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Internal Statutes of Limitation under ERISA

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In light of the heightened frequency of 401(k) plan litigation, it is appropriate for plan sponsors to include favorable procedural rules as part of their claims procedures. One such rule is an internal statute of limitations, which the Supreme Court has held is permissible in an Employee Retirement Income Security Act (ERISA) plan so long as it is reasonable and there is no controlling statute to the contrary. As a best practice, notice of any internal statute of limitations should be provided.

In civil procedure class in law school, we learned that the line between substance and procedure is a fluid one, a teaching affirmed by the Supreme Court in *Gasperini v. Center for Humanities, Inc.*,[1] when the Supreme Court confirmed the long-acknowledged observation that substance and procedure are inextricably intertwined. A rule that on its face regulates procedure may be intended to serve a substantive purpose.[2] Statutes of limitation, which establish the period within which a claimant can bring an action,[3] illustrate those general propositions. Although statutes of limitation are an affirmative defense on which a defendant bears the burden of proof,[4] a statute of limitations also has substantive elements to it. Thus, one reason for the existence of statutes of limitation is that "just determinations of fact cannot be made when, because of the passage of time, the memories of witnesses have faded or evidence

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is lost."[5] Similarly, in *Lozzano v. Montoya Alvarez,* the Supreme Court stated that statutes of limitation "characteristically embody a policy of repose, designed to protect defendants," and "foster the elimination of stale claims and certainty about a defendant's potential liability."[6]

ARE CONTRACTUAL LIMITATIONS PERIODS IN ERISA ACTIONS ENFORCEABLE?

In general, the ERISA does not provide a statutory limitations period for Section 502(a)(1)(B) claims, so courts generally apply the most closely analogous statute of limitations under state law.[7] However, a federal court will only borrow a state limitations period in the absence of a reasonable contractually agreed upon period.[8] "An ERISA plan is nothing more than a contract, in which parties as a rule are free to include whatever limitations they desire."[9] Consequently, "there are two parts to the determination of whether a claimant's ERISA action is timely filed … first whether the action is barred by the applicable statute of limitations and second whether the action is contractually barred by the limitations provision in the policy."[10]

The leading case in this area is *Heimeshoff v. Hartford Life & Accident Ins. Co.,*[11] in which the Supreme Court resolved a circuit split concerning the enforceability of contractual limitations periods, reaffirming the doctrine first established in *Order of United Commercial Travelers of America v. Wolfe*[12] and specifically holding that a contractual provision in an ERISA plan is enforceable even if the window for filing a legal claim opens before the plaintiff has completed the ERISA-mandated internal review process. (Note that although the text of ERISA does not require exhaustion, "the courts of appeal have uniformly required that participants exhaust internal review before bringing a claim for judicial review under ERISA Section 502.")[13] The Court announced its principal holding by stating that "absent a controlling statute to the contrary, a participant in a[n ERISA] plan may agree by contract to a particular limitation period, even one that starts to run before the cause of action accrues, as long as the period is reasonable." The Supreme Court noted the importance of the time "in which to file suit" after the end of the ERISA internal review process in evaluating whether a limitations period is reasonable. The Court also indicated that a limitations provision would be unreasonably short where it leaves a claimant with little chance of bringing a claim not barred. The Court in *Heimeshoff* concluded that ERISA was not a controlling statute to the contrary, because it does not contain a relevant statute of limitations[14] or any language that prohibited the parties from choos[ing] a shorter [limitations] period by contract."[15] The decision contained some qualifying language. First, "if the administrator's conduct causes

a participant to miss the deadline for judicial review, waiver or estoppel may prevent the administrator from invoking the limitations provision as a defense."[16] For example, in *Occidental Life Insurance Corp. of California v. EEOC*,[17] a case discussed in *Heimeshoff,* the Supreme Court did not enforce a one-year statute of limitations for Title VII employment discrimination actions, when the Equal Employment Opportunity Commission (EEOC) faced a backlog of 18 to 24 months. With respect to the doctrine of equitable estoppel as it applies to the affirmative defense of statute of limitations, the Court of Appeals for the Ninth Circuit explained in *Lamantia v. Voluntary Plan Administrators, Inc.*[18] [a]s a general rule, a defendant will be estopped from setting up a statute of limitations defense when its own prior representations or conduct have caused the plaintiff to run afoul of the statute and it is equitable to hold the defendant responsible for that result. Estoppel may apply not only against a party asserting a statutory statute of limitations but also against a party asserting a contractual limitations defense based on a specified time period in an ERISA … plan."

Hughes v. Life Insurance Company of North America[19] indicates the type of conduct by a defendant that allows a court to apply the equitable estoppel doctrine. However, a plaintiff may not cite discrepancies between plan documents as justification for delay in filing suit when there is no evidence that plaintiff relied upon those discrepancies in deciding when to file suit.[20] Similarly, a plaintiff could not be misled into a late filing by a document which she did not receive until many months after the deadline for filing the action had passed.[21]

Second, the Supreme Court indicated "to the extent the participant in an ERISA plan has diligently pursued both internal review and judicial review but was prevented from filing suit by extraordinary circumstances, equitable tolling may apply."[22] In a 2014 decision in the Southern District of New York, the court held that a plaintiff's failure to consult the provisions of the plan within months after final denial of his long-term disability claim did not constitute extraordinary circumstances.[23] Also in 2014, an Alabama district court held that a participant could not cite ignorance of the workings of a 3-year limitations provision when the plaintiff waited more than 3 years after accrual of his action under Section 502 of ERISA to file suit or to request the plan document at issue. [24] Another district court held that an appellant was not laboring under extraordinary circumstances where the time limit for plan participants to file a legal action and the manner in which the plan calculated time were set forth in the group policy.[25]

