



The Weekly Update of Texas Insurance News
TEXAS INSURANCE LAW NEWSBRIEF



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FEDERAL COURT RULES THAT PLAINTIFF'S STATE INSURANCE ALLEGATIONS WERE PREEMPTED BY ERISA

Recently, a federal judge ruled that plaintiff's state-law claims against his long-term disability insurance carrier were preempted by the Employment Retirement Income Security Act of 1974 ("ERISA"). In *Martinez v Unum Life Ins. Co. of Am.*, 2007 WL 3342606 (S.D. Tex November 9, 2007), plaintiff was insured through a group long-term disability policy purchased by his employer from Unum. Plaintiff complained the policy benefits he received for various medical ailments were "arbitrarily terminated." Plaintiff then sought, but was denied, reinstatement of disability benefits from Unum.

Plaintiff filed suit in state court, alleging claims for negligence and gross negligence, breach of contract, and other extra-contractual claims. Unum removed the case to federal district court and filed a motion to dismiss all claims save one—a claim for ERISA benefits under section 502. It was undisputed the policy's coverage was governed by ERISA. Plaintiff argued that his state-law claims survived because they fell within the "saving clause" of ERISA. After a swift analysis of the two types of preemption under ERISA, the court concluded Plaintiff's factual allegations did not demonstrate that the "savings clause" applied to his state-law claims. Lastly, the court held to the extent Plaintiff sought extra-contractual damages, such damages were barred under ERISA.

FEDERAL COURT DISMISSES PUTATIVE CLASS ACTION SEEKING DAMAGES AGAINST CARRIER WHO ISSUED PRE-1982 POLICIES

In *Beavers v. Metropolitan Life Ins. Co.*, 2007 WL 3342540 (S.D. Tex. November 8, 2007), a Houston federal judge recently held that plaintiffs' breach of contract claim had not been tolled, but instead was filed beyond the statute of limitations period. The lawsuit was brought by plaintiffs on behalf of themselves and all persons who, before 1982, purchased one or more participating individual life or other participating MetLife policies in effect between 1985 and spring 2000. Plaintiffs alleged beginning in 1983, MetLife made certain allocations (from business investments) which resulted in the purposeful transfer of surplus profits away from plaintiffs to other MetLife business areas.

Plaintiffs argued the carrier breached the insurance contracts by distributing dividends lower than what plaintiffs were entitled. The carrier moved to dismiss the putative class action complaint for failure to state a claim upon which relief may be granted. The court noted that all of MetLife's questionable conduct occurred in the 1980s alone and, without a tolling exception, plaintiffs claim accrued no later than the end of 1989—well outside the applicable four-year statute of limitations for breach of contract claims.

Plaintiffs asserted two possible exceptions to avoid the limitations bar: (1) the discovery rule; and (2) *American Pipe* tolling. First, the court recognized accrual may be deferred under the discovery rule when “the nature of the injury incurred is *inherently undiscoverable* and the evidence of injury is *objectively verifiable*.” The court went on to note Texas courts have restricted the application of the discovery rule (as a tolling provision) to exceptional cases. The court concluded plaintiffs' injuries were not inherently undiscoverable, which made the discovery rule inapplicable to defer accrual of plaintiffs' claim. The court also analyzed the second prong and found plaintiffs had not adduced indisputable “objectively verifiable” evidence of the wrongful act and resultant injury.

Next, the court evaluated the *American Pipe* tolling provision. Plaintiffs argued their claim was tolled during the pendency of a similar class-action suit filed in New York during 1998, and after its decertification, the plaintiffs' limitations period started anew. According to plaintiffs, because they filed this action within four years of decertification, their breach of contract claim was still viable. Under Texas law, however, the *American Pipe* rule does not restart the limitations period after decertification of a class action; it merely suspends the running of any time left during the pendency of a certified class. The court also recognized that the *American Pipe* rule does not toll limitations on a claim for reassertion in a subsequent class action. Therefore, the court held the *American Pipe* tolling provision was not applicable to plaintiffs' claim.

NEWSBRIEF TO RESUME DECEMBER 3, 2007 HAPPY THANKSGIVING!

Our offices will be closed this Thursday and Friday November 22nd and 23rd for the Thanksgiving Holiday. Our Texas Insurance Law Newsbrief research and writing staff will also be taking the weekend off to spend with family and friends. The Newsbrief will resume publication December 3, 2007 and here's wishing you and yours a very Happy Thanksgiving!

If you wish to discuss legal principles mentioned herein, reply to this e-mail or contact any of our lawyers at Martin, Disiere, Jefferson & Wisdom L.L.P.
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