Published on *The National Law Review* https://natlawreview.com

Third Circuit Rules Failure to Disclose Deadline to File Suit in Denial Letter Warrants Setting Aside Limitations of Suit Provision in Plan

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The Third Circuit ruled on August 26, 2015, that if a claim administrator fails to disclose in its final denial letter any plan-imposed deadline to challenge the denial in court, then that deadline will be set aside in favor of the most analogous state-law statute of limitations. In *Mirza v. Insurance Administrators of America, Inc. et al.* (No. 13-3535, 3d Cir. Aug. 26, 2015), the Court applied New Jersey's six-year breach of contract statute instead of the plan's one-year limitation of suit provision.

Background

Dr. Mirza performed spinal surgery on a participant in the self-insured health plan sponsored by Challenge Printing of the Carolinas and administered by Insurance Administrators of America. He sought payment of benefits under the plan pursuant to an assignment of rights executed by the participant/patient. Insurance Administrators denied the claim because the procedure performed was deemed to be medically investigational, and therefore not covered by the plan. The denial letter advised Dr. Mirza of his right to bring a civil action under ERISA, but did not specifically advise him of the plan-imposed limitation of suit deadline for doing so.

Mirza retained counsel, and counsel obtained a copy of the plan document containing the limitation of suit provision approximately four months prior to the deadline. Insurance Administrators pointed out that not only was the beneficiary on notice of the deadline since she had access to the plan document from the outset, but the surgeon's attorneys also received a copy of the plan well in advance of the deadline. The district court agreed and granted summary judgment in favor of the defendants.

Third Circuit Rationale

The Third Circuit vacated and remanded based on its holding that failure to note the deadline to file suit in the denial letter constituted a substantial violation of 29 CFR 2560.503-1(g). The Court observed that 29 CFR 2560.503-1(g)(1)(iv) requires a denial letter to set forth a description of the

plan's review procedures and any applicable time limits, "including a statement of the claimant's right to bring civil action" under ERISA. The Court found that this language mandates inclusion of any applicable time limitations on the filing of suit, and cited decisions from two other circuits in support: *Moyer v. Metro. Life Ins. Co.,* 762 F.3d 503, 505 (6th Cir.2014);*Ortega Candelaria v. Orthobiologics LLC,* 661 F.3d 675, 680 (1st Cir.2011).

In so holding, the Third Circuit expressly declined to follow decisions from the Second and Ninth Circuits, finding those decisions to be factually distinguishable from the present case. *See Scharff v. Raytheon Co. Short Term Disability Plan,* 581 F.3d 899 (9th Cir.2009)(where, according to the Ninth Circuit, plaintiff did not argue that failure of the denial letter to reference the plan's contractual one-year limitation period violated § 2560.503–1(g)(1)(iv), but argued that failure to disclose the deadline violated the "reasonable expectations doctrine," with which the Court disagreed since defendant had disclosed the limitation in other documents);*Heimeshoff v. Hartford Life & Accident Ins. Co.,* 496 F. App'x 129 (2d Cir.2012) (unpublished) (where, according to the Second Circuit, the Court declined to address requirements of the regulation because the plaintiff otherwise had notice of the limitation and was therefore not entitled to equitable tolling).

The Third Circuit also expressed concern that if administrators were not required to disclose the suit deadline in the denial letter, "plan administrators could easily hide the ball and obstruct access to the courts" by burying the provision in lengthy plan documents, like the 91-page plan document in that case.

In response to concerns raised by defendants that the ruling obligated plan administrators to render a legal conclusion regarding the applicable statute of limitations, the Court clarified that its ruling only required disclosure of plan-imposed suit limitations. The Court declined to say whether the suit deadline must be disclosed where the plan is silent on that issue.

Analysis

The Third Circuit's holding is vulnerable for several reasons. First, in addition to the Second and Ninth Circuits, the Tenth Circuit would also likely enforce the plan's limitation period under the facts presented in *Mirza*. In *Holmes v. Colorado Coalition for the Homeless LTD Plan*, 762 F.3d 1195 (10th Cir. 2014), the plan failed to comply with ERISA because the summary plan description did not describe a second level of administrative review. The Tenth Circuit still dismissed the lawsuit based on the claimant's failure to exhaust because the plaintiff was aware of the second-level appeal through other documents.

Second, the Third Circuit's reliance on *Moyer* from the Sixth Circuit is suspect in that the issue of whether the denial letter violated ERISA was never briefed or argued by the plaintiff. As the dissenting judge stated in*Moyer*, if this issue were raised by the Court prior to the issuance of the decision, the defendant could have addressed whether there was substantial compliance. *Moyer*, 762 F.3d at 509. Also, the Sixth Circuit relied on the Fourth Circuit's decision in *White v. Sun Life Assurance Co. of Canada,* 488 F.3d 240, 247 n.2 (4th Cir. 2007). But *White* was abrogated by the Supreme Court's decision in *Heimeshoff v. Hartford Life & Accident Ins. Co.,* 134 S. Ct. 604, 610 (2013).

Finally, it is debatable whether a denial letter must include the plan's limitation period in the first instance. Even the First Circuit acknowledged in *Ortega Candelaria* that one "could arguably read this regulation as setting forth two distinct requirements. That is, it could be argued that notice of the right to sue under ERISA is in addition to, and divorced from, notice of review procedures and the

time frame pertaining to such procedures." *Id*. at 680. n.7.

Nevertheless, unless a motion is made and granted for re-hearing or*certiorari*, *Mirza* is binding law in the Third Circuit, and all denial letters must include the plan-imposed suit limitation deadline, if any. Failure to include the deadline will result in application of the most analogous limitations period imposed under state law, which in New Jersey is the six-year statute of limitations applicable to breach of contract actions.

National Law Review, Volume V, Number 245