Although broad in application, equitable tolling can be defined narrowly as "the doctrine that if a plaintiff files a suit in one court and then refiles in another, the statute of limitations does not run while the litigation is pending in the first court if various requirements are met."[26] Generally speaking, it is reserved for instances where a claimant "has

made a good faith error (e.g., brought suit in the wrong court) or has been prevented in some extraordinary way from filing [her] complaint in time."[27]

IS THE CONTRACTUAL LIMITATIONS PERIOD REASONABLE?

Whether an internal statute of limitations is reasonable is generally fact specific, although the Court of Appeals for the Eleventh Circuit, in a pre-*Heimeshoff* case,[28] set forth a three-part test:

1. Was there a subterfuge to prevent lawsuits;

2. Was the limitations period commensurate with other provisions in the plan that are designed to process claims with dispatch; and

3. Was an ERISA-required internal appeals process completed.

However, although there is no question after *Heimeshoff* that contractual limitations periods[29] in ERISA actions are enforceable, regardless of state law, provided that they are reasonable,[30] in some instances it will be unclear as to what the applicable internal limitations period under an ERISA plan is, or the manner in which it should be interpreted. The limitations period must be contained in the plan document itself. In *Hughes v. Life Insurance Company of North America*,[31] the district court did not enforce a 180-day time limit for filing appeals contained in a benefits termination letter and indicated, without deciding, that in light of *Cigna Corp. v. Amara*,[32] it was unlikely to enforce such a limitations even if it was contained in a summary plan description.

In *St. Alexius Medical Center v. Roofers Unions Welfare Trust Fund*,[33] in order to resolve the issue as to whether the complaint was timely filed, the district court needed to determine whether the historical plan or the summary plan description was the governing document. The historical plan contained a 2-year internal statute of limitations, which would have barred the action, while the summary plan description was silent, meaning that the applicable state law statute of limitations—in this case, Illinois' 10-year statute of limitations—would apply. After careful review of the record, the district court concluded that the summary plan description was the governing document, so the plaintiff's cause of action was not time-barred. In *Bell v. Xerox Corp.,*[34] the contractual limitations period as defined under the plan did not apply to plaintiff's cause of action, because clarification of future rights was not a denial of benefits. In *Sandefur v. Iron Workers St. Louis District Council Pension Fund*,[35] defendant's motion to

dismiss on statute of limitations grounds was denied because the court could not determine whether the plan submitted to the court was the controlling document. In *Perris Valley Community Hospital, LLC v. Southern California Pipe Trades*,[36] a case in which under the plan document it was unclear as to whether the applicable 2-year limitations period began to run when a claim was initially denied or when an appeals committee subsequently denied an appeal, the ambiguity was read against the insurer and the claim was held to be timely. In *Mogck v. Unum Life Insurance Company of America*[37] and *Nelson v. Standard Insurance Company*,[38] statute of limitations defenses were unsuccessful because the courts could not determine the commencement date of the internal statute of limitations. However, attempts to read a contractual limitations period narrowly to avoid having an action time-barred are frequently rejected. Thus, there is no case suggesting that the phrase "proof of loss" is ambiguous because it is undefined;[39] there is no distinction between an action based on a denial of benefits and an action challenging the amount of benefits;[40] no case holds that a different statute of limitations applies to an estate,[41] nor is there any distinction between a limitations period in the health care context and a limitations period in the disability context.[42]

With respect to reasonableness challenges, except in those instances in which the limitations period ended before the claim could have accrued[43] or the appeals process was so protracted that the claimant was unable to file suit within the contractual period, such challenges are generally dismissed summarily. *Hansen v. Aetna Health and Life Ins. Co.* is an illustrative case. As the district court explained: "Defendants propose that this court construe the imposition of a contractual two-year suit limitation period against plaintiff as reasonable, despite the fact that Aetna's internal review process of plaintiff's claims has consumed the entire period. Enforcement of a two-year suit limitation in this case, after plaintiff has diligently pursued her appeal rights in a protracted internal review process would render that provision unreasonable in practical terms." [44]

On occasion a court will seek to cabin its decision. For example, in *Northlake Regional Medical Center v. Waffle House Sys. Employee Benefit Plan*, the Court of Appeals for the Eleventh Circuit approved a 90-day period as reasonable, but cautioned that such a provision may not always be reasonable or that a still shorter period will ever be reasonable.[45] Thus, courts have routinely held as reasonable 3-year periods running from the deadline for filing proof of loss,[46] and shorter periods have also been upheld as reasonable.[47] However, otherwise applicable doctrines applicable to statute of limitations matters, such as the relation back doctrine, remain in effect.[48]

Note that it may not be necessary for the period within which to file a claim to have completely expired for an internal statute of limitations to be held unreasonable. Thus, in a case in which the internal statute

of limitations was the earlier of 2 years from the date that the expense was incurred or 1 year from the date that a completed claim is filed, whichever occurs first, the Fifth Circuit implied that a contractual limitations period that as applied provided a claimant only 35 days within which to file suit is unreasonable.[49]

IS THE INTERNAL STATUTE OF LIMITATIONS A CONTROLLING STATUTE?

