

## [Ninth Circuit Upholds Dismissal of Action Filed Twenty Days After Expiration of ERISA Plan's One-Year Contractual Limitations Period](#)

Posted on September 23, 2009 by [Robert Renner](#)

In *Scharff v. Raytheon Company Short Term Disability Plan*, et al., \_\_\_ F.3d. \_\_\_, 2009 WL 2871229 (9th Cir. September 9, 2009), the Ninth Circuit Court of Appeals affirmed the district court's dismissal of a lawsuit filed a mere twenty days after expiration of the ERISA plan provision requiring an action to be filed within one year following the denial of the appeal from an initial disability-claim denial, holding that the summary plan description's placement and display of a that contractual limitations period met statutory and regulatory requirements. The court specifically rejected Donna Scharff's arguments that the doctrine of reasonable expectations should be adopted in analyzing Raytheon's SPD and that the placement and display violated her reasonable expectations: "We hold that even if the doctrine of 'reasonable expectations' applied here, the one-year statute of limitations met its requirements and also met the statutory and regulatory standards for disclosure." The court also declined Scharff's call for the importation into federal common law a California regulation requiring insurers to expressly inform claimants of statutes of limitations that may bar their claims. Noting that other circuits had expressly rejected a rule requiring plan administrators to inform participants of provisions already contained in the SPD, the court explained that Scharff's position "would place the Ninth Circuit out of line with current federal common law and would inject a lack of uniformity into ERISA law." In that latter regard, a lack of uniformity among the circuits would be detrimental, particularly to large multi-state employers who issue the same welfare benefit plan to cover all employees, regardless of their location.

Circuit Judge Susan P. Graber authored the majority opinion, joined by Judge Kim McLane Wardlaw. Judge Harry Pregerson dissented.

In the district court proceedings, Scharff conceded that the contractual limitations period had expired and that her complaint was otherwise untimely. *See* 2007 WL 2947566 (C.D. Cal. June 22, 2007). She also conceded that the one-year limitation was reasonable, and she did not claim that the wording of the one-year limitations period was unclear. Instead, she argued that her late filing should be excused because the limitations provision was placed neither in what she believed was the appropriate section of the SPD, nor in the claim-denial correspondence she received.

In the majority decision, Judge Graber faced the issue of whether the reasonable expectations doctrine applied to a self-funded benefit plan such as Raytheon's, taking account of two prior Ninth Circuit cases "that are seemingly in tension with one another." She noted that "we assumed, in dictum," that the doctrine applied in *Winters v. Costco Wholesale Corp.*, 49 F.3d 550 (9th Cir. 1995), but "[w]e hemmed in the doctrine just two years after" in *Estate of Shockley v. Alyeska Pipeline Service Co.*, 130 F.3d 403, 407 (9th Cir. 1997) by limiting the doctrine's application only to "insurance contracts, including ERISA insurance contracts." Her decision left the matter unresolved: "But we need not call for en banc consideration, nor try to harmonize the apparent conflict in our precedents. Assuming without deciding, that the reasonable expectations doctrine applies, the SPD here met plan participants' reasonable expectations, in addition to fulfilling the statutory and regulatory requirements."

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From a statutory perspective, the majority concluded that the SPD satisfied ERISA’s requirements of explaining circumstances that might “result in disqualification, ineligibility, or denial or loss of benefits” and of being “written in a manner calculated to be understood by the average plan participant.” 29 U.S.C. § 1022(b). From a regulatory perspective, the majority also concluded that the SPD satisfied the Department of Labor’s requirement that any exception, limitation, reduction, or other restriction of plan benefits not be minimized, rendered obscure, or made to appear unimportant. 29 C.F.R. § 2520.102-2(b).

In dissent, Judge Pregerson lamented how an average plan participant could not “successfully navigate through Raytheon’s labyrinthine Summary Plan Description.” He expressed his view that the SPD “bounces a reader between important provisions . . . in a way that makes it all too easy to miss the one-year deadline.” He also took issue with the plan administrators’ reduction of the otherwise applicable four-year statute of limitations, decrying their allotment of one-quarter of the amount of time she would otherwise have had to file a lawsuit and their failure to announce this drastic change in a clear, plain and conspicuous statement. According to him, “[i]n this case, the plan administrators slashed that four-year-period to one year, and buried this pivotal change within the Summary Plan Description.”