No. 16-3808

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

IN RE: GEORGE W. MATHIAS,
Petitioner

On Petition for a Writ of Mandamus to the United States District Court
for the Central District of Illinois in No. 1:16-cv-01323-MMM-JEH,
Hon. Michael M. Mihm

Amicus Curiae, Thomas E. Perez,
Secretary of the United States Department of Labor,
Brief in Support of Petitioner

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QUESTION PRESENTED

Whether the Employee Retirement Income Security Act ("ERISA") invalidates a welfare plan's forum-selection clause that deprives the petitioner-plaintiff of the venue choices granted by ERISA's venue provision.

THE SECRETARY'S INTEREST

The Secretary of Labor files this brief as amicus curiae at the invitation of this Court. The Secretary of Labor has primary authority to interpret and enforce the provisions of Title I of ERISA to ensure fair and impartial plan administration and compliance with ERISA's requirements. See 29 U.S.C. §§ 1132, 1133, 1135. Given this authority, the Secretary has a substantial interest in ensuring that ERISA's broad venue provision in section 502(e)(2), 29 U.S.C. § 1132(e)(2), governs ERISA suits, rather than more restrictive forum-selection clauses in plan documents that would allow employers to unilaterally erect obstacles that impede plan participants from enforcing their statutory rights, a result antithetical to ERISA's text and stated purposes. At the invitation of the Supreme Court, the government argued that forum-selection clauses that restrict a participant's choice of venue conferred by ERISA, 29 U.S.C. § 1132(e), are not "consistent" with ERISA, 29 U.S.C. § 1104(a)(1)(D), and, hence, are unenforceable. Brief of the United States as Amicus Curiae, Smith v. Aegon Comps. Pension Plan, 136 S. Ct. 791 (2015) (No. 14-1168), http://1.usa.gov/24P2gbV.

STATEMENT OF THE CASE

Plaintiff George W. Mathias worked for defendant Caterpillar, Inc. as a tool operator in York, Pennsylvania, from 1978 until 1997. Compl. ¶¶ 3, 9, 13. As a former employee, Mathias is a participant in several of Caterpillar's self-funded ERISA plans, including a group health plan. Id. ¶¶ 4, 7-8.

In May 1997, Mathias became unable to work due to chronic pain resulting from "coronary artery insufficiency," "quintuple coronary artery bypass surgery," and "continuing severe chest pain." Id. ¶ 14. Mathias "went out on disability," Compl. ¶ 13, and was "covered by Defendant's health insurance plans as an employee on long-term disability, and began paying insurance premiums at the disabled employee rate." Id. ¶ 18. In 2012, Mathias opted to retroactively retire, effective October 1, 2009. Id. ¶ 28; Compl. Ex. O at 2. Due to an "administrative error," Caterpillar, the plan administrator, failed to change Mathias's status when he retired and continued to bill Mathias at the lower employee premium rate rather than at the higher retiree rate. Compl. ¶ 33. In May 2013, Caterpillar realized its error and informed Mathias that he owed Caterpillar $9,513.13: the difference between what Caterpillar had charged Mathias and what he should have been charged as a retiree from 2009 to 2013. Id. When Mathias was unable to pay, Caterpillar terminated his benefits. Id. ¶ 41.

On April 19, 2016, Mathias filed a complaint against Caterpillar and the plans in the U.S. District Court for the Eastern District of Pennsylvania – a district close to where Mathias lives and worked. The complaint asserts a claim for benefits and other equitable relief under ERISA sections 502(a)(1)(B) and (a)(3), 29 U.S.C. §§ 1132(a)(1)(B) and (a)(3). Defendants filed a Motion to Transfer or Dismiss and based their request for transfer or dismissal on a forum-selection clause in the plan documents. Mathias v. Caterpillar, Inc., No. 16-1846, 2016 WL 4502350, at *3 (E.D. Penn. Aug. 29, 2016). The forum-selection clause requires any claims to be filed in the Central District of Illinois – a forum almost 800 miles from where Mathias lives. The district court in Pennsylvania transferred the case to the Central District of Illinois. Id. at *7. Mathias moved to retransfer the case back to Pennsylvania, which the district court in Illinois denied. Mathias then filed a writ of mandamus with this Court on October 28, 2016.[1]

DISCUSSION

The Forum-Selection Clause Is Unenforceable Because It Contradicts

[1] This Court in In re LimitNone, LLC reaffirmed that mandamus is an "approved" method to correct erroneous transfer orders issued under 28 U.S.C. § 1404. 551 F.3d 572, 575 (7th Cir. 2008). "It is difficult to see how such an error could be corrected otherwise." Hicks v. Duckworth, 856 F.2d 934, 935 (7th Cir. 1988). LimitNone considered a writ of mandamus challenging a transfer order based on a forum-selection clause. 551 F.3d at 575-76. Because the order here was issued under 28 U.S.C. § 1404 based on a forum-selection clause, mandamus is a proper vehicle to correct the district court's error under this Court's controlling precedent.

