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Alerts

# Second Circuit Issues Statute of Limitations Ruling Favorable to Healthcare Plan Administrators

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*The LHD/ERISA Advisor*

Federal law does not supply a statute of limitations for a claim seeking equitable relief under ERISA, 29 U.S.C. 1132(a)(3), and therefore federal courts borrow the limitations period of the state-law cause of action to which the ERISA claim is most analogous. As a result, whether an equitable ERISA claim is time-barred depends on which state-law claim is most analogous and the time limitations that state law prescribes for that claim. The Second Circuit recently applied these principles in *Connecticut General Life Ins. Co. v. Biohealth Labs, Inc.*, 988 F.3d 127 (2d Cir. 2021), to determine whether an ERISA plan fiduciary waited too long before bringing equitable ERISA claims against medical laboratories accused of a fraudulent billing scheme.

The dispute began in 2015, when the anti-fraud unit of a managed care company, Cigna, determined that the defendant medical laboratories were engaging in fraudulent and abusive billing practices, including waiving plan members' financial responsibility for the labs' services—a practice referred to as "fee forgiveness" —and billing for unnecessary testing. According to Cigna, this conduct resulted in the labs collecting more than $17 million in overpayments under healthcare plans administered by Cigna. When Cigna began to deny new claims submitted by the labs, the labs filed an action in a Florida district court seeking to recover the denied charges. After the Florida district court granted Cigna's motion to dismiss the labs' action for failure to exhaust administrative remedies under the plans, the Eleventh Circuit vacated portions of the order, but the labs did not file an amended complaint, which effectively ended the litigation.

Approximately two years after the Eleventh Circuit's ruling, in August 2019, Cigna filed a new action in the Connecticut district court, alleging a variety of Connecticut state-law and federal claims to recover the allegedly fraudulent or overbilled charges it paid to the labs. The district court granted the labs' motion under Rule 12(b)(6) to dismiss all of Cigna's claims as time-barred under Connecticut law. Since the factual premise of Cigna's equitable ERISA claim, as well as its federal Declaratory Judgment Act claim, was a fraudulent billing scheme, the district judge found that the federal claims were most analogous to a Connecticut state-law tort claim. The judge then concluded that all of Cigna's claims were time-barred under Connecticut's three-year statute of limitations for tort actions (Conn. Gen. Stat. Section 52-577) because the action had been filed more than three years after Cigna discovered the labs' billing practices in August 2015.

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On appeal, the Second Circuit reversed. First, although Cigna's equitable ERISA claim and its declaratory judgment claim both alleged that the labs' conduct was fraudulent, and although a showing that the labs had committed fraud would be sufficient to prove those claims, Cigna did not actually need to establish fraud to recover. The court did not detail what Cigna would need to prove to prevail, but the opinion suggests it may be sufficient to show "that the governing plans prohibited the Labs from being reimbursed for the services in question." 988 F.3d at 133. Having rejected the notion that a state-law fraud claim was most analogous to Cigna's equitable ERISA claim, the court then concluded that the most analogous state-law cause of action was a claim for unjust enrichment. As a result, Connecticut's limitations rules for unjust enrichment governed the timeliness of Cigna's federal claims. Under those rules, an equitable claim for unjust enrichment is exempt from statutory limitations periods and is instead subject only to the equitable defense of laches, which is ordinarily unsuited for determination on the pleadings because it turns on factual issues. Accordingly, the Second Circuit reversed the dismissal and remanded, instructing the district court to "deny the Labs' motion to dismiss with respect to Cigna's Equitable Claims unless [it] concludes that a meritorious laches defense is available on the face of Cigna's complaint." 988 F.3d at 135. Separately, the Second Circuit affirmed the district court's dismissal of Cigna's purely state-law causes of action, because they were subject to the three-year limitations period under Conn. Gen. Stat. 52-577, and the pendency of the labs' Florida action had not tolled or suspended the running of the limitations period.

## Key Takeaways

Several parts of the *Biohealth Labs* opinion are helpful to health benefit plans and their claims administrators. First, claims administrators may be able to avoid time bars by alleging facts that liken their ERISA claims to state-law claims that are subject to longer or no limitations period. Second, while the Second Circuit did not analyze what Cigna needed to prove to recover the alleged overpayments received by the labs under ERISA Section 1132(a)(3), the opinion states that showing fraud is unnecessary. It may be sufficient for the fiduciary to show that the payments were prohibited by the terms of the governing plan. Finally, the opinion notes that the claims administrator of an ERISA health plan has a fiduciary responsibility to "control the cost of healthcare for its members." Imposing increased cost shares when plan members access out-of-network providers is a legitimate way of incentivizing plan members to select in-network providers who have agreed to fixed rates. And while patients may benefit in the short run when out-of-network providers engage in fee forgiveness, this practice "ultimately may result in increased plan costs as insurers pay more for services."