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TOPIC: United States Supreme Court Decides that a Period of Limitation for Filing Suit on Benefit Claims May Be Set Forth in the Applicable Plan Document.

MARKET TREND: Increasingly, for the purpose of potentially limiting their exposure, sponsors of benefit plans subject to ERISA have been incorporating into the governing plan documents periods of limitations within which a participant or beneficiary must bring suit to enforce a claim for benefits.

SYNOPSIS: In *Heimeshoff v. Hartford Life & Accident Insurance Co.,* the U.S. Supreme Court resolved a split among circuits and upheld a plan provision requiring a suit to recover benefits to be brought within three years from the date that written "proof of loss" was required to be furnished. The Court reasoned that the provision at issue was valid because (1) it did not contradict any applicable statute (i.e., ERISA), (2) the plan was required to be administered in accordance with its terms, and (3) the period during which the suit was required to be brought was not unreasonably short.

TAKE AWAYS: Consultants to employers maintaining any type of ERISA-covered benefit plan – including retirement plans, death benefit plans, disability plans and others – should help ensure that the relevant plan documents contain provisions setting forth appropriately limited periods during which a lawsuit must be brought to enforce a benefits claim. This approach will help limit the company's exposure to open-ended claims

MAJOR REFERENCES: *Heimeshoff v. Hartford Life & Accident Insurance Co., 571 U.S. ____, (2013).*

Last month, the U.S. Supreme Court issued a unanimous opinion in *Heimeshoff v. Hartford Life & Accident Insurance Co.*, 571 U.S. ___, (2013) in which it resolved a split among circuit courts concerning the enforceability of provisions in written plan documents governing ERISA-covered benefit plans that establish a maximum period during which a claim for benefits may be filed in court. In this decision, the Supreme Court upheld the plan provision, even though the period of limitations began to run before the individual was permitted under ERISA to file a lawsuit.

BACKGROUND

Section 503 of ERISA requires each plan within its purview to establish a procedure for bringing claims for benefits against the plan. The procedure must afford two levels of review: (1) an initial determination concerning the claim for benefits and (2) an appeal of a claim denial. These reviews are generally performed by the plan administrator or its delegate (such as an insurance company or a third-party administrator). If a participant or beneficiary disagrees with the decision on appeal, he or she may bring suit under ERISA § 502. Courts of appeals, however, have uniformly required that the claimant exhaust the internal review process before filing a claim in court. Thus, in *Heimeshoff,* the Supreme Court noted that "a participant's cause of action under ERISA does not accrue until the plan issues a final denial."

ERISA does not itself specify a statute of limitations for filing a benefit claim in court. As a result, some courts have looked to analogous state law for determining the period of limitations. Also, some plan sponsors have established in their plan documents a maximum period during which a lawsuit must be brought.

THE *HEIMESHOFF* DECISION

Facts and Lower Court Rulings

The *Heimeshoff* case involved a claim for benefits under an employer's long-term disability plan. The claim was first filed in August 2005. The insurance company administering the plan denied the claim in November 2005 because of the claimant's failure to provide additional information requested by the insurance company that it deemed necessary to determine whether she was disabled. The claimant appealed that denial, with the insurance company issuing a final denial of the claim in November 2007.

In November 2010, almost three years to the date after the final denial of the claim for benefits, the claimant brought suit for benefits under the plan. The plan, however, contained a provision that stated that "[l]egal action cannot be taken against [the insurance company]… [more than] 3 years after the time written proof of loss is required to be furnished according to the terms of the policy." The policy provides that "[w]ritten proof of loss must be sent to [the insurer] within 90 days after the start of the period for which [the insurer] owes payment." Thus, the claimant clearly failed to bring suit within the three-year period of limitations established in the plan.

The District Court granted the employer's and the insurer's motion to dismiss the claimant's lawsuit on the ground that the suit was not brought within the period of limitations established under the plan, which it found to be consistent with applicable state law that permitted the plan to specify a limitations period that expired "[not] less than one year from the time when the loss insured against occurred." The Second Circuit affirmed the District Court's dismissal of the case, and the Supreme Court agreed to hear the case to resolve the existing split among circuits concerning the enforceability of periods of limitations set forth in plan documents.

The Supreme Court's Decision

The Supreme Court noted that statutes of limitations frequently do not begin to run until the plaintiff's right to sue in court accrued, whereas the one in the *Heimeshoff* case began to run before the claimant would have been allowed to bring a legal suit (*i.e.*, before the expiration of the plan's internal claim adjudication process). Nevertheless, the Court did not find that fact to carry a great deal of weight. Instead, the Court noted that "the critical aspect of this case" was that "the parties have agreed by contract to commence the limitations period at a particular time." In this regard, the Court pointed to its "well-established framework" for resolving issues of this nature. Specifically, the Court had previously stated that:

> "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 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." *Order of United Commercial Travelers of America v. Wolfe*, 331 U.S. 586, 608 (1947).

The Court also found that it was particularly appropriate to enforce a period of limitations that meets this standard and that is established in the governing documents of a plan subject to ERISA. The Court cited language in ERISA itself, as well as in cases applying ERISA principles, to the effect that the written plan document is central to ERISA and that plans must generally be administered in accordance with the terms of their written documents to the extent consistent with ERISA.

Finally, the Court concluded that the period of limitations set forth in the plan document at issue in the *Heimeshoff* case was not unreasonably short. It noted that, in general, the time frame established under ERISA for the internal review process generally contemplates that the process will be resolved in about one year, in which case a period of limitation of three years from when proof of loss was due would leave about two years for a participant or beneficiary to file suit after exhausting the internal administrative review process. Even where the internal review process lasted longer than is typical, as in the *Heimeshoff* case, the claimant still had one year in which to bring suit. In this regard, the Court noted that "ERISA regulations structure internal review to proceed in an expeditious manner. It stands to reason that the cases in which internal review leaves participants [subject to a three-year period of limitations beginning when proof of loss is due] with less than one year to file suit are rare." Thus, the Court found this period not to be unreasonably short.

TAKE-AWAYS

Although there has been a growing trend to include a specific period of limitations in documents governing ERISA-covered plans – including retirement plans, death benefit plans, disability plans and others – many plans do not contain these types of provisions. Consultants to employers maintaining these plans, and third-party administrators of these plans, should help ensure that the relevant plan documents contain provisions setting forth appropriately limited periods during which suit must be brought to enforce a claim for benefits. Using this approach, employers may be able to limit their exposure to open-ended claims.

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