ERISA's Text and Purposes

1. ERISA's Plain Text Confers on Plan Participants a Choice of Venues

In ERISA section 502(e)(1), 29 U.S.C. § 1132(e)(1), Congress granted plaintiffs seeking benefits under an ERISA plan the option of suing in federal or state court; plaintiffs seeking other relief must sue in federal court. In the same section, Congress further granted a choice of venue to claimants who choose to or must sue in federal court: "Where an action . . . is brought in a district court . . . it may be brought in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found[.]" Id. § 1132(e)(2).

Congress stated in ERISA's text that a "policy" of ERISA is to "protect . . . the interests of participants . . . by providing . . . ready access to the Federal courts." 29 U.S.C. § 1001(b). Implementing this policy, Congress included a special venue provision, section 502(e)(2), as part of a "carefully crafted and detailed enforcement scheme," Great-West Life & Annuity Ins. Co. v. Knudson, 534 U.S. 204, 209 (2002), that "Congress designed to provide federal forums and uniform substantive law to safeguard the interests of employees and their beneficiaries," Mut. Life Ins. Co. of N.Y. v. Yampol, 840 F.2d 421, 425 (7th Cir. 1988). Section 502(e)(2) carefully balances for plaintiffs the power of nationwide service with "Congress . . . provid[ing] specifically for venue where a plan is administered or where a breach took place." Waeltz v. Delta Pilots Ret. Plan, 301

F.3d 804, 808 (7th Cir. 2002); see also Bd. of Trustees, Sheet Metal Workers' Nat. Pension Fund v. Elite Erectors, Inc., 212 F.3d 1031, 1037 (7th Cir. 2000).[2]

Congress bolstered this carefully-crafted venue choice granted to plaintiffs in section 502(e)(2) by invalidating provisions in plan documents that deviate from the venue choice in ERISA's text. ERISA section 404(a)(1)(D) provides that plan fiduciaries are required to follow plan documents only "insofar as such documents and instruments are consistent with the provisions of [title I] and title IV [of ERISA]." 29 U.S.C. § 1104(a)(1)(D). Thus, an ERISA plan "cannot avoid that which is dictated by the terms of ERISA." Williams v. Rohm & Haas Pension Plan, 497 F.3d 710, 714 (7th Cir. 2007); accord Coleman v. Interco Inc. Divs.' Plans, 933 F.2d 550, 551 (7th Cir. 1991) ("ERISA trumps"). "Employers are entitled to vary by contract those aspects of [employee benefit] plans ERISA makes variable. . . . just as participants are entitled to the benefit of terms (such as vesting rules) that the law makes immutable." Fry v. Exelon Corp. Cash Balance Pension Plan, 571 F.3d 644, 646 (7th Cir. 2009). Here, ERISA did not make "variable" the venue choices conferred to plaintiffs in section 502(e)(2). Thus, employers cannot restrict those choices with "forum-selection clauses," which vary ERISA's text, and thus are unenforceable. 29 U.S.C. § 1104(a)(1)(D); see also

[2] Courts may conclude that fundamental fairness to defendants warrants a transfer under 28 U.S.C. § 1404, although in most ERISA cases, courts will properly be loath to do so. See e.g., In re Warrick, 70 F.3d 736, 740-741 (2d Cir. 1995).

Fifth Third Bancorp v. Dudenhoeffer, 134 S. Ct. 2459, 2470 (2014). But see, e.g., Smith v. Aegon Cos. Pension Plan, 769 F.3d 922, 932 (6th Cir. 2014) (permitting forum-selection clauses for ERISA cases).

