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"An Ounce of Prevention Is Worth a Pound of Cure": The Ninth Circuit's Holding in *Spinedex* Lowers the Bar For Plaintiffs Seeking ERISA Plan Benefits In Court

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On November 5, 2014, the Ninth Circuit issued an opinion in *Spinedex Physical Therapy USA, Inc. v. United Healthcare of Arizona, Inc*., 770 F.3d 1282 (9th Cir. 2014), of potentially great importance to sponsors and administrators of ERISA plans.

Of particular interest are the Ninth Circuit's holdings that:

- A contractual statute of limitations must be specifically stated in a particular location within the plan's summary plan description in order to be enforced;
- A plan document must affirmatively and unambiguously state that a participant has to exhaust administrative remedies before filing a lawsuit in order for that requirement to be enforced; and
- Claims administrators (and, potentially, other plan fiduciaries) may be proper defendants in claims for benefits brought under ERISA § 502(a)(1)(B).

Plan sponsors and administrators should review their plan documents to ensure that contractual limitations periods are properly located in the summary plan description ("SPD") and that plan documents clearly state that plan participants must exhaust all administrative remedies prior to filing a lawsuit against a plan for benefits. Otherwise, plan sponsors and administrators may find themselves litigating benefit claims in court without the benefit of an administrative record, and without the deference often afforded plan administrators in interpreting their own plans.

Furthermore, claims administrators of self-funded plans, who may already be considered plan fiduciaries based on their discretion to decide benefit claims, should also be aware that the Ninth Circuit views them as proper defendants in lawsuits seeking benefits.

Background

The underlying lawsuit in *Spinedex* involved claims brought by health care provider Spinedex Physical Therapy ("Spinedex") against several health plans (the "Plans") and their claims ad-

ministrator, United Healthcare of Arizona ("United"). United was also the insurer of some, but not all, of the Plans.

Spinedex provided physical therapy services to participants in the Plans. As an out-of-network provider, the Plans' participants were required to submit Spinedex's bills to their respective Plans for reimbursement. However, as part of the client intake process, Plan beneficiaries assigned their right to seek payment of Plan benefits to Spinedex. Spinedex then sought payment directly from the Plans for physical therapy services provided to Plan beneficiaries. United denied some of Spinedex's claims, and Spinedex, as an assignee, brought suit in federal court against the Plans and United ("Defendants"), seeking payment of benefits under ERISA § 502(a)(1)(B) and asserting breaches of fiduciary duty under ERISA.

The district court granted summary judgment in favor of the Defendants on the ground that Spinedex lacked standing under Article III of the United States Constitution. The district court reasoned that, because Spinedex had not actually sought payment for its services from the individual Plan beneficiaries, the beneficiaries had suffered no "injury in fact"; therefore, as an assignee of their claims, Spinedex suffered no "injury in fact" as required for Article III standing. On appeal, the Ninth Circuit reversed the district court's ruling on that issue, holding that, "[a]t the time of the assignment, Plan beneficiaries had the legal right to seek payment directly from the Plans for charges by non-network health care providers. If the beneficiaries had sought payment directly from their Plans for treatment provided by Spinedex, and if payment had been refused, they would have had an unquestioned right to bring suit for benefits.... However, instead of bringing suit on their own behalf, plaintiffs assigned their claims to Spinedex. ... [I]t is black-letter law that an assignee has the same injury as its assignor for purposes of Article III." *Spinedex*, 770 F.3d 1282 at 1291.

Because the Ninth Circuit reversed the district court on the threshold question of Article III standing, the Court also considered several other alternative holdings reached by the district court. The Court's reversal of the district court on three key issues provides important lessons to plan sponsors and administrators in drafting and administering their plans.

Lesson # 1: *Make Sure That Any Contractual Statute of Limitations in Your Plan Document is Correctly Located in Your SPD, or It Might Not Be Enforced*

The District Court had held that Spinedex's claims against two of the defendant Plans were barred by the two-year statute of limitations contained in those plan documents. The SPDs for both plans contained two-year limitations periods for benefit claims, and there was no question that Spinedex filed its action after the two-year period had expired. However, on appeal, the Ninth Circuit reversed the district court on this issue, holding that the Plans' contractual limitations periods were unenforceable because they were not properly disclosed in the SPDs. Specifically, the provisions were in the wrong place in the SPDs.

