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GUEST COLUMN

On your marks, get set, time's up

By Michelle L. Roberts

On Oct. 15, the U.S. Supreme Court will hear oral argument in the matter of *Heimeshoff v. Hartford Life & Accident Insurance Co. and Wal-Mart Stores, Inc.,* No. 12-729, where the court will address the question of when the statute of limitations period starts to run for judicial review of a denied benefit claim under the Employee Retirement Income Security Act of 1974 (ERISA). That this issue has split the circuit courts is unsurprising since ERISA itself does not provide a statute of limitations for denial of benefits claims. What strikes this commentator as fantastical is the basic premise underlying the rule proposed by the respondents in this case: that a statute of limitations should be able to accrue even before a plan participant has the legal right to file a lawsuit because she is engaged in a mandatory internal appeal and review process. A statute of limitations that begins accruing, and possibly running, before a participant can even tread the courthouse steps is the kind of scenario which drives one federal district court judge's observation: "A hyperbolic wag is reputed to have said that E.R.I.S.A. stands for 'Everything Ridiculous Imagined Since Adam.'" *Florence Nightingale Nursing Serv., Inc. v. Blue Cross & Blue Shield of Alabama*, 832 F. Supp. 1456, 1457 (N.D. Ala. 1993).

Perhaps the simplest analogy to understand the Alice-in-Wonderland-esque quality of the respondents' argument is this: You are preparing for a race and you have three minutes to cross the finish line. While engaged in your mandatory pre-race warm up several yards from the starting line, the whistle sounds and the clock starts ticking on your three minutes to finish the race. Startled, you jolt towards the starting line, maybe stumble over your untied shoelaces, and while hindered from a leg cramp caused by an insufficient warm-up, you are stopped mid-track by another whistle signaling your time is up. Do not pass go. Do not collect $200. Seems unfair, right? Yet, this is exactly the kind of irrationality that the Supreme Court is considering as a possible rule governing statute of limitations in ERISA denial of benefit claims.

Heimeshoff involves a denied claim for long-term disability (LTD) benefits under a group LTD plan offered by Wal-Mart Stores for its employees, including for Julie Heimeshoff, who worked for Wal-Mart for 19 years. The LTD plan is insured and administered by Hartford, which means that Hartford both pays the benefit and determines whether a participant is entitled to receive benefits. Heimeshoff became disabled from work due to a chronic medical condition and applied for LTD benefits on Aug. 22, 2005. After not receiving a response to an inquiry about Heimeshoff's functionality from her treating doctor, Hartford initially closed her claim on Dec. 8, 2005, stating that it could not make a claim determination. Heimeshoff retained counsel to assist her with her LTD claim in May 2006 and Hartford informed her that if it received clarification of her functionality it would reopen her claim. Hartford did not advise Heimeshoff of any deadlines. After obtaining additional functional capacity testing and information from her treating doctor, Heimeshoff's counsel forwarded the information to Hartford for its consideration on Oct. 2, 2006. Hartford denied Heimeshoff's claim on Nov. 29, 2006, and Heimeshoff appealed the denial to Hartford on Sept. 26, 2007. Hartford considered the appeal and issued "its last and final denial letter" on Nov. 26, 2007, more than two years after Heimeshoff filed her claim and approximately two years from the date proof of loss was due under the plan. Heimeshoff filed a lawsuit on Nov. 18, 2010.

Heimeshoff's LTD policy provides that legal action cannot be taken against Hartford beyond three years from the time written proof of loss is required to be furnished according to the terms of the policy. The policy also states that proof of loss must be sent to Hartford within 90 days after the start of the period for which Hartford owes payment. In Heimeshoff's case, if the statute of limitations may accrue before an administrator issues a final denial, she had less than one year left on the statute of limitations to file a lawsuit. Although she could have filed a lawsuit within that time, there are several reasons why accrual of a statute of limitations before a final denial of a disability benefit claim is an unworkable rule.

First, ERISA plan participants are required to exhaust the LTD plan's internal claims and appeals process subject to the time frames set forth in the regulations governing ERISA. That is, disability claimants must file a claim with the plan administrator, follow the plan's rules for appealing a denial, and wait for a decision before they can file a lawsuit. If they jump the gun, or keeping with the above analogy, start the race before the whistle, a court would dismiss the claim for failing to exhaust internal remedies.

Second, although ERISA's regulations provide certain timeframes in which administrators must make decisions on benefit claims, they also provide for an extension of those time periods under certain special circumstances which may lengthen the claims and review process by several months, or even years. *See e.g.*, 29 C.F.R. Section 250.503-1(h)(3)(i) and (h)(4) (requiring that a plan give a claimant a minimum of 180 days following notification of an adverse benefit determination within which to appeal such determination). This is due to the importance of the internal process in the good faith exchange of information between plan participants and administrators, especially where most ERISA cases must be resolved on the paper record developed before litigation. No two disability claims will proceed on the same track. Although Heimeshoff had several months to file a lawsuit after she exhausted internal remedies, there are many situations where a claimant may not exhaust before the statute of limitations has run, especially where a plan's terms contractually shortens a limitations period or permits accrual of the limitations period before the completion of the mandatory claims and appeals process.

Third, as Heimeshoff argues, it is well-settled law that unless Congress affirmatively specifies otherwise in the statute itself, the limitations period on a federal claim does not begin to run until that claim can be filed in court. See *Clark v. Iowa City*, 20 Wall. 583, 589 (1875). Although a court could equitably toll the limitations period during the time that a claimant is exhausting the internal claims process, it is unnecessarily laborious to engage in any analysis of tolling and equity in these situations which occur so frequently and where a bright-line rule — that accrual of the limitations period may not start before a final denial — would provide consistency and predictability across the board. This bright-line rule would also prevent a haphazard race to the finish line: Everyone starts racing when the whistle blows. Any law to the contrary will only result in inconsistent and widely varied statute of limitations analysis in ERISA cases. On your mark, racer; on your mark!

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