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Enforcement of ERISA Plan Limitation Provisions in the *Post-Heimeshoff* World

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Tweeting about this conference?

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Heimeshoff v. Hartford -- Introduction

- Wal-Mart Plan
 - Litigation deadline is “3 years after the time written proof of loss is required to be furnished according to the terms of the policy.”
- Timeline
 - June 2005 – disability allegedly begins
 - August 2005 – claim filed
 - 2006 – Heimeshoff retains attorney
 - November 2007 – administrative remedies exhausted
 - December 2008 – plan litigation deadline
 - November 2010 – suit filed
- Heimeshoff never offered reason for delay

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Second Circuit

- Arguments

- Can limitation clock start before administrative remedies exhausted?
- Is the limitation provision ambiguous?
- Must the limitation be disclosed in SPD or decision letter?
- Does a failure to disclose warrant equitable tolling?

- Ruling

- Precedent plainly established that limitation provision is enforceable as written
- No need to determine whether disclosure was required, because a failure to disclose would, at most, give rise to equitable tolling
- Tolling precluded because Heimeshoff had actual knowledge of limitation



Petition for Certiorari

- Heimeshoff raised 3 issues
 - Whether limitations period can begin to run before administrative remedies are exhausted?
 - What notice of time limits is administrator required to give?
 - What is the remedy if proper notice of time limits not given?
- Court granted certiorari on question 1 only

Supreme Court -- 134 S. Ct. 604 (2013)

- Limitations period generally begins to run when plaintiff can file suit – i.e., accrual
 - ERISA benefit cause of action does not accrue until administrative remedies exhausted
- General rule can be modified

Supreme Court (continued)

- “Absent 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.”
 - Freedom to agree to a limitation period = Freedom to agree when it starts to run

Supreme Court (continued)

- Wal-Mart limitation provision is reasonable
 - No contention that it is unreasonably short on its face
 - Reasonable as applied
 - Heimeshoff had a year after administrative remedies exhausted
 - No dispute that “a hypothetical 1–year limitations period commencing at the conclusion of internal review would be reasonable.”
 - Most claimants will have 2 years or more



Supreme Court (continued)

- ERISA is not a “controlling statute to the contrary”
 - No statutory provision contradicting the limitation provision
 - Limitation provision won’t undermine administrative review
 - Claimants have incentive, and time, to complete review
 - Limitation provision won’t endanger judicial review
 - Diligent plaintiffs have not been foreclosed from suing

Supreme Court (continued)

- Remedies exist for unusual situations
 - Waiver
 - Estoppel
 - Equitable tolling
- No basis to require tolling during administrative review
 - ERISA does not require
 - State laws not relevant, because limitation provision is not borrowed from state law

Issues to Consider *Post-Heimeshoff*

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What is a “reasonable period”?

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HEIMESHOFF ESTABLISHES:

- A three-year limitation period is enforceable
- A one-year limitation period commencing at the conclusion of the internal review is reasonable

A SURVEY OF THE CIRCUITS

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SECOND CIRCUIT

- *Guo v. IBM 401(k) Plus Plan*, 2015 WL 1379788 (S.D.N.Y. 2015)
 - Deadline to file suit was no later than 2 years after claim denial
 - 14-month period after denial is reasonable
 - However, leave given to amend to develop equitable tolling claim

THIRD CIRCUIT

- *Barriero v. NJ BAC Health Fund*, 2013 WL 6843478 (D.N.J. 2013)
 - Deadline to file suit was 3 years after the end of the year medical services provided
 - 9 months after final decision reasonable

FOURTH CIRCUIT

- *Benson v. Life Ins. Co. of N. Am.*, 2014 WL 6666944 (E.D.N.C. 2014)
 - Deadline to file suit was not more than 3 years after proof of loss was required to be furnished
 - 30 months after final decision is reasonable

