APPENDIX

TABLE OF CONTENTS

APPENDIX A

In the

United States Court of Appeals
For the Seventh Circuit

No. 16-3808

IN RE: GEORGE W. MATHIAS,

Petitioner.

Petition for Writ of Mandamus from the United States District Court for the Central District of Illinois.
No. 16-CV-1323 — **Michael M. Mihm**, *Judge*.

SUBMITTED DECEMBER 23, 2016 — DECIDED AUGUST 10, 2017

Before BAUER, RIPPLE, and SYKES, *Circuit Judges*.

SYKES, Circuit Judge. This mandamus petition raises a question of first impression in this circuit: Does ERISA's venue provision, 29 U.S.C. § 1132(e)(2), preclude enforcement of a forum-selection clause in an employee-benefits plan? George Mathias, the plan beneficiary and mandamus petitioner here, argues that it does; the Secretary of Labor, as amicus curiae, supports that interpretation. The respondent health plans argue that § 1132(e)(2) is permissive only and does not invalidate a forum-selection clause contained in plan documents.

Only one circuit has addressed this question. The Sixth Circuit has held that an ERISA plan's forum-selection clause is enforceable even if it overrides the beneficiary's choice of a venue permitted by § 1132(e)(2). *Smith v. Aegon Cos. Pension Plan*, 769 F.3d 922, 931–34 (6th Cir. 2014), *cert. denied*, No. 14-1168 (Jan. 11, 2016). The court reasoned that because the statute is phrased in permissive terms—it states that a suit "may be brought" in one of several federal judicial districts—it does not preclude the parties from contractually channeling venue to a particular federal district. *Id.* at 932. We agree and join the Sixth Circuit in holding that ERISA's venue provision does not invalidate a forum-selection clause contained in plan documents.

I. Background

This case is in its early stages and the mandamus petition raises a single legal issue, so we can be brief about the factual and procedural background. From 1978 to 1997, Mathias worked for Caterpillar, Inc., at its plant in York, Pennsylvania. In May 1997 he experienced serious health issues, and the Social Security Administration declared him disabled as of that date. Caterpillar covered his health insurance as an employee on long-term disability, billing him accordingly for his portion of the premium. In September 2012 Mathias chose to retire retroactively, effective October 1, 2009. Caterpillar failed to change Mathias's status and did not realize its mistake until the middle of 2013. The company then notified Mathias that he owed more than $9,500 in past-due premiums, which reflected the difference between the rate for a long-term disabled employee and the rate for a retired employee. When Mathias did not pay that amount, Caterpillar terminated his benefits.

Mathias sued Caterpillar and the relevant health plans in federal court in the Eastern District of Pennsylvania.[1] (We'll refer to the defendants collectively as "Caterpillar.") The plan documents require suit in federal court in the Central District of Illinois, so Caterpillar moved to transfer the case under 28 U.S.C. § 1404(a). Mathias opposed the motion, arguing that the forum-selection clause is invalid in light of § 1132(e)(2), ERISA's venue provision. Judge Robreno of the Eastern District of Pennsylvania rejected that argument, relying primarily on the Sixth Circuit's decision in *Smith*, which held that forum-selection clauses in ERISA plans are enforceable and not inconsistent with the text of ERISA's venue provision or the purposes of ERISA more generally. 769 F.3d at 931–34. Judge Robreno accordingly granted Caterpillar's motion and transferred the case to the Central District of Illinois.

When the case arrived in the Central District, Mathias moved to transfer it back to Pennsylvania—either to the Eastern or Middle District[2]—again arguing that the plan's forum-selection clause is invalid under § 1132(e)(2). Judge Mihm denied the motion.

---

[1] The company maintains several health plans covering active and retired employees.

[2] Mathias lives in the Middle District of Pennsylvania. Caterpillar's York plant, where he worked, is also located there. Caterpillar has dealerships in the Eastern District of Pennsylvania.

Mathias petitioned for mandamus relief in this court. He asks us to direct Judge Mihm to transfer the case to the Eastern or Middle District of Pennsylvania. Caterpillar has responded, and Mathias tendered a reply brief with a motion for leave to file it. We now grant that motion and accept the reply brief. In addition, we invited the Secretary of Labor to file an amicus curiae brief. He has done so and supports Mathias's interpretation of § 1132(e)(2). The matter is ready for decision.