With respect to the second limitation on internal statutes of limitations, a statute of limitations is a controlling statute to the contrary only if it specifically targets the type of action at issue.[50] *Caldwell v. Standard Insurance Company*[51] indicates when a law is a controlling statute to the contrary and the type of analysis that a court must conduct to reach that conclusion. The policy in that case contained a standard provision providing that no action could be filed more than 3 years after the earlier of the date the insurer received proof of loss or the time within which proof of loss was required to be given. The policy also contained a time limit for filing proof of loss—90 days after the end of the benefit waiting period, which under the policy was a 90-day period. Caldwell's disability began on January 4, 2011; 180 days from that date—i.e., 90 days after the expiration of the benefit waiting period—was July 3, 2011. Therefore, under the policy, the time period for filing a suit ended July 3, 2014. Caldwell filed suit on August 29, 2014, almost 2 months after the contractual limitations period had expired. However, the defendant did not deny her claim for disability benefits until almost 24 months had expired, when the definition under the policy changed from "your occupation" to "any occupation."

Caldwell timely appealed that denial, and Standard denied her appeals on September 23, 2013, and December 5, 2013. Caldwell argued that the policy limitation was unenforceable under West Virginia Code 33-6-14, which prohibits the parties from agreeing to a limitation, such as the one set forth in the policy, which sets the deadline for filing suit less than two years after the cause of action accrued. The policy limitation and the West Virginia statute were not inherently incompatible, because a claimant's receipt of a formal denial letter could provide a claimant with more than 2 years to file a legal action; however, in Caldwell's circumstances, application of the policy would be inconsistent with the West Virginia statute. In agreeing with Caldwell that the contractual provision, as applied, violated West Virginia law, the district court first concluded that "absent the applicability of other doctrines, neither the language nor reasoning of *Heimeshoff* prevents the application of 33-6-14 simply because it is a state statute." It then held

that the West Virginia statute was not subject to ERISA preemption because of the savings clause. Finally, the court rejected appellee's argument that the policy statute of limitations was exactly the same 3-year statute of limitations under another section of the West Virginia insurance law. The Court explained that "[t]he timeframe imposed by the required provision from 33-15-4(k) (which is virtually identical to the limitation contained in the policy) is not automatically voided by the statutory floor provision imposed by 33-6-14. It is possible for a deadline set by 33-15-4(k) to fall more than two years after a plaintiff's legal cause of action accrues and, in such a case, that deadline will be undisturbed by 33-6-14. But when as here the deadline falls less than two years after a plaintiff's cause of action accrues, 33-6-14 applies, and nothing in the language of 33-15-4(k) prohibits such application." As a result, appellant's action was not time-barred.

In *Mulholland v. MasterCard World Wide,*[52] the applicable long-term disability plan provided that legal action of any kind could not be brought more than three years after proof of disability was required to be filed "unless the law in the state where [the plan participant] live[s] allows a longer period of time." The district court determined that the action was time-barred under *Heimeshoff,*[53] but the Court of Appeals for the Eighth Circuit reversed. The appeals court found that the district court had overlooked the critical distinction between the contractual provision in the instant case and the contractual provision addressed in *Heimeshoff*. The court explained that "the provision in *Heimeshoff* did not contain the additional language allowing a participant to file suit beyond three years if the law of the state provided for a longer period, and thus we conclude that the instant suit was not time-barred."[54] In *Halpern v. Blue Cross Blue Shield of New York,*[55] the district court held a New York state statute regulating insurance to be a controlling statute to the contrary. In *Carey v. United of Omaha Life Ins. Co.,*[56] Section 40350.11 of the California Insurance Law, which requires that a statute of limitation be at least 3 years from proof of loss, was a controlling statute to the contrary with respect to a policy provision providing a contractual limitation of 2 years from the date proof of loss is due.

Munro-Kienstra v. Carpenters Health and Welfare Trust Fund of St. Louis illustrates the type of analysis a court applies in determining that a state statute is not a controlling statute to the contrary. In that case, the plan specified that any civil action for wrongful denial of benefits under ERISA Section 502(a) must be brought within 2 years of the final date of denial. Appellant brought her claim almost two-and-a-half years after she learned that her claim had been denied. Appellant argued in the district court that the plan's contractual 2-year statute of limitations was invalid because the plan's rules of construction stated that its terms should be read to comply with Missouri law,