SEVENTH CIRCUIT

- *Lundsten v. Creative Community Living Services, Inc. Long Term Disability Plan*, 2015 WL 1143114 (E.D. Wis. 2015)
 - Deadline to file suit was 3 years from the deadline for filing claims
 - 6-month period after the final decision was reasonable

NINTH CIRCUIT

- *Mahan v. Unum Life Ins. Co. of Am.*, 2015 WL 3901883 (N.D. Cal. 2015)
 - Deadline to file suit was 3 years after proof of claim due
 - 180-day period after the final decision was reasonable
 - Rejected equitable estoppel argument

ELEVENTH CIRCUIT

- *Wilson v. Standard Ins. Co.*, 2014 WL 358722 (N.D. Ala. 2014)
 - Deadline to file suit was 3 years after the date proof of loss is required to be given
 - 18 months after decision is reasonable

Is there a Controlling Statute to the Contrary?

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Supreme Court's Language

- “*Absent 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 v. Hartford, 134 S. Ct. 604, 610 (2013).

Controlling Statute

- Another way to avoid an ERISA plan's contractual limitations provision is to argue that a "controlling statute" prevents the limitations provision from taking effect

ERISA is Not a Controlling Statute to the Contrary

- Supreme Court rejects arguments that:
 - The contractual limitations period would “undermine” ERISA’s internal review process
 - Allowing plans to set limitations periods that begin to run before internal review is complete would endanger judicial review

What is a Controlling Statute to the Contrary?

- *Heimeshoff* doesn't tell us
- A number of courts have tackled this issue *post-Heimeshoff*

Mulholland v. MasterCard Worldwide, 2014 WL 6977805 (E.D. Mo. Dec. 9, 2014)

- Discussed in the PowerPoint on-line
- District Court found Missouri's 10-year SOL re: written monetary promises was not a "controlling statute to the contrary"
- The plaintiff's claim for benefits was time-barred under plan's limitation period
- Eighth Circuit just reversed, disagreeing with district court's application of the contractual limitations period



Munro-Kienstra v. Carpenters' Health & Welfare Trust Fund of St. Louis, 2015 WL 3756712 (8th Cir. June 17, 2015)

- Self-funded ERISA plan provides legal action must be brought within 2 years of the final date benefits are denied
- Claim brought 2 ½ years after final denial
- Plan argues untimely
- Plaintiff counters the plan's limitation period is invalid because the plan stated that its terms should be read to comply with Missouri law
 - 10-year SOL for written monetary promises
 - Statute barring contracting parties from shortening 10-year SOL



Munro-Kienstra v. Carpenters' *Health & Welfare Trust Fund of St. Louis,* **2015 WL 3756712 (8th Cir. June 17, 2015)**

District Court Rejects Plaintiff's Arguments

- Per *Heimeshoff*, no need to borrow state statute of limitations unless the contractual limitations period is unreasonably short or there is a controlling statute that prevents the contractual period from taking effect
- Applies the plan's 2-year limitations period and grants SJ for the plan

Munro-Kienstra v. Carpenters' Health & Welfare Trust Fund of St. Louis, 2015 WL 3756712 (8th Cir. June 17, 2015)

Eighth Circuit Takes a Look

- Plaintiff points to plan's rules of construction
- Plan states that its terms and provisions shall be construed in accordance with the Internal Revenue Code, ERISA, and *the laws of the State of Missouri*
- Plaintiff claims this provision means Missouri's 10-year SOL should apply

Munro-Kienstra v. Carpenters' Health & Welfare Trust Fund of St. Louis, 2015 WL 3756712 (8th Cir. June 17, 2015)

Eighth Circuit Rejects Plaintiff's Theory

- Plan's contractual limitations period does not *conflict* with Missouri law
- Unnecessary to turn to the plan's rules of construction

Munro-Kienstra v. Carpenters’ Health & Welfare Trust Fund of St. Louis, 2015 WL 3756712 (8th Cir. June 17, 2015)