The Supreme Court reached a similar conclusion in Boyd v. Grand Trunk W. R. Co., 338 U.S. 263, 265 (1949), with respect to forum-selection agreements for actions brought under the Federal Employers Liability Act ("FELA"), which, like ERISA, has its own special venue provision. The venue provision in section 6 of FELA states, "[A]n action may be brought in a district court of the United States, in the district of the residence of the defendant, or in which the cause of action arose, or in which the defendant shall be doing business at the time of commencing such action." 45 U.S.C. § 56. Section 5 of FELA states, "Any contract, rule, regulation, or device whatsoever, the purpose or intent of which shall be to enable any common carrier to exempt itself from any liability . . . shall to that extent be void[.]" 45 U.S.C. § 55. Reading these provisions together, the Supreme Court found that the "petitioner's right to bring the suit in any eligible forum [under section 6 of FELA] is a right of sufficient substantiality" to be protected by section 5 of FELA, which voids any contract or agreement that serves to purposefully or intentionally exempt the employer from any liability. Boyd, 338 U.S. at 265. The Court therefore held that "contracts limiting the choice of venue are void as conflicting with [FELA]" because they "would thwart" FELA's

"express purpose" by "sanction[ing] defeat of that right [to select the forum]." 338 U.S. at 265-66; see generally M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 15 (1972) ("A contractual choice-of-forum clause should be held unenforceable if enforcement would contravene a strong public policy of the forum in which suit is brought, whether declared by statute or by judicial decision" (emphasis added)).

ERISA is analogous to FELA in many respects. Like the venue provision in section 6 of FELA, the venue provision in ERISA section 502(e) provides several choices where the plaintiff "may" bring suit. 29 U.S.C. § 1132(e). Like section 5 of FELA, ERISA also contains protections against contractual terms that depart from the Act's minimum requirements. 29 U.S.C. § 1104(a)(1)(D). By eliminating the plaintiff's choice of venue, a forum-selection clause in an ERISA plan attempts to override ERISA section 502(e), preventing the plaintiff from bringing suit in his or her venue of choice. Such a forum-selection clause is therefore inconsistent with ERISA's text, and thus unenforceable.

In addition, the Supreme Court identified several other characteristics of FELA that animated the Court's finding in Boyd of a "substantial right" to venue warranting protection, which are equally applicable to ERISA. In South Buffalo Ry. Co. v. Ahern, the Court noted, in citing Boyd, that the Court, "mindful of the benevolent aims of the Act, [has] jealously scrutinized private arrangements for the bartering away of federal rights." 344 U.S. 367, 372-73 (1953). In Bisso v. Inland

Waterways Corp., 349 U.S. 85, 91 (1955), the Court, citing Boyd, articulated a general rule that courts may "prevent enforcement of [obligations under] contracts in many relationships such as . . . employers and employees, [in order] . . . to discourage [wrongdoing] by making wrongdoers pay damages, and . . . to protect those in need of goods or services from being overreached by others who have power to drive hard bargains." Id. at 90-91 (applying the rule to releases of negligence claims).

This Court recognizes that similar scrutiny must be applied to ERISA plans, because "[a] Congress committed to the principles of freedom of contract would not have enacted a statute that interferes with pension arrangements voluntarily agreed on by employers and employees." Van Boxel v. Journal Co. Emps.' Pension Tr., 836 F.2d 1048, 1052 (7th Cir. 1987). As a result, "courts treat an ERISA plan as a special kind of contract, in order to confer greater protection on one of the parties, namely the participant or beneficiary, than on the other, the plan administrator (they do this by invoking their understanding of trust law)." Herzberger v. Standard Ins. Co., 205 F.3d 327, 330 (7th Cir. 2000). Therefore, ERISA claims for a remedy under a plan document, while "governed by a federal common law of contract," must also be "keyed to the policies codified in ERISA." Larson v. United Healthcare Ins. Co., 723 F.3d 905, 911 (7th Cir. 2013) (emphasis added). As relevant here, ERISA's codified policy grants plaintiffs a choice of

venue, a policy choice that cannot be abrogated by a contractual plan provision purporting to limit that right.

2. The Plain Text is Bolstered by Congressional Intent and Policy Supporting That ERISA Was Designed to Allow Plan Participants and Beneficiaries the Right to Sue in a Venue of Their Choice

As in Boyd, numerous factors support a conclusion that Congress intended to grant ERISA plaintiffs the right to sue in any of the enumerated venues: (1) an expressly stated purpose of ERISA is to protect participants' and beneficiaries' rights and to eliminate barriers to suit; (2) ERISA creates a special fiduciary relationship within an employment context, obligating fiduciaries to protect and not impede participants' rights; (3) participants' legal actions are necessary to deter and police fiduciary misconduct, and participants should be granted ready access to court; and (4) individual participants typically do not have bargaining power with respect to plan design, including the forum selected in a plan's forum-selection clause. For these reasons, this Court should conclude that the participant's right to choose venue in ERISA section 502(e) is protected under ERISA section 404(a)(1)(D), which requires that plan terms that restrict this choice be disregarded as inconsistent with ERISA.