under which a 10-year statute of limitations governed ERISA claims.[57] The district court agreed, and the Eighth Circuit affirmed. Munro-Kienstra's argument was based on the plan's governing law section, which provided that the plan would be construed in accordance with the Internal Revenue Code and ERISA, and secondly in accordance with the laws of the State of Missouri. The court of appeals found this argument unpersuasive. The court indicated that there was no conflict between Missouri law and the contractual provision. State law does not "apply of its own force to a suit based on federal law-especially a suit under ERISA, with its comprehensive preemption provision."[58] Appellant next argued that even if Missouri's 10-year statute of limitations did not apply of its own accord, Missouri Revised Statutes Section 431.030, which prohibits parties from shortening the limitations period for enforcing a contract, is a controlling statute to the contrary that prevents enforcement of the plan's two-year internal statute of limitations. Again, the Eighth Circuit disagreed. It explained that although parties may specifically choose to incorporate state law when drafting the substantive terms of the plan setting forth the time limits for bringing claims,[59] they may not broadly "contract to choose state law as the governing law of an ERISA-governed benefit plan."[60] As a result, the plan's rule of construction did not specifically incorporate the Missouri statute that prohibits shortening the limitations period for enforcing a contract. Rather, Munro-Kienstra had to establish that the Missouri statute was not preempted by ERISA. Because the plan was self-funded, appellant was unable to establish that the Missouri statute would not be preempted. (Munro-Kienstra also argued that the savings clause applicable to multiple employer welfare arrangements should apply, but that argument was rejected because that savings clause does not apply where plans are maintained pursuant to collective bargaining agreements, which appellant acknowledged that the record established.) In other instances, assertions that a controlling statute to the contrary applied have been rejected because on its face the statute was inapplicable to the challenged provision.[61]

From a procedural perspective, the reasonableness of a contractual limitations period is properly considered by a court at the motion to dismiss stage.[62] Under Rule 8(c) of the Federal Rules of Civil Procedure (FRCP), a party must ordinarily raise such affirmative defenses as the statute of limitations at the pleading stage,[63] although there is ample authority that an affirmative defense raised for the first time in a summary judgment motion proceeding is sufficient notice.[64] Although a dismissal under FRCP 12(b)(6) is irregular, because the statute of limitations is an affirmative defense,[65] a motion to dismiss on such grounds should be granted "where the allegations of the complaint itself set forth everything necessary to satisfy the affirmative

defense."[66] Furthermore, the application of a statute of limitations in an ERISA case is a question of law that a court of appeals reviews *de novo*.[67]

IS NOTICE OF LIMITATIONS PERIOD REQUIRED?

There is a split of authority among the circuits, and in some instances within a circuit,[68] as to whether notice of the contractual limitations period must be included in a denial letter to plan participants under the Department of Labor's (DOL's) claims review procedures. The First Circuit,[69] Third Circuit,[70] and Sixth Circuit[71] have all held that the DOL regulations require denial letters to include the contractual limitations period for filing an ERISA claim, while the Ninth Circuit,[72] Tenth Circuit,[73] and Eleventh Circuit[74] have concluded to the contrary, concluding that the initial denial letters are only required to include time limits applicable to internal review procedures.

The split among the circuits results from the lack of precision regarding the relationship between two sections of the claims procedure regulations: 29 C.F.R. Section 2560.503-1(g)(1)(iv) requires a benefit determination to include, among other things, "a description of the plan's review procedures and the time limits applicable to such procedures, including a statement of the claimant's rights to bring a civil action under Section 502(a) of the Act following an adverse benefit determination on review." Another section of those regulations, 29 C.F.R. 2560.503-1(j)(4), requires a benefit determination on review to include, among other things, "a statement describing any voluntary appeal procedure offered by the plan and the claimant's right to obtain the information about such procedures described in paragraph (c)(3)(iv) of this section, and a statement of the claimant's right to bring an action under Section 502(a) of the Act." Thus, as the district court stated in *Fontenot v. Intel Corp. Long Term Disability Plan,*[75] "irrespective of ERISA's other requirements, the governing regulation, 29 C.F.R. Section 2560. 503-1(j) plainly does not require plan administrators to state the contractual limitations period in final denial letters."[76]

As the Court of Appeals for the Eleventh Circuit explained in *Wilson v. Standard Ins. Co.,* DOL Regulation Section 2560.503-1(g)(1)(iv) "can also be reasonably read to mean that notice must be given of the time limits applicable to the plan's review procedures, and the letter must also inform the claimant of her right to bring a civil action without requiring notice of the time period for doing so."[77] *Michael C.D. and Michael D. v. United Health Care*[78] indicates why some courts believe that, "although providing time limits in denial letters for bringing a civil action under the ERISA statute may be a good idea and may be

helpful to the claimant," a denial letter is not required under DOL regulations to disclose the contractual limitations period in the initial denial letter:

> As the last step in the administrative process, the final denial letters permit a claimant to pursue his or her claim in federal court for the first time. Therefore, the limits and procedures applicable to the claim in federal court are most relevant to the claimant at the time of receiving a final denial letter. But the regulations do not require time limits to be disclosed in final denial letters. Requiring time limits for federal court proceedings to be included in initial denial letters, where they are less relevant, but not in final denial letters, where they are the most relevant, is counterintuitive.

However, while it may not be required under DOL regulations, there would seem no good reason not to disclose to plan participants, if not in both the initial denial letter and the final denial letter. A summary plan description should also inform participants of a contractual statute of limitations.

CONCLUSION

Contractual limitation periods are a useful feature to include as part of plan administration, not so much from an adversarial perspective of eliminating meritorious participant claims but rather to require plan participants to address any issues that they may have in a timely manner, so that a resolution might be more easily accomplished. Plan sponsors have a great deal of flexibility in selecting a contractual limitations periods for all types of ERISA plans, and, except where there is a controlling statute to the contrary, determined after an ERISA preemption analysis, such internal statutes of limitation will withstand judicial challenge.

NOTES

1. *Gasperini v. Center for Humanities, Inc*., 518 U.S. 415, 426 (1996).

2. Jennifer S. Hendricks, "In Defense of the Substance Procedure Dichotomy," 89 *Washington University Law Review* 103, 109 (2011).