- Plaintiff also claims Mo. Rev. Stat. § 431.030 is a controlling statute preventing the plan’s contractual limitations period from taking effect
- § 431.030 provides: “All parts of any contract or agreement hereafter made or entered into which either directly or indirectly limit or tend to limit the time in which any suit or action may be instituted, shall be null and void.”
- Plaintiff argues plan violated statute by shortening limitations period to 2 years



Munro-Kienstra v. Carpenters’ Health & Welfare Trust Fund of St. Louis, 2015 WL 3756712 (8th Cir. June 17, 2015)

Eighth Circuit Finds

- ERISA preempts § 431.030
- Applying § 431.030 “would not only negate the plan’s contractual statute of limitations, but also ‘risk creating a national crazy quilt of ERISA limitations law, with contractual limitations enforceable in some states but not in others, contrary to the uniformitarian policy of the statute.’”
- Even if plaintiff could prove § 431.030 was saved from preemption, deemer clause prevents law’s application to this self-funded plan
- Concludes § 431.030 is not a controlling statute to the contrary



Takeaways from *Munro-Kienstra*

- Unlikely general statutes of limitations will be deemed “controlling statutes to the contrary” such that they override a plan’s contractual limitations provision
- State statutes that void contract provisions limiting the time in which to file suit may be an open question

Halpern v. Blue Cross/Blue Shield of Western New York, 2014 WL 4385759 (W.D.N.Y. Sept. 4, 2014)

- ERISA health plan -- contractual limitations period requiring suit to be filed within 1 year of date of service
- Action not filed within that time-frame
- Plaintiff argues suit is timely because the plan's contractual limitations period violates New York Ins. Law § 3221

Halpern v. Blue Cross/Blue Shield of Western New York, 2014 WL 4385759 (W.D.N.Y. Sept. 4, 2014)

- Section 3221 prohibits group health insurance policies from containing a limitations period of less than 2 years
- Plaintiff's position: courts consistently recognize that contractual provisions that don't meet Section 3221's minimum requirements are unenforceable
- Insurer's position: ERISA governs the plan and thus state laws purporting to restrict contracting parties' freedom to establish shorter limitations periods are not controlling

Halpern v. Blue Cross/Blue Shield of Western New York, 2014 WL 4385759 (W.D.N.Y. Sept. 4, 2014)

- Court finds application of Section 3221 is not a question of borrowing a limitations period from state law
- ERISA preemption is the issue
- Section 3221 is saved from preemption because it is “clearly and obviously directed toward the insurance industry”
- Subject plan must be read to conform with Section 3221
- 2-year limitations period applies



Caldwell v. Standard Ins. Co., 2015 WL 4727378 (S.D. W. Va. Aug. 10, 2015)

- Contractual limitations provision in ERISA-governed LTD policy: 3 years to bring action after proof of loss received or required
- Plaintiff argues contractual limitations period conflicts with W. Va. Code § 33-6-14
- Section 33-6-14 prohibits insurance policies (delivered in West Virginia) from containing provision giving insureds less than 2 years *from the time the claim accrues* to file suit

Caldwell v. Standard Ins. Co., 2015 WL 4727378 (S.D. W. Va. Aug. 10, 2015)

- Subject policy and § 33-6-14's requirements are not “inherently incompatible”
 - Possible for the policy's deadline to fall at least 2 years after the cause of action accrues
- Court considers whether § 33-6-14 is a controlling statute to the contrary under *Heimeshoff* that renders the contractual limitations period unenforceable

Caldwell v. Standard Ins. Co., 2015 WL 4727378 (S.D. W. Va. Aug. 10, 2015)

- Again comes down to ERISA preemption
- Court finds § 33-6-14 is saved from preemption
 - Regulates insurance
 - Directly impacts the policy relationship between an insurer and the insured
 - No wider application beyond insurance



Caldwell v. Standard Ins. Co.,
2015 WL 4727378 (S.D. W. Va. Aug. 10, 2015)