First and foremost, ERISA provides: "It is hereby declared to be the policy . . . to protect . . . the interests of participants in employee benefit plans" by, among other things, "providing . . . ready access to the Federal courts." 29 U.S.C. §

1001(b) (emphasis added). To "safeguar[d] . . . the establishment, operation, and administration" of employee benefit plans, ERISA sets "minimum standards . . . assuring the equitable character of such plans[.]" 29 U.S.C. § 1001(a) (emphasis added). In furtherance of these policies, ERISA provides "[l]iberal venue and service provisions," S. Rep. No. 383, 93d Cong., 1st Sess. 106 (1973), which were enacted despite objections that they could result in plan fiduciaries "having to defend actions in court far removed from their principal places of business." Tax Proposals Affecting Private Pension Plans: Hearings Before the H. Comm. on Ways & Means, 92d Cong. 784 (1972) (statement of Emp. Trusts Comm. of the Corp. Fiduciaries Ass'n of Ill.). ERISA's venue provision must be construed as a "minimum standard" codified to protect participant-plaintiffs' rights to ready access to court. Cf. Herzberger, 205 F.3d at 330. In this regard, ERISA's venue provision is distinct from typical venue provisions because ERISA intentionally established a special venue provision that protects the plaintiff's choice of venue. Compare Atl. Marine Constr. Co. v. U.S. Dist. Ct., 134 S. Ct. 568, 582 n.7 (2013) with Cortez Byrd Chips, Inc. v. Bill Harbert Const. Co., 529 U.S. 193, 203-04 (2000).

Specifically, ERISA's venue provision governs "an action under this subchapter," which is entitled "Subchapter I – Protection of Employee Benefit Rights." 29 U.S.C. § 1132(e)(2); see also Gulf Life Ins. Co. v. Arnold, 809 F.2d 1520, 1525 n.9 (11th Cir. 1987). Courts readily interpret the ERISA venue

provision broadly to ensure this "protection" of beneficiaries' and participants' rights. See, e.g., Waeltz, 301 F.3d at 809. Thus, section 502(e)(2) "is not a neutral provision merely describing the venues in which ERISA actions can be heard, but is rather intended to grant an affirmative right to ERISA participants and beneficiaries." Coleman v. Supervalu, Inc. Short Term Disability Program, 920 F. Supp. 2d 901, 906 (N.D. Ill. 2013). ERISA, including section 502(e)(2), protects participant-plaintiffs' rights to seek their benefits in the venue they select.

Second, ERISA places the defendant-fiduciary in a special trust relationship to the participant-plaintiff. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 110 (1989). This fiduciary relationship further counsels protection of the participant's access to court over a defendant-fiduciary's choice of venue. In Gulf Life Insurance Co., 809 F.2d at 1524-25 & n.7, the Eleventh Circuit concluded that if it allowed a fiduciary to use section 502(e)(2) to file a declaratory judgment action where it was headquartered, even if that were hundreds of miles from the defendant-participant, "the sword that Congress intended participants/beneficiaries to wield in asserting their rights could instead be turned against those whom it was designed to aid." Section 502(e)(2) protects the participants' venue choice.

Third, ERISA places the right of plan participants and beneficiaries to bring suit to obtain their promised benefits and also to ensure the fiduciary's proper plan and claim administration at the center of the statutory scheme. Cf. Sec'y of Labor

v. Fitzsimmons, 805 F.2d 682, 689 (7th Cir. 1986) (recognizing that the monitoring of fiduciaries has traditionally relied on the "initiative of the individual employee to police the management of his plan" (citation omitted)). Accordingly, ERISA was intended to eliminate "jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary duties." H.R. Rep. No. 93-553 (1973), reprinted in 1974 U.S.C.C.A.N. 4639, 4655. Cf. Franchise Tax Bd. v. Constr. Laborers Vacation Tr., 463 U.S. 1, 21 (1983) ("The express grant of federal jurisdiction in ERISA is limited to suits brought by certain parties [such as individual participants] as to whom Congress presumably determined the right to enter federal court was necessary to further the statute's purposes." (emphasis added)). Eliminating the right of participants to bring suit where they live and worked is likely to stand as a barrier to this statutory goal.

The First Circuit in Volkswagen Interamericana, S. A. v. Rohlsen, 360 F.2d 437, 439 (1st Cir. 1966), discussed a similarly "broad" venue provision formerly in the Automobile Dealers' Day in Court Act, which was "designed to assure the dealer as accessible a forum as is reasonably possible" because

> [t]he very purpose of the act is to give the dealer certain rights against a manufacturer independent of the terms of the agreement itself. . . . This protection would be of little value if a manufacturer could contractually limit jurisdiction to a forum practically inaccessible to the dealer. The act cannot so easily be thwarted.