3. *Winburn v. Progress Energy Carolinas, Inc.,* 2015 WL 505551 (D.S.C. February 6, 2015); *St. Alexius Medical Center v. Roofers Unions Welfare Trust Fund,* 2017 WL 3584212 (N.D. Ill. August 8, 2017); *Demopolous v. Anchor Tank Lines, LLC,* 2015 WL 4430699 (S.D.N.Y. 2015); *Mosdos Chofetz Chaim, Inc. v. RBS Citizens, N.A.,* 14 F. Supp.

3d. 191, 210 (S.D.N.Y. 2014); *Staebr v. Hartford Financial Services Group, Inc.,* 547 F. 3d 406, 425 (2d Cir. 2008), *cited in Guo v. IBM 401(k) Plus Plan,* 95 F. Supp. 3d 512 (S.D.N.Y. 2015).

4. *Heimeshoff v. Hartford Life and Accident Ins. Co.,* 134 S. Ct. 604, 610 (2013), quoted in *Center for Restorative Breast Surgery v. Blue Cross Blue Shield of Louisiana,* 2016 WL 7468165 (E.D. La. May 6, 2016).

5. *Wilson v. Garcia,* 471 U.S. 261, 271 (1985).

6. *Lozzano v. Montoya Alvarez,* 134 S. Ct. 1224, 1234 (2014).

7. *See, for example, Northlake Regional Medical Center v. Waffle House Sys. Employee Benefit Plan,* 160 F. 3d. 1301, 1303 (11th Cir. 1998); *Salisbury v. Hartford Life and Acc. Co.,* 583 F. 3d 1245, 1247 (10th Cir. 2009).

8. *Mazur v. Unum Insurance Company*, 2014 WL 5454836 (6th Cir. October 28, 2014); *Salisbury v. Hartford Life and Acc. Co., supra* n.7 ("choosing which state law to borrow is unnecessary … where the parties have agreed upon a limitations period.").

9. *Salisbury v. Hartford Life and Acc. Co., supra* n.7.

10. *Withrow v. Halsey,* 655 F. 3d. 1052, 1055 (9th Cir. 2011). *See also Armstrong v. Hartford Life and Accident Insurance Company,* 2014 WL 5514183 (E.D. Cal. October 30, 2014).

11. *Heimeshoff v. Hartford Life & Accident Insurance Company, supra* n.4 at 604.

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

13. *Heimeshoff, supra* n.4 at 610.

14. The Supreme Court in *Heimeshoff* specifically distinguished ERISA Section 1113 (the breach of fiduciary duty section) from its holding that where the statute creating the cause of action is silent regarding a statute of limitations, the plan can provide a time limit. *Winburn v. Progress Energy Carolinas, Inc., supra* n.3.

15. *Heimeshoff, supra* n.4 at 611.

16. *Id.* at 615.

17. *Occidental Life Insurance Corp. of California v. EEOC,* 432 U.S. 355 (1977).

18. *Lamantia v. Voluntary Plan Administrators, Inc.,* 401 F. 3d. 114, 119 (9th Cir. 2005).

19. *Hughes v. Life Insurance Company of North America,* 2016 WL 5231811 (E.D. La. September 22, 2016).

20. *McArthur v. Unum Life Ins. Co.,* 2014 WL 4494241(N.D. Ala. September 4, 2014).

21. *Shealy v. Unum Life Ins. Co. of America,* 979 F. Supp. 395, 399–400 (D.S.C. 1997).

22. *Heimeshoff, supra* n.4 at 615. However, an an argument that a contractual limitations period should not be enforced because it was part of a contract of adhesion was rejected in *Tarallo-Brennan v. Smith Barney,* 1999 WL 294873 (S.D.N.Y. May 10, 1999).

23. *Tuminello v. Aetna Life Ins. Co.,* 2014 WL 572367 (S.D.N.Y. February 14, 2014).

24. *Wilson v. Standard Ins. Co.,* 2014 WL 358722 (N.D.Ala. January 31, 2014) Aff'd 613 Fed. App'x 841, 844 (11th Cir. 2015) (unpublished), cited in *McArthur v. Unum Life Ins. Co. of America,* 2014 WL 4494221 (N.D. Ala. September 4, 2014).

25. *Santana-Diaz v. Metropolitan Life Ins. Co,* 2015 WL 317194 (D.P.R. January 23, 2015).

26. *Jamison v. Aetna Life Insurance Company,* 2015 WL 6711081 (N.D. Ill. November 2, 2015). For a general discussion, *see* Barry Salkin, "Equitable Tolling in the ERISA Context," 22 *Benefits Law Journal* September 2009.

27. *Threadgill v. Moore U.S.A., Inc.,* 269 F. 3d 848 (7th Cir. 2001). For an illustration of an equitable tolling analysis, *see Guo v. IBM 401(k) Plus Plan*, *supra* n.3.

28. *Northlake Regional Medical Center v. Waffle House Sys. Employee Benefit Plan, supra* n.7 at 1301, 1304; *Webb v. Liberty Mutual Insurance Company,* 2017 WL 2297615 (11th Cir. 2017).