- But insurer explains that its contractual limitations provision is “exactly the three-year time limit on legal actions mandated by the West Virginia Code” (W. Va. Code § 33-15-4(k))
- Argues the two statutes must be read together and the court should find the policy is consistent with West Virginia law

Caldwell v. Standard Ins. Co., 2015 WL 4727378 (S.D. W. Va. Aug. 10, 2015)

- District court finds “[c]ompliance with one statutory section does not prevent the application of a related, but entirely separate, statutory section”
- Concludes there is no irreconcilable tension between the statutes (possible to comply with both)
- When deadline to sue falls within 2 years of the claim accruing, § 33-6-14 is a controlling statute to the contrary



Takeaways from *Halpern & Caldwell*

- It all comes down to preemption
- State *insurance* statutes which conflict with a plan's contractual limitations period will likely be saved from ERISA preemption
- If so, they will be considered a “controlling statute to the contrary” under *Heimeshoff* and undermine the contractual limitations period
- Won't be true of self-insured plans – deemer clause

When Did the Claim Accrue?

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Continuous Claim Accrual

- Disability claimants' counsel may argue benefits become due each month and new claim accrues each month
- Disability claimants' counsel may further argue prior denial is not bar to subsequent monthly claims
- Sometimes raised in context of claim for waiver when insurer gives further consideration to otherwise stale claim

Accrual Determined By Federal Common Law

- Even if state statute of limitations is applied to determine whether claim was timely filed, federal common law still determines when ERISA claim accrued
- Claim may accrue when fiduciary denied benefits
 - *Riley v. Metropolitan Life*, 744 F.3d 241 (1st Cir. 2014).
- Claim also may accrue when claimant had reason to know of denial of benefits, *e.g.*, monthly benefit payments stop
 - *Witt v. Metropolitan Life*, 772 F.3d 1269 (11th Cir. 2014).

ERISA Claim

May Accrue By Agreement

- Plan limitations provision may define accrual of claim, *e.g.*, when proof of loss is due
 - *Heimeshoff v. Hartford Life*, 134 S. Ct. 604 (2013).
- If no claim filed, then ninety days allowed by many plans to provide written proof of loss may trigger limitations period
- Claimant cannot rely on one year time to submit proof of claim absent pleading, and ultimately proof, “impossible” to provide proof of loss within 90 days
 - *Hyatt v. Prudential*, 2014 U.S. Dist. LEXIS 155739 (W.D. N.C. Oct. 31, 2014).

Rejecting Installment Contract/Continuous Claim Accrual Theory

- Explicitly rejecting installment accrual theory to miscalculation of benefits that occurred almost seven years before lawsuit was filed
 - *Riley v. Metropolitan Life*, 744 F.3d 241 (1st Cir. 2014).
- Underpayment is a form of repudiation and triggers limitations because beneficiary knows when reduced benefit is received
 - *Miller v. Fortis Benefits*, 475 F.3d 516 (3d Cir. 2007).

Waiver Of Accrued Claim

- Insurer giving further consideration to otherwise stale claim ordinarily is not a waiver of any applicable time-bar to claim
 - *Witt v. Metropolitan Life*, 772 F.3d 1269 (11th Cir. 2014).
- Insurer should make clear no new claim is being considered, but simply reviewing additional evidence for old claim
- Policy rationale -- want insurers to consider whether claim is meritorious and possibly waive untimely submission
 - *Gordon v. Deloitte & Touche, LLP, Group LTD Plan*, 749 F.3d 746 (9th Cir. 2014).

Was Notice of the Contractual Limitations Provision Given?

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Must Decision Letters Disclose Contractual Limitation?

- Yes

- *Mirza v. Ins. Admin. of Am.*, 2015 WL 5024159 (3d Cir. 2015).
- *Moyer v. Met Life*, 762 F.3d 503 (6th Cir. 2014).
- *Candelaria v. Orthobiologics*, 661 F.3d 675 (1st Cir. 2011)
- *Spence v. Union Sec. Ins. Co.*, 2015 WL 1275308 (D. Or. 2015)
- *Novick v. Met Life*, 764 F.Supp.2d 653 (S.D.N.Y. 2011).
- *Solien v. Raytheon*, 2008 WL 2323915 (D. Ariz. 2008).

