* 2014 U.S. Dist. LEXIS 12111, *25 N.D. Ala. (January 31, 2014) (rejecting argument that regulations required the insurer to notify the plan participant of the plan's limitation period).

Nor does informing the claimant of a right to bring suit under ERISA act as a waiver of the claims administrator's right to assert the contractual limitations period. *See Upadhyay v. Aetna Life Ins. Co.,* 2014 U.S. Dist. LEXIS 27675, *15 (N.D. Cal. Mar. 3, 2014) (denying that inclusion of required regulatory language acted as a waiver to the insurer's right to assert contractual limitations period).

The *Wolfe* rule, confirmed by *Heimeshoff* does, however, include several requirements that are to be met: there is to be no controlling statute to the contrary, and the period prescribed must be reasonable. Additionally, the concepts of waiver, estoppel, and equitable tolling may apply to circumvent the contractual limitations period.

Controlling Statute to the Contrary

As noted above, the *Wolfe* rule applies when there is no controlling statute to the contrary. *Heimeshoff* suggests that a "controlling statute to the contrary" is a statute that explicitly declares as unlawful the contractual timing provision, *i.e.,* explicitly prohibits a shorter limitation period. *Heimeshoff,* 134 S. Ct. at 610. For example, in *Louisiana & Eastern R. Co. v. Gardiner,* 273 U.S. 280, 284 (1927), the contractual provision that required suit against the common carrier be brought within two years and one day after delivery was invalid under a federal statute "declar[ing] unlawful any limitation shorter than two years from the time notice is given of the disallowance of the claim" *Id. cited* in *Heimeshoff,* 134 S. Ct. at 611. *Heimeshoff* explained that, by way of contrast, other limitation periods provide only default rules that permit parties to choose a shorter limitations period.

Reasonable Time Period

The *Wolfe* rule requires that the contractually prescribed period be reasonable. In *Heimeshoff,* the administrative review process consumed nearly two years and left the claimant with only one year in which to file suit, and the court deemed that reasonable. *Heimeshoff,* 134 S. Ct at 612-13.

Heimeshoff has since been applied by a number of courts interpreting a "reasonable" time period. Courts have found that periods that left claimants with less than a year to file their claim to be reasonable. *See Tuminello v. Aetna Life Ins. Co.,*2014 U.S. Dist. LEXIS 20964 (S.D.N.Y. February 14, 2014) (3 year contractual limitation period reasonable when 9 months left to file action); *Barriero v. NJ BAC Health Fund,* 2013 U.S. Dist. LEXIS 181277, *12-13 (D.N.J. December 27, 2013) (deadline reasonable when the plaintiff could have filed suit any time in the nine month period).

Waiver and Estoppel May Preserve Claims

The concepts of waiver, estoppel and equitable tolling may still be invoked to allow late-filed claims when the tardiness was caused not by the claimant's lack of diligence, but by the plan administrator's conduct. *Heimeshoff,* 134 S. Ct. at 615-616. Whether conduct on the part of the insurer that "causes" the claimant to miss the deadline is sufficient to support equitable tolling is a question that has been addressed by a few courts after *Heimeshoff.* For instance, an untimely claim is not preserved despite the fact the claimant was not provided plan documents because he did not request them. *See Munro-Kienstra,,* 2014 U.S. Dist. LEXIS 18156 at *6 (tolling unavailable because the claims administrator did not cause claimant to miss the two year deadline by failing to provide claimant with a copy of the policy); *Wilson v. Std. Ins. Co.,* 2014 U.S. Dist. LEXIS 12111, *29 (N.D. Ala. January 31, 2014) (equitable relief unavailable where claimant did not request plan documents that would have informed her of deadline for more than four years after she was offered them.) Nor will equitable tolling be invoked when the claimant relied on communication from the claim administrator regarding deadlines attendant to short term rather than long term disability benefits, *i.e.,* irrelevant communication. *See Tuminello,*2014 U.S. Dist. LEXIS 20964 at *7 (no basis for equitable tolling when letter regarding short term disability benefits identified a one year limit to bring suit where court noted that short term disability benefits had nothing to do with plaintiff's application for long term benefits).

Conclusion

As case law applying *Wolfe* and *Heimeshoff* evolves, so will the parameters to what constitutes a contrary controlling statute, the reasonableness of the limitation, and claims administrator conduct that will undermine application of an ERISA plan's timing provisions. For the time being, it is well-settled that ERISA plan timing provisions will be enforced generally as written and that the claimant will retain his obligation to diligently pursue his rights according to the time limitations provided by the plan.

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