The Ninth Circuit noted that according to ERISA § 102(b), which sets forth the required contents of an SPD, "circumstances which may result in disqualification, ineligibility, or denial or loss of benefits" must be "clearly disclosed" in the SPD, holding that the inclusion of a contractual

statute of limitations provision qualifies as such a circumstance. *Id.* at 1294-95, quoting ERISA § 102(b). Under Department of Labor ("DOL") regulations, additional specific rules apply to the placement and format of SPD provisions falling within ERISA § 102(b) requirements. 29 C.F.R. § 2520.102-2(b). The Ninth Circuit read those rules to require either that a contractual statute of limitations provision must be placed "in close conjunction with the description or summary of benefits," in the SPD or the page containing the contractual statute of limitations provision must be "noted" "adjacent to the benefit description." *Id.* at 1295.

The two SPDs at issue addressed the Plans' covered benefits and exclusions therefrom in Sections 1 and 2, which spanned pages 2 through 36 of one SPD and pages 3 through 38 of the other SPD. By contrast, the Plans' contractual statute of limitations provision was described in Section 9 (entitled "General Legal Provisions") as the sixteenth of nineteen subsections and found on page 66 of one SPD and page 69 of the other SPD. Applying a "reasonable plan participant" standard, the Court rejected the Defendants' argument that the contractual limitations period was placed "in close conjunction with the description or summary of benefits." According to the Court, "[i]f we were to hold that the placement of the limitation provision in Section 9 satisfies [the] 'reasonable plan participant' standard under § 2520.102-2(b), we would, in effect, require a plan beneficiary to read every provision of an SPD in order to ensure that he or she did not miss a limitation provision." *Id.* at 1296. Furthermore, the respective benefits descriptions failed to include page number references to the page on which Plans' contractual statute of limitations provision was described. *Id.* at 1295. Therefore, the Ninth Circuit held that the Plans' contractual statute of limitations did not meet the placement or formatting requirements of the DOL SPD Regulations and was not enforceable.

Plan sponsors and administrators should take note of the Ninth Circuit's holding and consider the placement of any contractual limitations provision in their SPDs. Either the contractual limitations period language should be placed in close conjunction with the SPD's description of covered benefits, or the description of covered benefits should include a page reference to the SPD section addressing the Plan's contractual the statute of limitations.

Lesson #2: *Your Plan Documents Should Clearly and Unambiguously State That Participants Must Exhaust Administrative Remedies Prior to Filing a Lawsuit, or Participants May Go Straight to Court*

"As a general rule, an ERISA claimant must exhaust available administrative remedies before bringing a claim in federal court." *Id.* at 1298. In practice, the requirement that participants "exhaust their administrative remedies" means that a participant may not bring a lawsuit seeking plan benefits if he or she has not already filed an administrative claim and appeal under the plan's terms. In Spinedex, the Ninth Circuit relaxed this requirement if a plan document could be interpreted as stating that a participant is not required to exhaust administrative remedies before filing a lawsuit for benefits. The Court also heightened the standard that plan administrators are held to in responding to administrative claims and appeals, holding that if a plan administrator makes more than a "de minimis" error in the response, the participant may be "deemed" to have exhausted all administrative remedies and may go directly to court.

The district court had held that "[e]ven if standing existed, many individuals did not exhaust their

administrative remedies for their benefit denial claims." *Id.* at 1298. On appeal, the Ninth Circuit reversed the district court on this issue, explicitly adopting, for the first time, the rule that a participant need not exhaust administrative remedies when the plan does not clearly require it. According to the Court, "[w]here plan documents could be fairly read as suggesting that exhaustion is not a mandatory prerequisite to bringing suit, claimants may be affirmatively misled by language that appears to make the exhaustion requirement permissive when in fact it is mandatory as a matter of law." *Id.* The Ninth Circuit held that some of the Plans' SPD language was ambiguous as to whether exhaustion was required prior to filing a lawsuit. For example, one plan stated that "[i]n the interest of saving time and money, you are encouraged to complete all steps in the complaint process ... before bringing any legal action against us." *Id.* at 1299.

The Ninth Circuit noted that other circuit courts had held that a participant is not required to exhaust administrative remedies prior to filing a claim for benefits in court if the plan does not require it. The Court further noted that excusing participants in plans with ambiguous language from exhausting administrative remedies would have the beneficial effect of encouraging employers and plan administrators to make sure their plan provisions are clear, "thereby ... leading more employees to pursue their benefits claims through their plan's claims procedure in the first instance." *Id.* at 1298-99.

Following the Ninth Circuit's holding in *Spinedex,* participants in plans with arguably ambiguous exhaustion language may attempt to bypass the administrative claim and appeal process and head straight for federal court with a claim for benefits. One of the dangers of this approach is that, without the record developed during an administrative claim and appeal, the deference typically afforded to plan administrators by district courts in their benefit determinations may be lost. It is therefore important for employers and plan sponsors to review their plan documents to ensure that any administrative remedy exhaustion requirement is clearly and unambiguously stated.

