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Supreme Court ERISA update: Court upholds plan's contractual limitations period and agrees to hear employer stock case

In a favorable ruling for plan sponsors, the Supreme Court recently held that an ERISA plan can start the clock on a participant's time to file a lawsuit seeking plan benefits while the plan's internal claims process is ongoing. Separately, the Court agreed to consider whether 401(k) plan fiduciaries are entitled to a "presumption of prudence" in maintaining a company stock fund as part of the plan's investment lineup.

Plan limitations periods are enforceable

Exhausting administrative remedies

An ERISA plan participant may bring a lawsuit in federal court claiming a right to plan benefits only after exhausting the plan's administrative (also referred to as internal) claims adjudication process.

In *Heimeshoff v. Hartford Life & Accident Ins. Co.*, the Court ruled unanimously that an ERISA plan can impose a "reasonable" time limitation on a participant's opportunity to file a lawsuit in federal court challenging an unfavorable plan benefits determination — even if the time period begins to run prior to the end of the administrative claims process, before the participant has the right to judicial review.

Background

The case involved a Wal-Mart Stores, Inc. employee, Julie Heimeshoff, who participated in Wal-Mart's long-term disability plan governed by ERISA and administered by Hartford Life & Accident Insurance Company (Hartford). The plan document (here, the insurance policy) required participants to file a lawsuit to recover plan benefits no more than three years from the deadline for submitting "proof of loss."

Ms. Heimeshoff stopped working on June 8, 2005 due to chronic fatigue and pain. She submitted a claim for disability benefits in August 2005 supported by a statement from her rheumatologist. In December 2005, after previously informing Ms. Heimeshoff that it could not determine whether she was disabled because her doctor had not responded to its request for additional information, Hartford denied her claim on the basis that she had failed to provide satisfactory proof of loss. Although Hartford initially informed Ms. Heimeshoff that she had 180 days in which to appeal, it later told her that it would reopen her claim, without an appeal, if it received the requested information from her rheumatologist.

Ms. Heimeshoff submitted additional medical evidence in October 2006. In November 2006, Hartford denied the claim again, this time on the grounds that she was not disabled. Following Hartford's grant of her requested extension of the 180-day appeal period, Ms. Heimeshoff filed an appeal of the claim denial on September 26, 2007. Hartford denied Ms. Heimeshoff's appeal on November 26, 2007.

On November 18, 2010, within three years of the date her appeal was denied but more than three years after she was required to submit proof of loss, Ms. Heimeshoff brought a lawsuit under ERISA seeking judicial review of her denied claim. Hartford filed a motion to dismiss Ms. Heimeshoff's lawsuit on the ground that that the plan's three-year time period for bringing a lawsuit had expired. The trial court granted that motion, agreeing that Ms. Heimeshoff had missed her window of opportunity for bringing a lawsuit based on the claim denial. On appeal, Ms. Heimeshoff argued that, regardless of the plan's terms, the limitations period for bringing a lawsuit under ERISA should not begin to run until after the participant has exhausted the plan's administrative review process. The Second Circuit Court of Appeals rejected this argument and affirmed the ruling of the trial court. The Court agreed to hear the case to resolve a split in the appellate courts on this issue.

The *Heimeshoff* case involved a health and welfare plan, but the Court's holding appears equally applicable to retirement plans.

The Supreme Court's ruling

The Court held that Ms. Heimeshoff's claim for plan benefits was time barred even though, under the plan's terms, the limitations period for filing a lawsuit began running before Ms. Heimeshoff had a right to sue. The Court characterized the plan as a contract whereby the plan sponsor, one party to the contract, and plan participants and beneficiaries, the other party, agreed to a three-year limitations period that begins to run at the time proof of loss is due. This contractual agreement must be respected, the Court found, unless (1) there is a "controlling statute to the contrary," or (2) the period is "unreasonably short" — neither of which was the case in *Heimeshoff*.

> Buck comment. ERISA does not provide a statute of limitations for benefit claims, as it does for breach of fiduciary duty claims. Rather, the limitations period provided in the most analogous state statute applies, which is often the state statute of limitations for breach of contract claims. Thus, whether or not there is a controlling statute to the contrary is a state-specific question.

The Court did not explicitly define the boundaries of reasonableness for a limitations period. However, it did remark that the year-long period following the plan's final denial of Ms. Heimeshoff's claim on appeal afforded her sufficient time to file a lawsuit before the limitations period lapsed. The plan's limitations period was not contrary to ERISA itself, the Court found, dismissing as "highly dubious" the argument that participants would try to short-circuit the often-effective administrative claims process to preserve their right to bring a lawsuit. In any event, the Court noted, judges can always turn to equitable remedies where the "administrator's conduct causes a participant to miss the deadline for judicial review."

Buck comment. This opinion makes clear the Court's view of the significance and centrality of the terms of an ERISA plan document. It is consistent with recent rulings in other contexts where the Court has enforced ERISA plan terms. In light of this, employers may want to minimize their benefit claims litigation exposure by amending plan documents to similarly limit the time period in which lawsuits for plan benefits may be brought. The three-year limitations period approved in *Heimeshoff* should give employers comfort that courts will apply the plan's terms where similar time periods are provided, so long as there is no state statute to the contrary.

