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Disability claims and the statute of limitations

BENNETT v. OHIO NATIONAL: WITHHOLDING OF BENEFITS IN THE FUTURE DOES NOT START THE STATUTE OF LIMITATIONS IN THE PRESENT

If an insurer currently paying benefits tells its insured that it will stop paying benefits in the future, does the statute of limitations for the insured to bring a claim against the insurer begin to tick? In *Bennett v. Ohio National Life Assurance Corp.*, the California Court of Appeal recently held that the answer is no, and in *Albers v. Paul Revere Insurance Group*, the Ninth Circuit reached the same conclusion. (*Bennett v. Ohio Nat'l Life Assurance Corp.* (2023) 92 Cal.App.5th 723; *Albers v. Paul Revere Ins. Grp.* (9th Cir. June 7, 2023) No. 22-15100, 2023 WL 3862514.) The opinions bring much needed clarity to an issue that has resulted in divergent rulings and that, at times, has cost insureds their ability to pursue recovery against insurers for the wrongful denial of benefits.

For several years, there has been some uncertainty under California law as to when an insured's breach-of-contract and bad-faith claims against its insurer accrue where the insurer continues to pay the insured benefits in the present but informs the insured of its intention to stop paying benefits in the future. The issue can be case dispositive. In California, the statute of limitations for breach of contract is four years and two years for bad faith. (Code Civ. Proc., §§ 337(1) (breach of contract), 339(1) (bad faith).) If an insurer tells its insured that it will stop paying benefits in six years, the insured is left in the odd position of wondering when to bring a claim against its insurer to recover benefits that the insurer is still paying.

This issue has repeatedly come up in the context of long-term disability policies that pay monthly benefits to insureds who experience a disability that prevents them from performing their occupation. Where the insured's disability results from a "sickness," these policies often promise to pay benefits until the insured is age 65. But if the insured's disability results from an "injury," the policies promise to pay benefits for life. In these cases, insurers have initially determined that the insured's disability results from "injury," and thus they are entitled to disability benefits for life. After the initial determination, insurers have redetermined that the insured's disability instead results from "sickness," such that the insured is only entitled to benefits up to age 65. If the insured is age 57 when this redetermination is made, there is uncertainty as to when to bring suit. They are still receiving their benefits, but they know that absent the insurer changing their determination again, payment of the benefits will stop in eight years, instead of continuing for life.

Courts applying California law have expressed different views on this issue. Some courts have held that the insured's claims accrue when the redetermination is made even though the insured will continue to receive payment of benefits. (See, e.g., *Finkelstein v. AXA Equitable Life Ins. Co.* (N.D. Cal. 2018) 325 F.Supp. 3d 1061, 1067 ["Here, the Court finds the statute of limitations began to accrue when Equitable denied Plaintiff's request for reclassification and not when the insurance company ceased making payments to Plaintiff."]; *Finnell v. Equitable*



Life Assur. Soc'y of U.S. (E.D. Cal. Nov. 19, 2007) No. CIV. S070129RRBGGH, 2007 WL 4170637, at *4.) Other courts have indicated that an insured's claims against an insurer do not accrue until the insurer declines payment of benefits. (See, e.g., *Erveca v. W. States Life Ins. Co.* (1942) 19 Cal.2d 388, 402 ["Such a policy constitutes a continuing contract for periodic installment payments depending upon the insured's continued disability, and he has no cause of action, nor the insurer any liability, except for the benefits which have accrued"].) In *Bennett v. Ohio National Life Assurance Corporation* and *Albers v. Paul Revere Insurance Group*, the California Court of Appeal and Ninth Circuit provided important clarification on this issue, holding that the statute of limitations does not start until the insurer withholds payment. (*Bennett*, 92 Cal.App.5th at 731-32; *Albers*, 2023 WL 3862514, at *2.)

Bennett v. Ohio National Life Assurance Corporation

In *Bennett*, Ohio National initially approved Bennett's claim that he was totally disabled due to injury in January 2014. Under Bennett's policy, monthly benefits were payable for life if his disability was due to injury. If due to sickness, they would only be paid until he was age 65. In June 2015, Ohio National notified Bennett that after further evaluation, it had determined that his disability was due to sickness, not injury.

Ohio National continued to pay Bennett monthly benefits until September 2018, the year that Bennett turned age 65. After unsuccessfully requesting Ohio National reconsider its determination that his disability resulted from "sickness" and not "injury," Bennett filed a suit for breach of contract and bad faith

against Ohio National on August 13, 2019, over four years after Ohio National informed Bennett that it had determined that his disability was due to sickness, not injury.

