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Best Practices in Administering Benefit Claims #9 – Managing Litigation

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As we shifted focus last week from a plan's administrative claims procedures to defending against a claim for benefits in court, we explained how a well-documented administrative record can enhance the chances of getting a case dismissed at the outset without the need for protracted litigation. This week, we offer three opportunities to further manage litigation by adding one or more of the following provisions to plans: a contractual limitations period, a forum selection clause, and/or a mandatory arbitration provision.

- *Contractual Limitations Periods.* ERISA does not specify a statute of limitations for claims for benefits under Section 502(a)(1)(B). Thus, courts borrow the state statute of limitations for the state claim that is most analogous to a claim for benefits, which, in most cases, is a breach of contract claim. In New York, for example, a claim for benefits is generally subject to a six-year statute of limitations. In other jurisdictions, the statute of limitations has been determined to be as many as fifteen years. There is a separate issue of when the statute of limitations begins to accrue, which is typically governed by the federal discovery rule, *i.e.*, when a participant knew or should have known that he or she was not entitled to benefits. In light of the length of these limitations periods, plan sponsors often include a contractual limitations period in the plan document and summary plan description that considerably shortens the statute of limitations and also specifies when the period begins to run. Depending on the type of plan, we have seen limitations periods in plan documents that range from a couple of years to as few as a couple of months. Although there is little, if any, dispute that contractual limitations periods are enforceable, it is important that they be reasonable, be published in the summary plan description, and be included in all benefit denial letters. By drafting clear contractual limitations periods that also specify precisely when the period is triggered, plan sponsors can limit the ability of participants and beneficiaries to bring suits based on events that occurred many years earlier.
- *Forum Selection Clauses.* ERISA contains a venue provision, which provides that a claim under ERISA "may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found."

ERISA § 502(e)(2). ERISA's broad venue provision can make it costly to defend a case, particularly if a participant with a claim works in or retires to a location that is far from where the plan is administered. Most courts have concluded that ERISA's venue provision is permissive, not mandatory. As such, plan sponsors are free to draft a plan provision that requires all ERISA claims to be commenced in particular state and/or court. By dictating where the plan will be required to defend against ERISA claims (of any kind), plan sponsors can help reduce the costs and burdens of the plan being involved in litigation.

- *Mandatory Arbitration Provisions.* It is well-established that plan sponsors and plan fiduciaries may require claims for benefits, after the claim is processed through the plan's administrative claims procedures, to be arbitrated rather than litigated in court. Because arbitration is generally viewed to be less costly than litigation, plan sponsors may wish to consider the relative pros and cons of arbitration. When doing so, there are a multitude of factors to consider, including the following: Which arbitration forum should be used—AAA, JAMS or something else? Should the plan create its own arbitration procedures? Where should the arbitration be commenced? How many arbitrators should there be—one or a panel of three? Who should pay for the arbitration? Should class-wide arbitration be prohibited? What appellate rights should be provided following arbitration? There are many answers to these questions, and there is not necessarily a one-size-fits-all answer to them. The answers may very well differ depending on, among other things, the type of ERISA claim. The answers to these questions are well beyond the scope of this blog, but the important thing to recognize here is that arbitration is available and that there are many important questions that must answered besides the most fundamental one—does the plan and/or plan sponsor want to arbitrate ERISA claims?

A decision by the plan sponsor and/or plan fiduciary to include some or all of these provisions in the plan (and summary plan description) can serve to help avoid and/or minimize the costs and burdens of ERISA litigation. Careful consideration should be given to determining whether any of these provisions are a good choice for your plan.

Next week, we wrap-up with some final thoughts on best practices in benefit claim administration.

You can find our previously published best practices here:

- #1 – Know (and Read) Your Plan Document
- #2 – Know (and Read) Your SPD
- #3 – Dealing with Benefit Assignments

- #4 – Know (and Understand) the Law: Full and Fair Review
- #5 – Establishing (and Following) a Good Claims Process
- #6 – Distinguishing an Inquiry from a Claim
- #7 – Understanding Attorney-Client Privilege in the Benefits Claims Process
- #8 – Facing Litigation of Benefit Claims

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- **Russell L. Hirschhorn**
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