29. A contractual limitations period begins to run as defined by the plan's terms" [*Koblentz v. UPS Flexible Employee Benefit Plan,* 2013 WL 4525432 (S.D. Cal. August 23, 2013), appeal dismissed February 23, 2014)] and would begin, at the latest, upon an insurance company's or plan administrator's final denial of benefits [*Johnson v. Unum Provident,* 363 Fed. Appx. 1, 3 (11th Cir. 2009), cited in *McArthur v. Unum Life Ins. Co. of America, supra* n.24.

30. *Id. See also Mazur v. Unum Insurance Co., supra* n.8.

31. *Hughes v. Life Insurance Company of North America, supra* n.19.

32. *Cigna Corp. v. Amara,* 563 U.S. 421 (2011).

33. *St. Alexius Medical Center v. Roofers Unions Welfare Trust Fund*, *supra* n.3.

34. *Bell v. Xerox Corp.,* 2014 WL 4955372 (W.D.N.Y. October 2, 2014).

35. *Sandefur v. Iron Workers St. Louis District Council Pension Fund*, 2015 WL 4232490 (S.D. Ind. July 13, 2015).

36. *Perris Valley Community Hospital, LLC v. Southern California Pipe Trades*, 2014 WL 12558843 (C.D. Cal. February 21, 2014).

37. *Mogck v. Unum Life Insurance Company of America*, 292 F. 3d 1025, 1029 (9th Cir. 2002).

38. *Nelson v. Standard Insurance Company*, 2014 WL 4244048 (S.D. Cal. August 26, 2014).

39. *Almont Ambulatory Surgery Center, LLC v. United Health Group, Inc.,* 2015 WL 160899 (C.D. Cal. April 10, 2015).

40. *Jevelkides v. Lincoln National Corporation,* 2015 WL 3849312 (N.D.N.Y. June 22, 2015); *Hoover v. Metropolitan Life Ins. Co.,* 2016 WL 4076418 (E.D. Pa. August 1, 2016).

41. *Lonogan v. UNUM Life Ins. Co.,* 2017 WL 569521 (E.D. Pa. February 10, 2017).

42. *Dye v. Associates First Capital Long Term Disability Plan 504,* 243 Fed. Appx. 808, 810 (5th Cir. 2007), cited in *Center for Restorative Breast Surgery, LLC v. Blue Cross Blue Shield of Louisiana, supra* n.4.

43. *Abena v. Metropolitan Life Ins. Co.,* 544 F. 3d 880, 884 (7th Cir,. 2008), citing *Doe v. Blue Cross Blue Shield United of Wisconsin,* 112 F. 3d 869, 887 (7th Cir. 1997); *Center for Restorative Breast Surgery v. Blue Cross Blue Shield of Louisiana, supra* n.4 (a contractual limitations period that expires before the issuance of a final denial of benefits is unreasonable); *Nelson v. Standard Insurance Company,* 2014 WL 4244048 (S.D. Cal. August 26, 2014) ("Defendant cites no legal authority holding that a period of approximately 100 days constitutes a reasonable period to file suit in a case such

as this one, where the plan administrator has not issued a final decision prior to the expiration of the limitation period.").

44. *Hansen v. Aetna Health and Life Ins. Co.,* 1999 WL 1074048 (D. Ore. November 4 1999).

45. *Northlake Regional Medical Center v. Waffle House Sys. Employee Benefit Plan, supra* n.7.

46. *Rotondi v. Hartford Life and Accident Group,* 2010 WL 3720830, n.2 (S.D.N.Y. September 22, 2010); *DeMarco v. Hartford Life and Accident Ins. Co.,* 2014 WL 3490481 (E.D.N.Y. July 11, 2014); *Hyatt v. Prudential Ins. Co.,* 2014 WL 5530130 (W.D.N.C. October 31, 2014); *Jerves v. Hartford Life and Accident Ins. Co.,* 2016 WL 5887601 (E.D. Tex. October 7, 2016) (three-year limitation period running from proof of loss is reasonable); *Barrilleaux v. Hartford Life & Accident Ins. Co.,* 2014 WL 3778696 (E.D. La. July 29, 2014) (3 years after time written proof of loss required to be provided is reasonable); *Barriero v. NJ BAC Health Fund,* 2013 WL 6843478 (D.N.J. December 27, 2013) (3 years from the end of the year in which medical services provided is reasonable); *Schulte v. Boston Mutual Life Ins. Co.,* 2015 WL 7273148, fn.30 (D. Md. November 18, 2015) (limitation period " materially identical" to *Heimeshoff* is reasonable); *Thomas v. Prudential Insurance Company of America,* 2015 WL 2406036 (M.D. La. May 9, 2015) (3 years after proof of claim required is reasonable); *Haas v. Metropolitan Life Ins. Co.,* 2016 WL 4076418 (E.D. Pa. August 1, 2016) (3 years after proof of disability must be filed is reasonable); *Soich v. Aetna Life Ins. Co.,* 2017 WL 449171 (D. Ohio February 2, 2017) (three years from the deadline for filing a claim is reasonable). *Cf. Jacobs v. Prudential Ins. Co. of America,* 2014 WL 2807537 (E.D. La. June 19, 2014) (6-year period is reasonable).

