

Justices Mull Time Limits For ERISA Disability Claims

By **Abigail Rubenstein**

Law360, New York (October 15, 2013, 7:32 PM ET) -- The U.S. Supreme Court on Tuesday grilled attorneys for a former Wal-Mart Stores Inc. employee and the retailer's insurer on whether the Employee Retirement Income Security Act allows an employee benefits plan to set a limitations period for challenging the denial of benefits in court that starts before the plan has made a final decision.

The court heard oral arguments in former Wal-Mart employee Julie Heimeshoff's appeal of a Second Circuit decision that affirmed the dismissal of her ERISA suit against Wal-Mart and Hartford Life & Accident Insurance Co. over the insurer's denial of her claim for long-term disability benefits because it was not filed within the plan's time limit of three years from when a worker submits a proof of loss.

The Second Circuit held that ERISA plans can start the clock running on the limitations period for filing a federal suit for wrongful denial of benefits, before a plan's mandatory internal resolution process has run its course, but Heimeshoff is hoping to convince the high court that this is not the case.

Heimeshoff's attorney Matthew W.H. Wessler of Public Justice PC told the justices that the three-year limitations period starting when proof of loss is submitted, which occurs relatively early in the internal administrative process runs afoul of ERISA because it starts the clock running before a federal claim even exists.

"This provision directly conflicts with ERISA's two-tiered remedial structure, which is designed to maximize the number of claims that are resolved internally without lawyers in courts," Wessler said. "The respondent's provision undermines this goal by making it impossible for anyone to know in advance how much time will be left on the limitations clock after the internal process is complete."

He urged the justices to find that the limitations period cannot start until after the final claim denial by the plan.

The justices, however, pressed Wessler on whether such a limitations period actually produced an unfair result for Heimeshoff, noting that she in fact had a year after the final denial of her claim to bring her suit.

"But in this case ... there was a period of I think just over a year, in which it was very clear that the administrative process had ended and nothing happened," Justice Anthony Kennedy said. "I don't see the unfairness in the application of the rule in this case."

And noting that courts seem to be willing to give plaintiffs more time in situations where the internal process lasts an especially long time, Justice Elena Kagan said, "It seems just a little bit like a solution in

search of a problem."

But arguing for the government, which sided with Heimeshoff, Assistant to the Solicitor General Ginger D. Anders agreed that the Wal-Mart plan's limitation's provision undermines ERISA's two-tiered remedial framework.

Meanwhile, Catherine M.A. Carroll of WilmerHale, who argued the case for Wal-Mart and Hartford, told the justices that the plan provision at issue was typical.

She warned the court that a ruling in favor of Heimeshoff could have far-reaching implications beyond the question directly presented in the case.

"Since ERISA's enactment, this court has never held that in a suit to enforce the terms of an ERISA plan those terms can be thrown out the window because we worry that they might be unfair in some case that we can speculate about," she said. "That would be a very significant shift in how this court enforces ERISA plans, and it would undermine Congress' goal of wanting to assure employers and plan sponsors that the terms on which they agree to provide benefits will be respected."

When pushed by the justices for answers about what should happen in situations where such a limitations period does leave a plaintiff too little time to prepare a suit, Carroll said standard protections such as equitable estoppel could be applied by courts.

Still, the justices expressed concerns about where a ruling in favor of the retailer and insurers might leave plan participants.

"So you're pushing this start to the statute of limitations period, and your answer to the problems is: Well, don't worry," Chief Justice John Roberts said. "If it ever turns into something that's going to be enforced, we won't enforce it, or it won't be enforceable without a judicial determination about equitable estoppel and all these other things that are very difficult to apply."

A decision in the case is expected by June.

The Supreme Court agreed to hear the case in April.

Heimeshoff, a Wal-Mart employee from 1986 to 2005, suffered from lupus and fibromyalgia. In August 2005, she requested long-term disability benefits, according to court papers.

Hartford eventually denied the disability claim, and in September 2007 Heimeshoff appealed that decision. Following that appeal, she allegedly received a final notice of denial in November 2007. She then lodged the ERISA suit in Connecticut federal court in 2010, according to court filings.

The district court dismissed the suit because it had not been filed within the insurance plan's time limit, and the Second Circuit upheld that dismissal despite Heimeshoff's arguments that the statute of limitations should not have started to run until her benefits were denied on a final basis.

Matthew W.H. Wessler of Public Justice PC argued the case for Heimeshoff. Heimeshoff is also represented by Steven P. Krafchick and Carla Tachau Lawrence of Krafchick Law Firm; Leah M. Nicholls, Leslie A. Brueckner and Arthur H. Bryant of Public Justice PC; and Peter K. Stris, Brendan S. Maher and Victor O'Connell of Stris & Maher LLP.

Catherine M.A. Carroll of WilmerHale argued the case for Hartford and Wal-Mart. The companies are also represented by Seth P. Waxman, Weili J. Shaw and Ari Holtzblatt of WilmerHale.

Assistant to the Solicitor General Ginger D. Anders argued the case for the government.

The case is Heimeshoff v. Hartford Life & Accident Insurance Co. et al., case number 12-729, in the U.S. Supreme Court.

--Additional reporting by Ben James. Editing by Katherine Rautenberg.

All Content © 2003-2013, Portfolio Media, Inc.