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Supreme Court Upholds ERISA Plan's Statute of Limitations

Yesterday, in *Heimeshoff v. Hartford Life & Accident Insurance Co.* the United States Supreme Court upheld the enforceability of an ERISA-plan provision providing:

Legal action cannot be taken against The Hartford . . . [more than] 3 years after the time written proof of loss is required to be furnished according to the terms of the policy.

The Supreme Court held:

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.

Prior to yesterday's ruling, two circuit courts had enforced such provisions and two had held such provisions unenforceable.

In light of *Heimeshoff*, plan sponsors who do not have similar provisions in their plans may wish to add such provisions. Here is why:

ERISA does not provide a limitations period for filing a lawsuit after a benefit claim has been denied. Courts generally apply the limitations period prescribed by state law for the action most analogous to the claim for benefits. But if the plan

prescribes a time limit for the filing of a lawsuit, the courts generally will enforce that time limit. Thus, for example, if the plan terms require suit to be brought within one year, courts generally will enforce that one-year limitations period even if the applicable state law prescribes a longer period.

Heimeshoff addressed the issue of whether the plan by its terms may prescribe when that plan-prescribed limitations period begins to run. Generally, limitations begin to run when a cause of action accrues and courts generally have held that an ERISA cause of action does not accrue until the participant has exhausted his administrative remedies. The petitioner in *Heimeshoff* asserted that if she had not exhausted her administrative remedies so that her cause of action had not accrued and she could not file suit in court, it should not be permitted that the limitations period applicable to her claim already had begun to run. The Supreme Court rejected this argument.

In *Heimeshoff*, the claimant filed her claim for disability benefits in August 2005. In November 2005 Hartford advised that it could not determine whether she was disabled because her doctor had failed to provide requested additional information. In July and October 2006 the claimant provided additional information, but Hartford denied the claim in November 2006. In May 2007 the claimant asked for her time to file an administrative appeal be extended to September 2007 and Hartford granted that request. On September 26, 2007 the claimant submitted her administrative appeal and Hartford denied that appeal November 26, 2007. The claimant filed suit November 18, 2010, within three years of Hartford's November 26, 2007 denial, but more than three years from the date her proof of loss was due.

The claimant argued that in some instances, her statute of limitations could run before she had even exhausted her administrative remedies. The Supreme Court found that under ERISA regulations, most "mainstream" claims should exhaust administrative remedies within one year. The Court suggested that provisions similar to those in *Heimeshoff* would work a hardship mainly on those who did not diligently pursue both the plan administrative appeals and judicial review.

The claimant asserted that limitations should be tolled during administrative proceedings. But the Supreme Court found that tolling is required under ERISA only if the plan offers voluntary internal appeals beyond what is permitted by regulation. To impose tolling in other circumstances would effectively make this ERISA provision meaningless. Nonetheless, the Court recognized that "To the extent the participant has diligently pursued both internal review and judicial review but was prevented from filing suit by extraordinary circumstances, equitable tolling may apply."

In our experience, it has been easy for plan sponsors to prescribe a shortened limitations period that assures that once the administrator denies the administrative appeal, the participant promptly proceeds to court. In some

instances it has been more difficult, however, to require a participant to file a prompt claim for benefits. Even when the plan requires a participant to file his claim within a specified period of time, courts are reluctant to enforce that time

limit unless the plan can demonstrate that it was prejudiced by the participant's delay in filing a claim. Showing that prejudice can sometimes be a difficult challenge. But a plan that includes a provision similar to Hartford's in *Heimeshoff* has an added weapon. The participant who delays two years filing his administrative claim may find that, upon the exhaustion of his administrative remedies, his limitations period already has expired.

If you have questions regarding any aspect of this development, or other employee benefits issues, feel free to contact your Thompson Coburn attorney or any member of our Employee Benefits Group.

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