47. *Hoover v. Harvard Pilgrim Health,* 2016 WL 2636236 (D.N.H. May 5, 2016) (2-year limitation period is reasonable); *Freeman v. American Airlines LTD Plan,* 2014 WL 690207 (C.D. Cal. February 20, 2014) (2-year internal statute of limitations period not unreasonable); *Arkin v. Unum Group et al.,* 2017 WL 4084050 (S.D.N.Y. September 14, 2017) (more than 30 months within which to file a claim is reasonable); *Medical Mutual of Ohio v. K. Amalia Enters., Inc.,* 548 F. 3d 383, 391 (6th Cir. 2008) (2- or 3-year period within which to bring a claim is reasonable); *Dahmen v. Liberty Mutual,* 2016 WL 3072256 (E.D. Wash. May 31, 2016) (1 year after the time that proof of claim is required is reasonable); *Doe v. Blue Cross Blue Shield of Wisconsin, supra* n.43 (17 months following completion of internal appeals is reasonable), discussed in *Summer v. Hartford Life & Accident Ins. Co.,* 2014 WL 107002 (E.D. Wisc. January 9, 2014); *Dunn v. The Building Trades United Pension Trust Fund,* 2015 WL 7432846 (E.D. Wis. November 23, 2015) (14 months after completion of administrative appeals is reasonable); *Abena v. Metropolitan Life Ins. Co., supra* n.43 (seven months following the completion of internal appeals is reasonable); *Russell v. Catholic Health Care Partners Employee Long Term Disability Plan,* 2014 WL 3953722 (6th Cir. August 14, 2014) (over six months remaining to file a legal action is reasonable); *Horton v. Hilton Retirement Plan,* 2017 WL 5992096 (E.D. La. December 4, 2017) (180-day period is reasonable, where there is prompt notification of decision on appeal, and the period does not begin to run until the exhaustion of internal claim procedures); *Sheckly v. Lincoln National Corp. Employees Retirement Plan,* 366 F. Supp. 2d 140, 145–148 (D. Me. 2005) (enforcing a plan provision that suit must be filed within six months of final denial); *Dye v. Associates First Capital Corp. Long Term Disability Plan 504*, *supra* n.42 (120-day limitation period in context of disability benefit was not unreasonable); *Center for Restorative Breast Surgery v. Blue Cross Blue Shield of Louisiana, supra* n.4 ("A contractual limitations period that results in the claimant having at least 90 days to file suit from the date the plan issues a decision on final appeal is presumptively reasonable"); *White v. Worthington Industries, Inc. LTD Plan,* 266 F.R.D. 178, 185 (S.D. Ohio 2010) (71 days); *Delosky v. Penn State Geiger Health Plan,* 2002 US

Dist. LEXIS 17188 (M.D. Pa. Apr. 23, 2002) (enforcing 60 days to file suit from a final decision by a state department of insurance); *Davidson v. Walmart Associates Health and Welfare Plan,* 305 F. Supp. 2d. 1059, 1069–1075 (S.D. Ia. 2004) (requiring plaintiff to file suit within 45 days after denial of favorable appeal is reasonable). For an excellent discussion of the pre-*Heimeshoff* cases cited herein, see J.S. Christie and Jessica L. Jones, "After Heimeshoff: Applying an ERISA Plan's Contractual Limitation of Action Provision" (May 23, 2014) (*https://www.bradley.com/insights/publications/2014/04/after-iheimeshoffi-applying-an-erisa-plans-contr__*).

48. *Dahmen v. Liberty Mutual Group, supra* n.47.

49. *Baptist Memorial Hospital, DeSoto, Inc. v. Crain Auto, Inc.,* 392 Fed. Appx. 288, 294 (5th Cir. 2010) (per curiam), cited in *Center for Restorative Breast Surgery v. Blue Cross Blue Shield of Louisiana, supra* n.4.

50. *Heimeshoff, supra* n.4 at 61, cited in *Mulholland v. MasterCard Worldwide,* 2014 WL 6977805 (E.D.Mo. December 9, 2014), rev'd on other grounds, 2015 WL 6161462 (8th Cir. October 21, 2015).

51. *Caldwell v. Standard Insurance Company,* 2015 WL 4727378 (S.D. W. Va. August 10, 2015).

52. *Mulholland v. MasterCard Worldwide, supra* n.50.

53. *Mulholland v. MasterCard Worldwide,* 2014 WL 6977805 (E.D. Mo. December 9, 2014).

54. *See also Harris v. The Epoch Group, L.C.,* 357 F. 3d. 822, 824–826 (8th Cir. 2002), in which an ERISA plan contained almost the identical contractual language and the court held that Missouri's 10-year statute of limitations was applicable.

55. *Halpern v. Blue Cross Blue Shield of New York,* 2014 WL 4385759 (W.D.N.Y. September 9, 2014).

56. *Carey v. United of Omaha Life Ins. Co.,* 2017 WL 1045077 (C.D. Cal. January 31, 2017). *See also Wetzel v. Lou Ehler Cadillac Group Long Term Disability Plan,* 222 F. 3d 643, 650–651 (9th Cir. 2000) (en banc) (remanding action to district court to determine whether plaintiff's action was barred by the plan's limitation period in light of California law, particularly California Insurance Code § 10350.7). *cf. Stephan v. Unum Life Ins. Co. of America,* 697 F. 3d 917, 927 (9th Cir. 2012) (California statutory law is read into an insurance policy and becomes part of the contract).

57. *Johnson v. State Mutual Life Assurance Company of America,* 942 F. 2d. 1260 (8th Cir. 1991) (en banc).

58. *Citing Doe v. Blue Cross Blue Shield United of Wisconsin, supra* n.43.