Are plan's employer stock rules enforceable?

In *Dudenhoefer, et al. v. Fifth Third Bancorp, et al.*, the Court will decide whether 401(k) plan fiduciaries are entitled to a "presumption of prudence" when offering employer stock as an investment option.

Background

Over the last decade, participants in defined contribution plans that offer company stock as an investment option have brought a slew of lawsuits claiming that plan fiduciaries should have eliminated the employer stock fund from the investment lineup during a time period when the company's stock price declined. A wave of these cases followed the global financial crisis, as many companies — particularly in the financial services industry — experienced dramatic drops in their stock value. In many of these "stock drop" cases, participants had voluntarily invested 401(k) plan assets in their company stock funds. They later claimed that their employer should not have allowed them to make this investment given the company's declining prospects during a given time period.

ERISA's special treatment of employer stock

Generally, ERISA plan fiduciaries have a duty to diversify plan investments so as to minimize the risk of large losses. ERISA exempts fiduciaries from the *duty to diversify* employer stock funds, however, as a way to promote employee ownership.

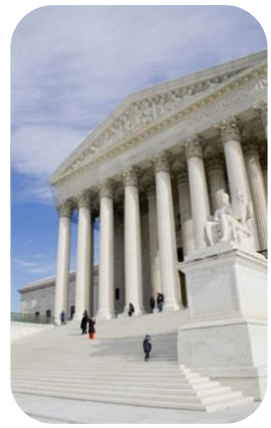
Nevertheless, fiduciaries must still adhere to their *duty of prudence* for plan investments in employer stock.

Federal courts have struggled to balance fiduciaries' duty to protect participants against imprudent plan investments, on the one hand, with the special treatment that Congress has given employee stock ownership, on the other. Additionally, where a 401(k) plan document explicitly requires that the plan offer employer stock as one of its investment options, divesting the plan of company stock would directly contravene plan terms — which, as exemplified by the *Heimeshoff* case discussed above, courts are loathe to do.

To resolve this tension, a number of courts have developed a "presumption of prudence" whereby a fiduciary is presumed to have acted prudently in offering employer stock unless the participant can show that the company faced "dire circumstances" threatening the company's viability. This concept is also known as the "*Moench*" presumption, after the Third Circuit case where it originated. The majority of courts that have considered this issue have adopted the presumption and applied it at the pleadings stage of litigation, meaning that an employer can more easily get a claim dismissed simply based on the initial complaint and without having to proceed to the costly evidentiary stage of litigation.

The Sixth Circuit, however, has taken a different approach. While recognizing the presumption of prudence, it has refused to apply the presumption until the evidentiary stage of litigation. This makes it much more difficult and costly for an employer to get a claim dismissed early on. Additionally, in applying the presumption, the Sixth Circuit uses a much more lenient standard. Instead of requiring a participant to show that the company was in "dire circumstances," a participant bringing a claim in the Sixth Circuit need only show that "a prudent fiduciary acting under similar circumstances would have made a different investment decision" to overcome the presumption.

Dudenhoeffer case on appeal to the Supreme Court



The *Dudenhoeffer* case is on appeal from the Sixth Circuit where the court found in favor of a group of participants in Fifth Third Bank's 401(k) plan who claim that the plan's fiduciaries should have discontinued Fifth Third stock as an investment option when the company's stock price declined 74%, due to involvement in subprime lending. The plan document at issue required that company stock be one of the plan's investment options. In requesting Supreme Court review, Fifth Third argued that, contrary to the Sixth Circuit's findings, the presumption of prudence should apply at the pleadings stage under a "dire circumstances" standard rather than the Sixth Circuit's "ordinary prudent-man standard," which Fifth Third maintains would "render meaningless" the special status that Congress bestowed on employer stock investments.

In an unusual move, the Court asked the DOL to file an amicus (friend of the court) brief to weigh in on the case. In its brief, the DOL argued — consistent with its general position on this topic in recent years — that plan fiduciaries are not entitled to any presumption for employer stock investments, and that, if the Court decides a presumption applies, it should not apply at the pleadings stage.

On Friday, December 13, 2013, the Court agreed to consider whether plan fiduciaries are entitled to a presumption of prudence when investing in employer stock, and, if so, at what stage in the litigation this presumption applies.

> Buck comment. Fifth Third also asked the Court to review the Sixth Circuit's decision that incorporating allegedly misleading SEC filings into a plan's summary plan description turns the SEC filings into plan communications for which fiduciaries can face liability. Following the DOL's recommendation, the Court declined to review this question.

Oral argument is scheduled for April 2, 2014. Employers that offer a company stock fund as one of their 401(k) plan investment options should pay close attention, as the outcome in this case is likely to have risk assessment as well as plan drafting implications.

In closing

In *Heimeshoff*, the Court exhibited a strong preference for adherence to the written terms of the plan regarding limitations on federal court claims for benefits. It remains to be seen whether the Court will take a similar position where a 401(k) plan document requires employer stock to be included as one of the plan's investment options.

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