

## The Potential Advantage of Incorporating a Contractual Limitations Period into Welfare Benefit Plans

Published in *Benefits Law Journal*, Volume 21, Number 3

Autumn 2008

This article provides an overview of circuit court decisions in the benefits-due suit that arises under the Employee Retirement Income Security Act of 1974 (ERISA), narrowed in scope to suits brought by “plan participants” or “beneficiaries” of welfare benefit plans. The authors examine the general rule adopted by the circuits that in the benefits-due lawsuit courts will borrow the most analogous state statute of limitations, which is usually—but not always—an action based on a written contract, and review how some plans and plan administrators have successfully avoided litigation under the most analogous state statute of limitations through a contractual limitations period incorporated into the plan. The article also provides an analysis of cases where limitations period provisions were not enforced by the court, and offers guidance on how to incorporate an enforceable contractual limitations period into plan documents.

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