59. *Harris v. The Epoch Group, LC,* 357 F. 3d. 822, 825 (8th Cir. 2004).

60. *Prudential Ins. Co. of America v. Doe,* 140 F. 3d. 785, 791 (8th Cir. 1998).

61. *See, for example, Estaban Jeanette Dodge v. Hartford Life & Accident Ins. Co.,* 2017 WL 412633 (E.D. Ark. January 30, 2017) (An Arkansas prohibition against shortening the limitations period for filing suit on a life insurance policy did not apply to a group disability plan); *McArthur v. Unum Life Insurance Company of America, supra* n.24 (Georgia Statute 33-29-3(b)(7) not a controlling statute to the contrary, because it applies to individual disability policies, not group disability policies).

62. *Jerves v. Hartford Life & Accident Ins. Co., supra* n.46.

63. *Schulte v. Boston Mutual Life Ins. Co., supra* n.46.

64. *Grunley Walsh USA, LLC v. Raap,* 386 Fed. Appx. 455, 459 (4th Cir. 2010).

65. *Chicago Building Design, P.C. v. Mongolian Houses, Inc.,* 770 F. 3d. 610, 615 (7th Cir. 2014), cited in *Dunn v. The Building Trades United Pension Trust Fund, supra* n.47. *See also supra* n.4.

66. *Tregenza v. Great American Communications, Co.,* 12 F. 3d 717, 719 (7th Cir. 1993), cited in *Dunn v. The Building Trades United Pension Trust Fund, supra* n.47. *See also Harris v. City of New York,* 186 F. 3d 243, 250 (2d Cir. 1999) (dismissing a complaint on statute of limitations grounds at the complaint level "is appropriate only if a complaint clearly shows the claim is out of time."); *Mosdos Chofetz Chaim, Inc. v. RBS Citizens, N.A., supra* n.3 (a pre-answer motion to dismiss on statute of limitations grounds should be granted "only if it is clear on the face of the complaint that the statute of limitations has run"); *Staehr v. Hartford Fin. Serv. Group Inc., supra* n.3, cited in *Guo v. IBM 401(k) Plus Plan, supra* n.3 (a statute of limitations defense may be raised in a pre-answer 12(b)(6) motion if the defense appears on the face of the complaint); *La Chapelle v. Berkshire Life Ins. Co.,* 142 F. 3d 507, 509 (1st Cir. 1998), cited in *Hoover v. Harvard Pilgrim Healthcare,Inc., supra* n.47 ("Granting a motion to dismiss based on a limitations defense is entirely appropriate when the plaintiff's allegations leave no doubt that an asserted claim is time-barred"); *Trans Spec Trucking Serv. v. Caterpillar, Inc.,* 524 F. 3d 315, 320 (1st Cir. 2008) ("Where the dates included in the complaint show that the limitations period has been exceeded and the complaint fails to sketch a factual predicate that would warrant the application of either a different statute of limitations or equitable estoppel, dismissal is appropriate.").

67. *Witt v. Metropolitan Life,* 772 F. 3d 1269 (11th Cir. 2014). *See also Russell v. Catholic Healthcare Partners Employee Long Term Disability Plan, supra* n.47; *Munro-Kienstra v. Carpenters' Health and Welfare Trust Fund of St. Louis,* 2015 WL 3756712 (8th Cir. June 17, 2015).

68. In *Novick v. Metropolitan Life Ins. Co.* 764 F. Supp. 2d 653, 661 (S.D.N.Y. 2011), the district court held that the disclosure of the applicable time limit was required, while in *Soares v. United of Omaha Life Ins. Co.,* 2016 WL 158495 (D. Conn. January 13, 2016), the court concluded that it was not required.. While most courts in the Ninth Circuit have held that disclosure is not required, the district court in *Solien v. Raytheon*, 2008 WL 2323915 (D. Ariz. 2008) reached a contrary conclusion.

69. *Santana-Diaz v. Metropolitan Life Ins. Co.,* 816 F. 3d 172 (1st Cir. 2016); *Candelaria v. Orthobiologics,* 661 F. 3d 675 (1st Cir. 2011).

70. *Mirza v. Insurance Administrator of America, Inc.,* 800 F. 3d 129 (3rd Cir. 2015).

71. *Moyer v. Metropolitan Life Ins. Co.,* 762 F. 3d 503 (6th Cir. 2014).

72. *Scharff v. Raytheon Co. Short Term Disability Plan,* 581 F. 3d 899, 907–908 (9th Cir. 2009) (declining to supplement ERISA's comprehensive scheme for regulating disclosures to participants with a California law requiring the express disclosure of a statute of limitations).

73. *Young v. United Parcel Services,* 416 F. App'x 734, 740 (10th Cir. 2011) (unpublished) (concluding that requiring a notification of the time limit for filing suit "conflates the internal appeals process, and its associated deadlines, with the filing of a legal action after the process has been fully exhausted.").

74. *Wilson v. Standard Ins. Co., supra* n.24.

75. *Fontenot v. Intel Corp. Long Term Disability Plan,* 2014 WL 2871371 (D. Ore. June 24, 2014).

76. *Id.* at *p7.

77. *Wilson v. Standard Ins. Co., supra* n.74.

78. *Michael C.D. and Michael D. v. United Health Care*, 2016 WL 2888984 (D. Utah 2016).