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To: Our Clients and Friends

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Plan-Provided Limitations Period And Accrual Provisions: A View From Bryan Cave's Employee Benefits Group

Recent appellate and district court opinions have upheld the enforceability of contractual limitations periods and accrual provisions in benefit plans. These recent decisions serve as a useful reminder that the inclusion of such plan terms work to the benefit of both plan sponsors and participants. For plan sponsors, these plan terms reduce the uncertainty and inconsistency created when courts borrow state limitations periods. For plan participants, these terms provide clarity regarding the time for bringing suit.

I. Two Recent Cases Uphold Plan Provisions Specifying Limitations

Heimeshoff v. Hartford Life & Acc. Ins. Co., 2012 WL 4017133 (2d Cir. Sept. 13, 2012)

Ms. Heimeshoff brought a claim against Hartford Life and Accident Insurance Company ("Hartford") and Wal-Mart Stores, Inc. ("Wal-Mart") to recover benefits under Hartford's long-term disability plan ("Plan"). While employed by Wal-Mart, Ms. Heimeshoff began suffering from chronic disability symptoms, causing her to stop working on June 8, 2005.

On August 22, 2005, Ms. Heimeshoff filed a claim for long-term disability benefits with Hartford. On November 29, 2005, Hartford notified Ms. Heimeshoff that it could not make a claim determination because it had not received any of the required reports from her doctor (*i.e.*, "Proof of Loss"). Shortly thereafter, on December 8, 2005, Hartford denied Ms. Heimeshoff's claim for benefits, citing a failure to "provide satisfactory Proof of Loss." Hartford subsequently informed Ms. Heimeshoff that it would reopen her claim upon receipt of medical reports sufficient to establish a satisfactory Proof of Loss. After undergoing further testing with another doctor, Ms. Heimeshoff's counsel sent new medical reports to Hartford. Hartford retained a doctor to review the medical records submitted for Ms. Heimeshoff's claim. The Hartford doctor determined that based on the medical records submitted,

Ms. Heimeshoff "was not disabled under the Plan's definition." Accordingly, Hartford denied her claim for benefits. Ms. Heimeshoff appealed the denial on September 26, 2007 and, according to Ms. Heimeshoff, Hartford sent a final denial letter on November 26, 2007.

On November 18, 2010, Ms. Heimeshoff filed suit in federal court challenging the denial of long-term disability benefits under Section 502(a)(1)(B) of ERISA. The U.S. District Court for the District of Connecticut granted Hartford's motion to dismiss, holding that Ms. Heimeshoff's claim was time-barred by the statute of limitations provision set forth in the Plan, which stated, "[l]egal action cannot be taken against The Hartford . . . 3 years after the time written proof of loss is required to be furnished according to the terms of the policy."

Ms. Heimeshoff appealed, arguing that the Plan's limitations period did not begin to run until the final denial of benefits (*i.e.*, November 26, 2007) and that Hartford had not disclosed the limitations period in its denial of benefits letters. The Second Circuit affirmed the district court's judgment, holding that Connecticut law permitted Hartford to shorten the applicable state limitations period (to a period not less than one year) and that Hartford's three-year limitations period could begin to run before Ms. Heimeshoff's claim accrued, as prescribed by the Plan.

Ms. Heimeshoff also argued that the limitations period was equitably tolled because Hartford failed to disclose the time limits for filing a civil action in its denial of benefits letters pursuant to the ERISA regulations governing notice requirements. The Second Circuit found that it need not determine this issue because plaintiff's counsel conceded that he had received a copy of the Plan containing the contractual limitations provisions prior to expiration of the three-year period.

Webb v. Gardner, Carton & Douglas LLP Long Term Disability Plan, —- F.Supp. 2d —-, 2012 WL 5195966 (N.D. Ill. 2012)

Edward Webb ("Webb"), formerly a partner with the law firm of Gardner, Carton & Douglas LLP ("Gardner Carton") (now merged into Drinker Biddle & Reath LLP ("Drinker")), filed suit against the Gardner, Carton & Douglas LLP Long Term Disability Plan (the "Plan"), Unum Life Insurance Company of America ("Unum") and Drinker for a failure to pay disability benefits and for breach of fiduciary duty for providing a misleading summary plan description ("SPD").

On May 15, 2002, Webb experienced a heart attack and permanently ceased work at Gardner Carton. He began receiving benefits under both the Plan and an individual disability income policy (called the "IDI Plan") on December 20, 2002 (retroactive to November 12, 2002). The IDI Plan had been adopted in January 2002 to act as a supplemental benefits plan providing a monthly payment of up to $6,500. After adopting the IDI Plan, due to a drafting error, the Plan's language continued to state that its payments were capped at $15,000, despite the intent of Gardner Carton to establish a monthly cap of $8,500 for the post-January 2002 Plan (for a combined maximum benefit of $15,000 under the Plan and the IDI Plan).

