

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 92-4421

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CHARLES E. MILLER,

Plaintiff-Appellant,

VERSUS

MEADOW GOLD DAIRIES, INC., ET AL,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Louisiana  
90 CV 1995

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(June 14, 1993)

Before DAVIS and DEMOSS, Circuit Judges, and ZAGEL, District Judge.<sup>1</sup>

PER CURIAM:<sup>2</sup>

Plaintiff Appellant Charles Miller appeals the summary judgment dismissal of Meadow Gold Dairies, Inc. and Borden, Inc. on the basis of the statute of limitations. We affirm.

Plaintiff sued his former employer and a disability plan administrator in state court regarding insurance benefits. Though Plaintiff had received two years of disability benefits under a

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<sup>1</sup> United States District Judge, North District of Illinois, sitting by designation.

<sup>2</sup> Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

plan provided by the employer, Plaintiff claims that he should have been covered under the employer's other plan, which would have continued longer than two years. The matter was removed and the court determined that all Plaintiff's actions were preempted by ERISA. Meadow Gold Dairies and Borden, Inc., the Plaintiff's former employer and its parent corporation, moved for summary judgment based on the statute of limitations, and Plaintiff did not oppose the motion.

The applicable statute of limitations provides,

No action may be commenced . . . with respect to a fiduciary's breach of any responsibility . . . after the earlier of--

(1) six years after (A) the date of the last action which constituted a part of the breach or violation, . . . or

(2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation . . .

29 U.S.C.A. § 1113 (West Supp. 1993). The district court correctly ruled that the six-year limitation period in subsection (1) applies only if it is a shorter time period than the three-year period provided for in subsection (2).

Plaintiff first argues that the limitation period of six years should apply rather than a three-year period. Yet, in September 1985 Plaintiff complained to his employer that he should be covered under a Principal Mutual Plan rather than the plan insured by Mutual Benefit. Within a year he again requested his employer to provide benefits from the Principal Mutual Plan. These facts regarding Plaintiff's knowledge of the alleged breach are

undisputed. In this case the three-year rather than the six-year period applies, because of the undisputed evidence of Plaintiff's knowledge of the alleged breach.

Plaintiff alternatively argues that even under a three-year limitation period, the earliest possible breach was in 1987, when he was informed that he would no longer be paid any benefits. We disagree. The undisputed facts show that Miller knew of his claim in September 1985. Thus the three-year statute of limitations had expired before Miller filed suit in 1990.

AFFIRMED.