Retirement Plan's Venue Selection Clause Held Enforceable and Applied to Dismiss Participant's Benefit Claims: Smith v. AEGON Companies Pension Plan

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The U. S. Court of Appeals for the Sixth Circuit recently upheld a lower court's enforcement of a retirement plan's venue selection clause and affirmed the dismissal of an ERISA plan participant's claim to recover benefits in a court outside of that venue. In *Smith v. AEGON Companies Pension Plan*, No. 13-5492 (6th Cir. October 14, 2014), the Sixth Circuit held that the participant was required to refile his complaint in a different federal court over 500 miles from the place where his suit began, and thus underscored the large leeway granted to plan sponsors to design, modify and amend their plans within the scope of ERISA.

The Background. Prior to his retirement, the plaintiff ("Smith") was employed in Louisville, Kentucky by Commonwealth General Corporation ("CGC"). CGC agreed to merge with AEGON USA, Inc. ("AEGON"), and, to induce certain employees, including Smith, to stay on board until the merger was completed, CGC offered them enhanced compensation and benefits as stated in the Voluntary Employee Retention and Retirement Program ("VERRP"). The VERRP had both qualified and non-qualified plans, each paying separate monthly benefits upon retirement. Under the VERRP, Smith would retire on March 1, 2000. He elected in January 1999 to accept CGC's offer and receive over $1,066 a month under the qualified plan and about $1,123 a month under the non-qualified plan, in addition to other benefits, either as a lump sum or in an annuity form, under CGC's Retirement Plan ("CGC Plan").

A month before he retired, Smith received notice that the CGC Plan and AEGON's pension plan had been integrated into one plan ("the Plan") pursuant to the merger, and he became a "grandfathered" participant under the Plan. Smith retired in 2000 and began receiving both a lump sum benefit and a monthly benefit. Several years passed uneventfully.

In 2007, AEGON amended the Plan to add a venue selection clause, requiring any participant or beneficiary to bring an action in connection with the Plan in the federal court in Cedar Rapids, Iowa, about 500 miles away from Smith's locality in Kentucky. Then, in August 2011, the Plan notified Smith that he had been overpaid by about $1,123 a month (the amount of the VERRP's non-qualified benefit) ever since his retirement in 2000, and the Plan then reduced and, in September 2011, eliminated his entire monthly benefit, saying the Plan would continue to do so until the Plan recouped the alleged overpayment or Smith repaid the Plan over $153,000. Smith appealed that decision to AEGON's

Pension Committee, but was denied.

Smith brought his first lawsuit ("*Smith I*") in western Kentucky against CGC, asserting claims for breach of contract and other grounds. The case was removed to the federal court in western Kentucky, which dismissed Smith's complaint against CGC and held that only the AEGON Pension Committee, which administered the Plan, was a proper defendant. Smith later filed a second suit ("*Smith II*") against the Plan in the same federal district court in Kentucky. On the basis of the Plan's venue selection clause, the *Smith II* court dismissed that suit as well, without prejudice to Smith's filing of a new complaint in Iowa. Smith then appealed to the Sixth Circuit.

The Court's Ruling.

For reasons this Alert need not review, the Sixth Circuit declined to defer to the U. S. Secretary of Labor's argument, presented in an amicus brief, that venue selection clauses are incompatible with ERISA. The Court held that even if it gave the Secretary's position heightened deference, it would have reached the same conclusion and enforced the Plan's venue selection clause.

The Sixth Circuit first acknowledged the ERISA requirement for a written plan, and the general freedom of plan sponsors to adopt, modify or terminate plans, including pension plans. (That freedom is, of course, subject to certain limits, such as ERISA's anti-cutback provision, but that statutory provision was not directly involved in the dispute over the Plan's venue clause.) The Court rejected Smith's argument that the amendment adding the venue clause was improper because it occurred seven years after he retired, finding that the amendment occurred before his benefit claims arose in 2011. The Court held also that the amendment was presumptively valid and enforceable, and that Smith had not shown that the Plan's clause was unreasonable.

More fundamentally, the Sixth Circuit rejected Smith's contention that ERISA precluded venue selection clauses. Congress had not prohibited them when it enacted ERISA, or since then, and the clause in the Plan did not prevent the "ready access to the Federal courts" that ERISA declares to be a goal of the statute. See 29 U. S. Code § 1001(b). To the contrary, the Plan's venue selection clause specified that claims must be brought in a federal court (though, admittedly, one many miles from Smith's locality). The Court even noted possible advantages to such clauses, including the encouragement of uniform judicial decisions by confining plan claims to one district court. The Court also held that ERISA's statutory venue provision simply said that ERISA claims "may be brought" in the district where the plan is administered, a breach occurred, or a defendant resides, and the Plan's venue clause did not conflict with the statute, because it required legal actions to be brought where the Plan was administered, in Cedar Rapids, Iowa.

Finally, the Sixth Circuit noted that it had already upheld the validity of arbitration clauses in ERISA plans, and found it illogical to say that venue selection clauses in ERISA plans were not also enforceable.

The Significant Lessons: The Federal courts, as highlighted in the U. S. Supreme Court's 2013 decision in *Heimeshoff v. Hartford Life & Accident Insurance Co.*, have repeatedly held that adherence to the written terms of a plan in enforcing ERISA rights and obligations is of paramount importance. These decisions often demonstrate the extent to which the courts will enforce a plan sponsor's design choices provided they fit within ERISA's statutory and regulatory boundaries. Those boundaries are not endlessly elastic, but *Smith II* shows that they may be broader than some participants expected. However, plan sponsors who include venue selection clauses should still be careful to frame the clauses so that they have a reasonable connection to the plan and allow access to a federal court in accordance with ERISA's statutory venue provisions.

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