Unum initially calculated that Webb would receive $14,124.95 in monthly benefits under the Plan and $6,500 in monthly benefits under the IDI Plan, based on the express terms of the applicable plan documents. In a letter dated January 15, 2003 Gardner Carton informed both Webb and Unum that it believed Webb was being overpaid based on the drafting error. Gardner Carton attempted to secure

Webb's agreement that in return for waiving any right to higher benefits under the allegedly "faulty" language of the Plan, Unum would not seek recovery of the two overpayments that Webb had already received. Webb did not agree and began receiving reduced benefits starting January 2003 (totaling $15,000 under Plan and the IDI Plan). On April 1, 2003, Webb appealed this reduction and his appeal was denied. Webb did not seek further review, purportedly because he feared retaliation based on threats from the firm's executive director that Gardner Carton would withdraw support of Webb's application for a life insurance premium waiver (which it previously provided).

On July 15, 2003 the Plan was amended retroactive to January 1, 2002, a date before Webb's disabling event, to reflect Gardner Carton's "asserted" original intent regarding the Plan's maximum monthly benefit. Webb's benefits from the Plan and the IDI Plan ceased on January 20, 2012, and he thereafter filed suit. The reviewing court dismissed Webb's claim for benefits as time-barred by the contractual limitations period established in the Plan, which provided that, "You can start legal action regarding your claim . . . up to 3 years from the time proof of claim is required . . ." The Plan further provided that a proof of claim is required 90 days after the elimination period (*i.e.*, the period of continuous disability that must be satisfied to receive benefits -- in Webb's circumstances, 180 days). Since Webb's disabling event occurred on May 16, 2002, his elimination period ended November 12, 2002 and the due date for his proof of claim was February 9, 2003. Since his claim for benefits was filed after February 9, 2006, it was untimely. In reaching this conclusion, the court rejected Webb's claims that the contractual limitations clause applied only to disputes as to the threshold question of entitlement to benefits, not to the amount of benefits owed and also that the three-year period was unreasonable.

II. Adoption And Notice Of Plan Terms

Benefit Plans Should Include A Limitations Provision

ERISA does not provide a statute of limitations for benefit claims. In the absence of statutory guidance, courts apply the "most analogous" state limitations period to ERISA benefits claims, which often vary in type and duration. The state-specific enforcement structure leaves plan sponsors uncertain about whether administrative claims will reemerge, when they will reemerge, and in what forum. It also leaves plan sponsors with little control over the status of a claim, extending an indeterminate shadow of liability.

To reduce the uncertainty created by the state-specific limitations scheme, plan sponsors should consider including contractual limitations periods in their benefit plans. Courts across the Circuits have enforced contractual limitations periods. A majority of Circuits will enforce a plan's limitations period if the period is reasonable and clearly communicated. Case law defines a reasonable limitations period as one that provides a claimant adequate time to exhaust internal administrative procedures and remedies. Reluctant to modify contractual provisions, these courts have taken a lenient approach to the reasonableness determinations and have rarely found contractual limitations periods to be unenforceable. A minority of Circuits take a different approach. For example, rather than using a reasonable standard, the Second Circuit looks instead at whether the most relevant state law allows contractual modification of a statutory limitations period, as *Heimeshoff* illustrates.

Benefit Plans Should Specify an Accrual Trigger

While a court may borrow state limitations periods, the accrual of a claim is governed by federal common law. As with limitations periods, the accrual trigger may be dictated by plan terms and these provision will be enforced in most, but not all, Circuits. In the absence of plan terms, the federal discovery rule governs the determination of an accrual date. The rule states that "a plaintiff's cause of action accrues when he discovers, or with due diligence should have discovered, the injury that is the basis of the litigation." The Circuits are split on the application of this rule. A majority of the Circuits, applying the rule to benefits claims, have held that accrual occurs at the first point at which there has been a clear repudiation of the claim. The Fourth and Fifth Circuits, on the other hand, have held that accrual occurs when there has been a formal denial of a claim under the plan.

Courts in some Circuits, including the Second and Seventh, have enforced contractual accrual dates. Other Circuits, such as the Fourth, however, have refused to enforce contractual accrual dates, citing concerns that plan sponsors will use contractual provisions to "undermine and potentially eliminate the ERISA civil right of action," or that contractual accrual dates offend the federal discovery rule. These concerns are based on the premise that a claimant should have the opportunity to fully exhaust internal administrative procedures before the limitations period begins.

III. Conclusion

The recent decisions in *Heimeshoff* and *Webb* serve as a reminder that inclusion of statute of limitations in ERISA plan documents may help reduce uncertainty (and inconsistency) for plan sponsors and may also set reasonable expectations and guidance for plan participants. However, these provisions should be clearly written to avoid confusion. Where possible, the benefit plans (including the SPD, claims correspondence and other participant communications) should unambiguously communicate the length of the applicable statute of limitations period ***and*** when the limitations period will accrue (*i.e.*, begin to run). Of course, these provisions should be "reasonable" under the circumstances.

With the new-year upon us, it might be a good time for plan sponsors to revisit their plan documents to assess:

- Whether limitations and accrual periods are, or should be, included;
- Whether any included limitations and accrual periods are communicated in a clear manner; and
- Whether any included limitations and accrual periods are reasonable.

If you have any questions regarding anything discussed in this Alert, the attorneys and other professionals of the Employee Benefits and Executive Compensation group of Bryan Cave LLP are available to answer your questions.

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