- No

- *Armstrong v. Hartford*, 2014 WL 5514183 (E.D. Cal. 2014).
- *Fontenot v. Intel*, 2014 WL 2871371 (D. Or. 2014).
- *Freeman v. American Airlines*, 2014 WL 690207 (C.D. Cal. 2014).
- *Wilson v. Std. Ins. Co.*, 2014 WL 358722 (N.D. Ala. 2014), *aff'd*, 2015 WL 3477864 (11th Cir.)
- *Koblentz v. UPS*, 2013 WL 4525432 (S.D. Cal. 2013).
- *Heimeshoff v. Hartford*, 2012 WL 171325 (D. Conn. 2012).



Issue is Meaning of 29 CFR 2560.503-1(g)

- Denial letter must have “[a] description of the plan’s review procedures and the time limits applicable to such procedures, **including a statement of the claimant’s right to bring a civil action ... following an adverse benefit determination on review.**”
 - Requires only “a statement” of the right to sue
 - But does “including...” mean that litigation is one of “the plan’s review procedures?”
 - This “seems like a strained reading.” *Wilson v. Std. Ins. Co.* (11th Cir. 2015)

Compare with 1(j)

- Appeal letter does not require time limits
 - “A statement describing any voluntary appeal procedures offered by the plan and the claimant’s right to obtain the information about such procedures[,] ... and a statement of the claimant’s right to bring an action”
 - *Fontenot v. Intel* (D. Or. 2014) (1(j) “plainly does not require plan administrators to state the contractual limitations period in final denial letters”)
- Why require disclosure of limitation period **before** exhaustion of administrative remedies, and not **after**?
- None of the Circuit cases addressed 1(j)
 - *Mirza* assumed that 1(g) applied to appeal letters

If Litigation is One of “Plan’s Review Procedures”

- 1(g) would require “a description ... of the claimant’s right to bring a civil action”
 - No basis to limit “description” to disclosure of a contractual limitation
- What would be included in the “description”?
 - How to commence a litigation (state and federal)?
 - Personal jurisdiction?
 - Venue?
 - Filing fees?
 - Pleading requirements?
 - Remedies?

Problems with Circuit Cases

- *Moyer and Candelaria*
 - Both raised the issue *sua sponte* – not fully briefed
- *Moyer and Candelaria and Mirza*
 - Didn't address distinction between 1(g) and 1(j)
 - Didn't address consequences of treating litigation as a plan review procedure

Effect of Non-Disclosure

- Contractual limitation unenforceable
 - *Mirza* – use state limitation period
 - *Moyer* – unclear what limitation, if any, applies
- Apply equitable tolling rules; actual knowledge precludes tolling
 - *Heimeshoff* (2d Cir)
 - *Wilson v. Std. Ins. Co.* (11th Cir) (assumed without deciding that regulation required disclosure)

Practical Implications for Plan Sponsors

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Practical Implications

- If the Plan already includes a limitation:
 - Is it “reasonable?”
 - Is it disclosed, as required by the recent decisions?



Practical Implications

- If the Plan is silent:
 - Serious consideration of a limitation is warranted
 - Consider a plan's history of claims and litigation
 - Plan principles should be taken into account, especially for self-insured plans
 - What would be a “reasonable” limitation as to time and accrual?
 - Consensus seems to be that 2-3 years is reasonable
 - Specifying when claim accrues is less clear
 - Consider national vs. limited exposure
 - Consistency is important but
 - Delaware has a 1-year statute of limitations
 - Consider plan type (pension vs. welfare/insured vs. self-insured)

Practical Implications

- Lack of a history of stale claims may argue that action is unnecessary
 - Complications of amending plans and any associated collective bargaining
 - Revising responses to adverse determination letters

Thank you!

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