In addition to waiving the requirement of exhaustion in the face of ambiguous plan terms, the Ninth Circuit also heightened the standard to which plan administrators are held in their review of administrative claims and appeals. Historically, when a plan administrator fails to establish or follow claims procedures consistent with the DOL regulations, a participant may be "deemed to have exhausted [his] administrative remedies." *Id.* at 1299. However, the standard was relatively loose, and minor violations would not lead to "deemed" exhaustion. In *Spinedex,* the Ninth Circuit adopted the Secretary of Labor's view that anything more than a "de minimis" violation of the claims regulations or claims procedures would lead to a participant being deemed to have exhausted his or her administrative remedies. *Id.* Following *Spinedex,* plan administrators should be even more careful to adhere to the claims and appeals procedures set forth in the DOL regulations and their own plan documents to prevent participants from being able to bypass the administrative claim and appeal process altogether.

Lesson #3: *Claims Administrators (and other Plan Fiduciaries) May Be Named as Defendants in Lawsuits for Benefits*

The Ninth Circuit in *Spinedex* clarified that its prior holding in *Cyr v. Reliance Standard Life Ins.*

Co., 642 F.3d 1202 (9th Cir. 2011) significantly expanded the realm of proper defendants in a lawsuit for benefits brought under ERISA § 502(a)(1)(B). Prior to Cyr, the prevailing rule in the Ninth Circuit was that the only proper defendants in a lawsuit for benefits under ERISA § 502(a)(1)(B) were the plan itself and the plan administrator. In Cyr, the plaintiff named Reliance, the plan's insurer, as a defendant in a lawsuit for benefits. However, because Reliance was not the plan administrator, the district court dismissed the plaintiff's claims against Reliance on the ground that Reliance was an improper defendant in a claim for benefits under ERISA § 502(a)(1)(B).

On appeal, the Ninth Circuit in *Cyr* held that if a "party's individual liability is established," that party is a proper defendant in a claim under ERISA § 502(a)(1)(B). *Cyr,* 642 F.3d at 1207. Because Reliance was the plan's insurer and responsible for paying legitimate benefits claims, the Ninth Circuit held that Reliance was a "logical defendant for an action by Cyr to recover benefits due to her under the terms of the plan and to enforce her rights under the terms of the plan." *Id.*

Following Cyr, it remained unclear how far the Ninth Circuit had opened the door to naming parties, other than the plan, the plan administrator and the plan's insurer, as defendants in a lawsuit for benefits under ERISA § 502(a)(1)(B). In Spinedex, the Ninth Circuit clarified that the universe of defendants in a benefit claim may be larger than expected.

The district court in *Spinedex* had dismissed claims for benefits brought against United relating to plans for which United was the claims administrator, but not the insurer of benefits. United was not designated as the "plan administrator" in the plan documents. Therefore, according to the district court, United was an improper defendant because it was not the plan, not the plan administrator, and not responsible for paying benefits under the plans.

On appeal, the Ninth Circuit vacated this aspect of the district court's holding and remanded, stating that proper defendants in a lawsuit under ERISA § 502(a)(1)(B) for improper denial of benefits ***"at least include*** ERISA plans, formally designated plan administrators, insurers or other entities responsible for payment of benefits, and ***de facto plan administrators that improperly deny or cause improper denial of benefits***." *Spinedex* at 1297 (emphasis added). The Ninth Circuit further stated that lawsuits to recover benefits may be brought against "***plan fiduciaries***," defined as "any entity that exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets … [or] has any discretionary authority or discretionary responsibility in the administration of such plan." *Id.* at 1298 (emphasis added).

The Ninth Circuit noted that the district court held that United was not an "administrator" of the Plans in question, but the defendants had conceded that United was the "claims administrator" for each of the defendant Plans. The Ninth Circuit stated that it was "unable to reconcile the district court's holding with Defendants' apparent concession" and it was unclear whether United "is a formally designated or de facto administrator." *Id.* The Court therefore remanded the question of whether United was a proper defendant to the district court for further proceedings.

Following *Spinedex*, the realm of proper defendants in a claim brought under ERISA § 502(a)(1)(B) arguably includes not just the plan, the named plan administrator and the plan's insurer, but also any de facto plan administrator, and possibly other plan fiduciaries.

Conclusion

The Ninth Circuit's holding in *Spinedex* has potentially significant consequences for plan sponsors, plan administrators and plan fiduciaries. However, at least some of these consequences can be avoided with carefully drafted plan contractual limitations periods and specific adherence to claims procedures. De facto plan administrators and plan fiduciaries should also be aware that they may be called to defend against lawsuits for benefits brought under ERISA § 502(a)(1)(B), even if they are not identified as the "plan administrator" and have no obligation to fund plan benefits.

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