

# Compensation and Benefits Insights

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## Seventh Circuit: Forum Selection Clause Enforceable Under ERISA

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Despite an argument from the U.S. Department of Labor that forum selection clauses are not permitted under the Employee Retirement Income Security Act of 1974 (“ERISA”), the Seventh Circuit Court of Appeals has ruled that employers can limit the courts in which participants can file lawsuits. This ruling is consistent with a 2014 Sixth Circuit Court of Appeals ruling.

### *Background*

George Mathias was a participant in a group health plan sponsored by Caterpillar, Inc. (“Caterpillar”). Mathias was declared disabled by the Social Security Administration in May 1997, and as a result was allowed to pay a reduced employee premium under the plan. In 2012, Mathias decided to retire retroactively, effective as of October 1, 2009. In 2013, Caterpillar requested that Mathias pay the \$9,500 to the plan which was attributable to the difference between the disabled employee premium rate and retired employee premium rate from 2009 to 2013. After refusing to pay this amount, Caterpillar terminated Mathias’ benefits under the plan.

Mathias brought suit in the Eastern District of Pennsylvania, but the plan document required suit to be brought in the Central District of Illinois. Relying on the 2014 Sixth Circuit decision<sup>1</sup> upholding forum selection clauses in ERISA plan documents, the case was transferred to the Central District of Illinois as requested by Caterpillar. Mathias objected to this transfer, arguing that the “venue” provision under ERISA Section 502(e)(2) invalidated the forum selection clause in Caterpillar’s plans.<sup>2</sup>

### Our Practice

We advise public, private, taxable and tax-exempt clients on a wide variety of issues related to the design, preparation, communication, administration, operation, merger, split-up, amendment and termination of all forms of employee benefit plans and executive compensation programs and related funding vehicles. The firm has defended clients in significant high-profile ERISA litigation matters, including 401(k) plan “stock drop” cases and other breach-of-fiduciary-duty class actions.

### Contact

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<sup>1</sup> Smith v. Aegon Cos. Pension Plan, 769 F.3d 922 (6th Cir. 2014).

<sup>2</sup> The Eighth Circuit Court of Appeals recently declined to hear an appeal from a participant making the same argument as Mathias.

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## *Analysis*

ERISA Section 502(e)(2), provides, in relevant part:

*“Where an action...is brought in a district court of the United States, it may be brought in the district court where the plan is administered, where the breach took place, or where a defendant resides or may be found...”*

Because the Caterpillar plan has a forum selection clause, from a procedural perspective, the Appeals Court only considered “public” interest factors when determining whether to grant Mathias’ transfer request and did not consider any “private” interests he may have had in transferring the case back to Pennsylvania. To that end, Mathias, with assistance from an *amicus* brief filed by the U.S. Department of Labor, argued that forum selection clauses are categorically invalid because they deprive plan participants and beneficiaries the right to select from the “menu” of venue options provided in ERISA Section 502(e)(2).

The Appeals Court ruled that nothing in the ERISA venue provision confers a statutory right to choose from any of the listed venues without regard to a forum selection clause contained in a plan document. Focusing on the “may be brought” language in the statute, the Appeals Court ruled that the statute is permissive and does not preclude the parties from contractually narrowing options available to participants. According to the Appeals Court, the broader statutory policy of the ERISA venue provision is to ensure and maintain access to federal court, and the Caterpillar plan’s forum selection clause preserves this right. In its analysis, the Appeals Court did consider the opposing policy goals under ERISA of (1) ensuring fair and prompt enforcement of rights under a plan and (2) encouraging of employers to create such plans (and the leeway in the design of such plans). Arguing that forum selection clauses actually promote uniformity in plan administration and reduce administrative costs, the Appeals Court concluded that forum selection clauses are consistent with the broader statutory goals of ERISA.

The Appeals Court’s dissenting judge noted that ERISA participants have no role in the negotiation or the acceptance of a plan’s terms, and are just beneficiaries of an agreement that other parties have negotiated and accepted. In his opinion, the broader ERISA policy of protecting the interests of the participant is inconsistent with restricting the right of a plan participant to an action in a forum far away from home and his place of employment.

## *Takeaway for Employers*

Inclusion of a forum selection clause in an ERISA plan document is consistent with best practices, and, as the Appeals Court noted in its decision, may reduce plan administrative costs and promote uniformity in plan administration. While a minority of district courts have ruled in favor of participants as it relates to the enforceability of forum selection clauses, the only two Circuit Courts of Appeals to rule on the matter (and the majority of district court cases) have held that these clauses will be enforced by a court of law. King & Spalding is happy to assist employers with the design of the plan documents generally, as well as assist with any questions relating to forum selection.

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## September and October 2017 Filing and Notice Deadlines for Qualified Retirement and Health and Welfare Plans

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Employers and plan sponsors must comply with numerous filing and notice deadlines for their retirement and health and welfare plans. Failure to comply with these deadlines can result in costly penalties. To avoid such penalties, employers should remain informed with respect to the filing and notice deadlines associated with their plans.

The filing and notice deadline table below provides key filing and notice deadlines common to calendar year plans for the next two months. If the due date falls on a Saturday, Sunday, or legal holiday, the due date is generally delayed until the next business day. Please note that the deadlines will generally be different if your plan year is not the calendar year. Please also note that the table is not a complete list of all applicable filing and notice deadlines (including any available exceptions and/or extensions), just the most common ones. King & Spalding is happy to assist you with any questions you may have regarding compliance with the filing and notice requirements for your employee benefit plans.

Deadline	Item	Action	Affected Plans
September 15  (8 ½ months after the end of the plan year)	Minimum Contribution Deadline	Deadline for plan administrator to contribute balance of minimum contributions necessary to avoid a funding deficiency.	Defined Benefit Plans
September 30  (within 9 months of the end of the plan year)	Summary Annual Report (SAR)	Deadline for plan administrator to distribute Summary Annual Report for prior year to participants and beneficiaries. This deadline may be extended until 2 months following the close of the extension period for filing a Form 5500, if applicable.	Defined Contribution Plans  Health and Welfare Plans  (unfunded welfare plans are exempt)
September 30  (last day of the 9th month following the end of the prior plan year)	Certification of Adjusted Funding Target Attainment Percentage (AFTAP)	Deadline for actuary to certify AFTAP to avoid presumption that AFTAP is less than 60%.	Defined Benefit Plans

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Deadline	Item	Action	Affected Plans
October 15	Medicare Part D Creditable Coverage Notice to Individuals	Deadline for employers that provide prescription drug coverage to Medicare Part D eligible individuals to provide a written disclosure notice to Medicare eligible individuals and their dependents covered under the plan indicating whether their prescription drug coverage is creditable coverage.	Health and Welfare Plans that provide prescription drug coverage to Medicare Part D eligible individuals
October 15 (2 ½ months after extension granted)	DOL Form 5500	Deadline for plan administrator to file Form 5500 for prior year if deadline was extended by filing a Form 5558.	Retirement Plans  Health and Welfare Plans
	IRS Form 8955-SSA	Deadline for plan administrator to File Form 8955-SSA if deadline was extended by filing a Form 5558.	Retirement Plans
October 15 (9 ½ months after the previous plan year)	PBGC Premium Filing	Deadline for plan administrator of large plans (500 or more participants) to pay flat-rate or variable PBGC premium for current plan year.	Defined Benefit Plans with 500 or more participants