Id. Similarly, a participant's right to sue under ERISA section 502(a)(1)(B) and his

right to statutory protections is much more likely to be thwarted if the plan sponsor can limit venue to a distant forum. A section 502(a)(1)(B) claim for benefits, in part, enforces the statutory requirement that those administering benefits plans provide "a full and fair review" of denied benefits claims, ERISA section 503(2), 29 U.S.C. § 1133(2); see Metro. Life Ins. Co. v. Glenn, 554 U.S. 105, 115 (2008), including procedural protections governed by regulation and fiduciary obligations that override contrary plan terms. The right to independent judicial review of a benefits decision to ensure compliance with these protections is granted by statute, see Patton v. MFS/Sun Life Fin. Distribs'., Inc., 480 F.3d 478, 485-86 (7th Cir. 2007), and should be governed by the statute's venue provision, not the plan's.

If participants are prevented from choosing a local forum permitted under ERISA, they may be prevented from protecting their ERISA benefits and rights and from ensuring proper plan and claims administration. "[M]any of those individuals whose rights ERISA seeks to protect," including "retirees on a limited budget, sick or disabled workers, widows and other dependents[,] . . . are often the most vulnerable individuals in our society, and are the least likely to have the financial or other wherewithal to litigate in a distant venue." Smith, 769 F.3d at 935 (Clay, J., dissenting) (citation omitted). Mathias is disabled and is now forced to litigate hundreds of miles from his home and former workplace in order to assert his right to disability benefits.

Finally, many participants do not have the opportunity to negotiate the details of plan documents – they either accept the plan as written or choose not to participate. See Glenn, 554 U.S. at 114 ("[E]mployees are rarely involved in plan negotiations.") (citing Langbein, Trust Law as Regulatory Law, 101 Nw. U.L. Rev. 1315, 1323-24 (2007)). In such cases, the plan sponsor can unilaterally impose provisions that cede participant rights, like choice of venue, to the employer.

ERISA's protective purpose extends to the creation of a liberal venue provision that protects a participant's right to police plan administration. This statutory policy cannot be thwarted by plan terms.

3. Arguments for Enforcing Forum-Selection Clauses in ERISA Plan Documents are Unpersuasive

Some courts enforce forum-selection clauses because such clauses presumably promote ERISA's goal of uniformity. However, Congress was concerned about uniformity because it did not want plans to be subject to different legal requirements under the laws of "different States," and it thus included a general provision, 29 U.S.C. § 1144(a), which preempts the application of state law to ERISA claims. Egelhoff v. Egelhoff, 532 U.S. 141, 148 (2001). Congress did so to ensure that the federal courts would have jurisdiction over ERISA claims, not that one federal court would have jurisdiction over all claims for one ERISA plan.

Some courts have also concluded that forum selection clauses are analogous to arbitration agreements, which can be enforceable in some ERISA contexts. See

Smith, 769 F.3d at 932 (citing cases). This argument is misguided. Courts enforce arbitration agreements not on the basis of a general judicial policy favoring arbitration, but because that is what federal law – in this case the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 2, 3 – requires. There is no such similar requirement regarding forum-selection clauses under any federal statute. Moreover, the FAA serves a different purpose than ERISA section 502(e)(2). See Coleman, 920 F. Supp. 2d at 909. Rather than addressing where the action should be brought – which could result in "a substantial increase in expense and inconvenience" – the FAA addresses whether arbitration is required – which focuses on the dispute resolution procedure "without necessarily creating such hardships for the individual." Id. Finally, arbitration of ERISA benefit claims is non-binding. 29 C.F.R. § 2560.503-1(c)(4) (2016). Thus, while an arbitration agreement may narrow the district court's review, an arbitration agreement does not void or interfere with a participant's right to choose the venue for his section 502(a) suit. See Rush Prudential HMO, Inc. v. Moran, 536 U.S. 355, 385-86 (2002); 29 C.F.R. § 2560.503-1(c)(4) (2016). The congressional policy favoring arbitration is simply not implicated here, either directly or by analogy.

CONCLUSION

For the reasons set forth above, the forum-selection clause under which this case was transferred is inconsistent with ERISA and unenforceable.

Respectfully submitted,

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FOR CASE NO. 16-3808

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Dated: December 8, 2016

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(s) /s/ Sarah K. Hughes
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Dated: December 8, 2016

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2016, two copies of the foregoing Brief for the Secretary of Labor as Amicus Curiae were served upon the following via Federal Express and ECF:

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