

SEVENTH CIRCUIT HOLDS ERISA VENUE SELECTION PROVISION IS ENFORCEABLE

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On August 10, 2017, in *In re Mathias*, the United States Court of Appeals for the Seventh Circuit held ERISA Section 502(e)(2) venue provisions do not invalidate a forum-selection clause contained in plan documents, in a 2-1 split decision.

Case Background

George Mathias sued his employer Caterpillar and its ERISA-governed health plan in the United States District Court for the Eastern District of Pennsylvania, where he resided. The plan documents, however, required any suit to be brought in federal court in the Central District of Illinois, so Caterpillar moved to transfer the case. Mathias opposed the motion, arguing that ERISA's venue provision invalidated the plan's forum-selection clause. His argument was rejected and Caterpillar's motion to transfer the case was granted in a decision relying on a Sixth Circuit decision in *Smith v. Aegon Cos. Pension Plan*, which held that forum-selection clauses in ERISA plans are enforceable and not inconsistent with the text of ERISA's venue provision. When the case arrived in the Central District of Illinois, Mathias moved to transfer it back to Pennsylvania with the same argument, and his request was denied. Then, Mathias petitioned for mandamus relief in the United States Court of Appeals for the Seventh Circuit.

Seventh Circuit Decision

In a mandamus proceeding, the court can only reverse a transfer decision if the applicant can show that the transfer order is a "violation of a clear and indisputable legal right, or at the very least, is patently erroneous." *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1295 (7th Cir. 1995). This high standard was not met here.

Under ERISA's venue provision, an action *may* be brought in the district court where (1) the plan is administered, (2) the breach or violation took place, or (3) a defendant resides or may be found. ERISA § 502(e)(2) (emphasis added). The Seventh Circuit cited the *Smith* decision which found the language in ERISA to be permissive and explained that the statute doesn't limit parties from contractually narrowing the options to one of the venues listed in the statute. 769 F.3d at 931-32.

The Court ultimately found that ERISA venue provisions do not invalidate forum-selection clauses in plan documents.

Mathias filed a petition in the U.S. Supreme Court for certiorari review. The Department of Labor filed an amicus brief encouraging the Supreme Court to review the case and to invalidate the venue provision in the Caterpillar plan. The Supreme Court declined to review the case, however.

Effect of Decision

For now, employers in the Sixth and Seventh Circuit (Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin) can have confidence that their plan venue selection clauses are enforceable. However, both of these decisions were split decisions. A more participant-friendly Circuit could reach a different conclusion.

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