The trial court granted Ohio National's motion for summary judgment on the ground that Bennett's claims were time barred. In relevant part, the trial court found that the June 2015 letter from Ohio National informing Bennett that "he was not entitled to receive lifetime benefits, but only benefits until age 65 due to sickness" triggered the statute of limitations. (*Bennett v. Ohio National Life Assurance Corp. et al.* (Marin County Superior Court, Aug. 1, 2022) Case No. 1903075, at *14.) The trial court explained that "[a]t that time, the elements of both the causes of action for breach of contract and bad faith were complete, including the last element of actual damages." (*Id.* at *15.) According to the trial judge, the statute of limitations thus began to run.

On appeal, the California Court of Appeal reversed the trial court, holding that Bennett's claim against Ohio National did not accrue until Ohio National began withholding benefits in 2018. Applying long-standing rules regarding claim accrual, the Court explained that statutes of limitation "do not begin to run until a cause of action accrues" and "a cause of action accrues when it is complete with all of its elements." (*Bennett*, 92 Cal.App.5th at 728-29.) Where damages are an element of a cause of action, "the claim does not accrue until the damages have been sustained." (*Id.* at 729.)

Damages are an element of both a breach-of-contract and a bad-faith claim. Applying claim accrual principles to the facts of the case, the California Court of Appeal held that Bennett did not suffer damages until Ohio National stopped paying benefits in September 2018.

(*Bennett*, 92 Cal.App.5th at 730.) Even though Ohio National had redetermined that Bennett's disability resulted from sickness, it continued to pay benefits for several years. The Court reasoned that Bennett did not sustain damages until Ohio National stopped making payments in September 2018. (*Ibid.*) Thus, there was no injury – and Bennett's claim did not begin to accrue – until Ohio National stopped payment that year.

In reaching this holding, the Court distinguished a line of case law that Ohio National argued stood for the proposition that the statute of limitation begins when an insurer states its intention to withhold benefits. (*Bennett*, 92 Cal.App.5th at 730-31.) In these cases, the insurer began withholding benefits at the same time that it informed the insured that they were not entitled to benefits. The immediate economic loss that occurred in those cases distinguished them from a case, like Bennett's, where the insurer continued to pay benefits in the present but communicated an intention to withhold benefits in the future. The bottom line was that immediate economic loss was required to trigger the statute of limitations.

Albers v. Paul Revere Insurance Group

The same month that the California Court of Appeal issued its opinion in *Bennett*, the Ninth Circuit addressed a similar accrual issue in a memorandum opinion in *Albers v. Paul Revere Insurance Group*.

In *Albers*, Paul Revere Insurance Group approved Albers's claim for residual disability benefits in 1998. Under the terms of her policy, Albers would not be eligible for total disability benefits until she turned 65 in 2020. Nonetheless, in 2008, Paul Revere informed Albers that it did not consider her eligible for total disability benefits.

In 2020, Albers again sought total disability benefits under her policy. Paul Revere denied them again, and Albers

filed claims for breach of contract and bad faith. The district court granted Paul Revere summary judgment on statute of limitation grounds, holding that the statutes of limitation for Albers's claims began in 2008 when Paul Revere informed her that it did not consider her totally disabled under the policy. (*Albers v. Paul Revere Ins. Grp.* (N.D. Cal. Dec. 23, 2021) No. 20-CV-08674 NC, 2021 WL 6622294, at *3-4.)

In its memorandum opinion reversing the district court, the Ninth Circuit applied the same long-standing claim accrual rules that the California Court of Appeals applied in *Bennett*. The Court explained that the statute of limitations does not begin to run until "the cause of action is complete with all of its elements" and that damages are an element of both a breach-of-contract and bad-faith claim. (*Albers*, 2023 WL 3862514, at *1.) Applying these principles to the facts, the Court held that "the statutes of limitations did not begin to run until Albers sustained damages, which first occurred in 2020 when her lifetime benefits were withheld after her 65th birthday." (*Id.* at *2.)

Conclusion

Bennett and *Albers* resolve the uncertainty under California law regarding when the statute of limitations begins to run where an insurer informs its insured of its intention to withhold future benefits. The decisions hold that an insurer's determination that an insured will not be eligible for benefits in the future does not trigger the statute of limitations in the present. The decisions clarify that the statute of limitations does not begin to run until the insurer withholds benefits, thereby subjecting the insured to immediate economic harm.

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