

Sixth Circuit Declines Deference to DOL and Enforces Venue Selection Clause



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The **Sixth Circuit recently held that a venue selection clause** in an ERISA-governed pension plan was enforceable and, in so ruling, **refused to give deference to the DOL's contrary position**. See *Smith v. AEGON Cos. Pension Plan*, No. 14-0256, 2014 U.S. App. LEXIS 19668 (6th Cir. Oct. 14, 2014). Plaintiff brought suit against the corporate successor of his former employer, AEGON, in the U.S. District Court for the Western District of Kentucky, alleging that AEGON wrongfully eliminated his enhanced compensation benefits. The district court dismissed Plaintiff's complaint because plaintiff's pension plan contained a venue selection clause that stated that a participant shall only bring an action in the Federal District Court in Cedar Rapids, Iowa.

On appeal, the DOL submitted an amicus brief arguing that venue selection clauses are incompatible with ERISA. A split panel of judges declined to afford deference to (what the majority labeled) the DOL's attempted "regulation by amicus." First, the majority concluded that the DOL had no more expertise than the Court when it came to determining whether federal statutes proscribe venue selection. Second, the

majority noted that the DOL had never brought an enforcement action in connection with an ERISA-governed plan's venue selection clause, and it had never promulgated any regulation or interpretive guidance related to such clauses. Because of this, the majority found that the DOL's position in its amicus brief lacked the longevity and consistency necessary to be granted deference. Ultimately, the majority found that the DOL's "amicus brief in this case can only be characterized as . . . an expression of mood."

The majority then (i) noted that most courts faced with this issue found that venue selection clauses in ERISA-governed plans were enforceable and (ii) explained that if Congress wanted to prohibit such clauses, it could have done so. Further, the majority stated that "[i]t is illogical to say that, under ERISA, a plan may preclude venue in federal court entirely [via an arbitration clause], but a plan may not channel venue to one particular federal court."

Judge Clay (dissenting) took issue with the fact that the venue selection clause prevented Plaintiff from bringing suit anywhere but a court 500 miles away with which he had no connection. Judge Clay stated that such restrictions conflict with ERISA's broad venue provisions and "the strong public policy evinced by the statute"—i.e., to eliminate jurisdictional and procedural obstacles that may hamper enforcement of fiduciary responsibilities.

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