[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-13487
Non-Argument Calendar

D.C. Docket No. 9:19-cv-80151-WPD

DOUGLAS KUBER,

Plaintiff-Appellant,

versus

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Defendant-Appellee.

Appeals from the United States District Court
for the Southern District of Florida

(June 30, 2020)

Before WILSON, NEWSOM, and LAGOA, Circuit Judges.

PER CURIAM:

This is a fight over disability benefits. The appellant Douglas Kuber is the beneficiary of a long-term disability policy issued by the appellee The Prudential

Insurance Company of America. After exhausting his administrative remedies, Kuber sued Prudential for its allegedly wrongful failure to pay disability benefits. The district court dismissed the case, holding that it was time-barred. Kuber appeals; we affirm.

I.

Kuber allegedly stopped working because of a disability on September 18, 2012. After his contractual elimination period lapsed, Prudential began paying Kuber benefits under his long-term disability policy. But in January 2015, Prudential told Kuber that he had exhausted his coverage and that it would soon stop paying him benefits.

After exhausting his administrative appeals, Kuber sued Prudential in federal court on December 28, 2018. He at first alleged claims for breach of contract, breach of the duty of good faith, and violation of New Jersey's Consumer Fraud Act. He later amended his complaint, dropping the Consumer Fraud Act claim and seeking a declaration that his claims were not time-barred.

The policy contains a Group Contract.[1] The Group Contract has a Delaware choice-of-law provision. It also incorporates a Certificate.[2] And the Certificate explains that it is "subject in every way to the entire Group Contract." In other words, the Group Contract and the Certificate are effectively one document. And that document chooses Delaware as its governing law.

The combined document (which we will simply call the policy) has a limitation provision: "[Kuber] can start legal action regarding [his] claim 60 days after proof of claim has been given and up to 3 years from the time proof of claim is required." Kuber must provide "written proof of [his] claim no later than 90 days after [his] elimination period ends." The elimination period is a period of 180 days of continuous disability. To be disabled under the policy, Kuber must be, among other things, unable to "perform the material and substantial duties" of his job.

II.

We review de novo a district court's dismissal of a claim as time-barred. *See La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004). We

[1] Though Kuber did not attach the Group Contract to his amended complaint, Prudential attached the document to its motion to dismiss. We may consider the Group Contract because it is "central to" this lawsuit and because Kuber does not provide any meaningful grounds to dispute its authenticity. *See Horsley v. Feldt*, 304 F.3d 1125, 1134 (11th Cir. 2002). Despite Kuber's view, the Group Contract does not contradict the documents attached to his amended complaint; it completes them.

[2] Kuber attached the Certificate to his amended complaint as Exhibit B. We may consider his attachment at the dismissal phase. *See Saunders v. Duke*, 766 F.3d 1262, 1270 (11th Cir. 2014).

can affirm only if the complaint makes clear that the claim is time-barred. *See id.* In conducting our analysis, we accept all well-pled allegations as true, but we need not accept mere conclusory allegations. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

We first consider what law governs. The policy has a Delaware choice-of-law provision. Sitting in diversity, we apply the forum state's choice-of-law rules to decide whether a choice-of-law provision applies. *See U.S. Fid. & Guar. Co. v. Liberty Surplus Ins. Corp.*, 550 F.3d 1031, 1033 (11th Cir. 2008) (per curiam). Florida law respects a contractual choice-of-law provision unless the chosen jurisdiction's law conflicts with Florida's public policy. *See Mazzoni Farms, Inc. v. E.I. DuPont De Nemours & Co.*, 761 So. 2d 306, 311 (Fla. 2000). We see nothing in Florida policy that conflicts with Delaware law here. So Delaware law governs our analysis of the limitation provision.

Under Delaware law, the "[i]nterpretation of an insurance policy is a question of law." *Solera Holdings, Inc. v. XL Specialty Ins. Co.*, 213 A.3d 1249, 1255 (Del. Super. Ct. 2019). We enforce "[c]lear and unambiguous" language in a contract according to "its ordinary and usual meaning." *Id.* "A contract is not ambiguous merely because the parties disagree about its proper construction." *Id.* Our reading must consider "the pertinent provisions of the policy as a whole, and not on any single passage in isolation." *O'Brien v. Progressive N. Ins. Co.*, 785

A.2d 281, 287 (Del. 2001). And parties can limit how long they have to file a lawsuit if the limitation is reasonable. S*ee Woodward v. Farm Family Cas. Ins. Co.*, 796 A.2d 638, 643 (Del. 2002).

The policy's limitation provision is unambiguous. It says that "[Kuber] can start legal action regarding [his] claim 60 days after proof of claim has been given and up to 3 years from the time proof of claim is required." A different provision explains that Kuber must provide proof of claim "no later than 90 days after [his] elimination period ends." So in a normal case (like this one), the three-year clock starts running 90 days after the elimination period ends.[3] And that time limitation is reasonable here. *See id.*

Applying the limitation provision's plain meaning, we reach the same conclusion as the district court. Kuber allegedly stopped working on September 18, 2012. His elimination period ended 180 days later—March 17, 2013. The policy thus obligated him to provide proof of claim 90 days after that—June 15, 2013. Skip three years and you land on June 15, 2016. Kuber filed suit on December 28, 2018—over 30 months late. His claim is time-barred.[4]

[3] Kuber cites other language in the policy to suggest that, in some cases, proof of claim may not be required 90 days after the elimination period ends. As nothing in Kuber's complaint suggests that he falls within these hypotheticals, we do not address them. All we say for sure is that, in Kuber's case, the limitation provision unambiguously began to run 90 days after the elimination period ended.

[4] We reject Kuber's extraneous arguments and briefly address three. First, any claim that ERISA governs this case is wrong; Kuber has an individual policy, not an employer-provided policy. Second, Kuber has provided no extraordinary circumstances warranting equitable estoppel or

The district court's judgment is **AFFIRMED**.

equitable tolling. And third, any tolling under the policy's tolling provisions—if those provisions apply at all—was brief and would not change the outcome.