Portfolio Media. Inc. | 860 Broadway, 6th Floor | New York, NY 10003 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

6th Circ. Lends Credence To ERISA Venue Selection Clauses

Law360, New York (November 06, 2014, 11:08 AM ET) --

Nancy G. Ross

In an effort to mitigate the risk that claims for employees' benefits owed under Employee Retirement Income Security Act plans will devolve into costly lawsuits filed in a variety of venues across the country, plan sponsors often include venue selection clauses in their benefit plans which require the claimants to file suit in a particular jurisdiction. The enforceability of such clauses, however, have been disputed by plan participants and the U.S. Department of Labor on the basis that they are inconsistent with ERISA's liberal venue provisions and its stated policy of providing "ready access to the Federal courts." 29 U.S.C. § 1001(b).

While some district courts, such as the Northern District of Illinois in Coleman v. Supervalu, Inc. Short Term Disability Program, 920 F. Supp. 2d 901 (N.D. Ill. 2013), have agreed with plan participants, the Sixth Circuit's recent 2-1 decision in Smith v. Aegon Companies Pension Plan, No. 13-5492, --- F.3d --- (6th Cir. 2014), lends strong support for the prevailing view among the district courts that venue selection clauses are enforceable.

In Smith v. Aegon, after Aegon reduced Smith's monthly pension benefit to recoup alleged overpayments, Smith filed suit in the U.S. District Court for the Western District of Kentucky to have those benefits reinstated. Aegon immediately moved to dismiss Smith's case pursuant to Rule 12(b)(6). Specifically, Aegon argued that Smith could not pursue his claim in the Western District of Kentucky because his pension plan included a "Restriction on Venue" clause, which provided that "[a] participant or beneficiary shall only bring an action in connection with the Plan in Federal District Court in Cedar Rapids, Iowa." The Western District of Kentucky agreed with Aegon and dismissed Smith's complaint without prejudice. Rather than refile in the Northern District of Iowa as required by under the plan, Smith appealed to the Sixth Circuit.

On appeal, the Sixth Circuit identified two distinct, but related, questions governing the enforceability of the pension plan's venue selection clause: (1) whether the clause was enforceable as a matter of contract law and (2) whether the clause was consistent with ERISA. The Sixth Circuit answered both questions affirmatively.

With respect to the first question — whether the venue selection clause was enforceable as a matter of

contract law — the Sixth Circuit held that under U.S. Supreme Court precedent the clause was "presumptively valid and enforceable." Relying on its decision in Wong v. PartyGaming Ltd., 589 F.3d 821 (6th Cir. 2009), the Sixth Circuit held that in order to overcome this presumption, Smith was required to demonstrate that the clause was: (1) obtained by fraud, duress or other unconscionable means; (2) that the designated forum would ineffectively or unfairly handle the suit; or (3) that the designated forum would be so seriously inconvenient such that requiring the plaintiff to bring suit there would be unjust. However, Smith failed to do so.

The Sixth Circuit then turned to whether the venue selection clause was inconsistent with either the policies supporting ERISA or ERISA's own venue provision set forth in ERISA Section 502(e)(2). The Sixth Circuit held that it was not and noted that ERISA's goal of providing participants "ready access to the Federal courts," 29 U.S.C. Section 1001(b), would still be furthered when the venue selection clause designated a federal court as a forum. In fact, the Sixth Circuit found that, if anything, venue selection clauses furthered the policies underlying ERISA by promoting uniform decision-making and minimizing plans' administrative costs.

Finally, the Sixth Circuit addressed whether a plan's venue selection clause was inconsistent with ERISA's own venue provision. Under ERISA Section 502(e)(2), an ERISA plan participant can file suit in any district in which: (1) the plan is administered, (2) a breach of the plan occurred or (3) a defendant may be found. 29 U.S.C. Section 1132(e)(2). The Sixth Circuit found that Section 502(e)(2) was wholly consistent with the pension plan's venue selection clause because the plan was administered in Cedar Rapids, Iowa. The Sixth Circuit went even further, however, and found that even if a venue selection clause identified a venue that did not fall within one of the three jurisdictions identified by Section 502(e)(2), it would still be presumptively valid and enforceable.

The Sixth Circuit's decision in Smith v. Aegon is only the first step toward resolving the dispute amongst the district courts regarding the enforceability of venue selection clauses. However, cases such as Aegon reflect the broader trend among the federal courts to allow plan sponsors to include reasonable "plan-based" restrictions on participants' ability to file costly lawsuits to obtain benefits they allege they are owed.

This trend is not limited to restrictions on where suits may be filed; it also includes the courts' willingness to allow plan sponsors to dictate when suits may be filed. Less than a year ago, the Supreme Court ruled in Heimeshoff v. Hartford Life & Accident Ins. Co. that "[a]bsent a controlling statute to the contrary, a participant and a plan may agree by contract to a particular limitations period [on filing suit for employee benefits] ... as long as the period is reasonable."

Practical Implications for Plan Sponsors

- Plan sponsors should consider adopting provisions that limit the venues available to plan participants in asserting a claim under ERISA. In so adopting, plan sponsors should be aware that the state where venue lies will likely determine the governing statute of limitations for ERISA claims other than allegations of fiduciary breach.

- Choosing the appropriate venue will likely require a balancing of both the plan participants' and the plan sponsor's interests to avoid risks that the clause will be deemed unenforceable as a matter of contract law.

- A prudent approach for plan sponsors may be to identify the forum in which the plan administrator resides.

- Practitioners should continue to monitor the judicial trend toward allowing reasonable "plan-based" limitations on participants' suits.

—By Nancy G. Ross and Samuel P. Myler, Mayer Brown LLP

Nancy Ross is a partner and Samuel Myler is an associate in Mayer Brown's Chicago office.