II. Analysis

We begin by noting that mandamus is the appropriate procedural method to obtain review of a district court's decision on a § 1404(a) transfer motion. Without the availability of mandamus relief, the question of proper venue escapes meaningful appellate review. *In re Hudson*, 710 F.3d 716, 717 (7th Cir. 2013); *In re LimitNone, LLC*, 551 F.3d 572, 575 (7th Cir. 2008) (per curiam); *In re Nat'l Presto Indus., Inc.*, 347 F.3d 662, 663 (7th Cir. 2003).

Mathias could have asked the Third Circuit for mandamus relief from Judge Robreno's transfer order, but for reasons not clear to us, he waited to seek appellate review until after Judge Mihm denied his motion to send the case *back* to Pennsylvania. Appellate review would have been more appropriate in the Third Circuit, where the transferor court sits. *See* 15 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3846 (4th ed. 2016). In considering Mathias's motion to *re*transfer, Judge Mihm was bound by law-of-the-case principles that apply to transfer decisions of another district court.

Constrained by those principles, the motion was highly unlikely to succeed. Although a court may revisit a prior decision of its own or a coordinate court, it ordinarily should not do so "in the absence of extraordinary circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice.'" *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817 (1988) (quoting *Arizona v. California*, 460 U.S. 605, 618 n.8 (1983)). "[T]he policies supporting the doctrine [of law of the case] apply with even greater force to transfer decisions than to decisions of substantive law; transferee courts that feel entirely free to revisit transfer decisions of a coordinate court threaten to send litigants into a vicious circle of litigation." *Id.* at 816; *see also United States v. Wyatt*, 672 F.3d 519, 523 (7th Cir. 2012) ("[I]n the usual case another court should not respond by batting the suit back again.").

Unsurprisingly then, Mathias's retransfer motion failed. Judge Mihm found no clear defect or manifest injustice in Judge Robreno's ruling that the plan's forum-selection clause is valid and enforceable. With no controlling Supreme Court or Seventh Circuit precedent, Judge Mihm quite reasonably deferred to Judge Robreno's decision, which drew primarily on the Sixth Circuit's opinion in *Smith*, the only appellate ruling on this subject. Judge Mihm also looked to a recent decision by a district judge in the Southern District of Illinois collecting district-court decisions on this issue, most of which follow *Smith*. *Feather v. SSM Health Care*, 216 F. Supp. 3d 934 (S.D. Ill. 2016) (collecting cases).

Like Judge Robreno before him, Judge Mihm rejected Mathias's argument that § 1132(e)(2) gives plan beneficiaries a statutory right to their choice of venue. He observed that forum-selection clauses are "not inconsistent with the purposes of ERISA generally or its venue statute in particular." The judge went on to explain that a forum-selection clause like the one at issue here "allows a plaintiff access to federal courts when it provides for venue in a federal court" and "promotes other ERISA policies, including uniformity of administration and reducing costs, which benefit all participants and beneficiaries."

Our review of Judge Mihm's order necessarily incorporates the merits of Judge Robreno's original transfer decision. *Alexander v. Erie Ins. Exch.*, 982 F.2d 1153, 1156 (7th Cir. 1993); *see also Posnanski v. Gibney*, 421 F.3d 977, 980–81 (9th Cir. 2005); *SongByrd, Inc. v. Estate of Grossman*, 206 F.3d 172, 177 (2d Cir. 2000); *Hill v. Henderson*, 195 F.3d 671, 677 (D.C. Cir. 1999). Law-of-the-case principles do not insulate the question from appellate review. *Christianson*, 486 U.S. at 817; *Minch v. City of Chicago*, 486 F.3d 294, 302 (7th Cir. 2007); *McMasters v. United States*, 260 F.3d 814, 818 (7th Cir. 2001). If the district court applied the wrong standard, mandamus relief may be appropriate. *Atl. Marine Constr. Co. v. U.S. Dist. Court for W. Dist. of Tex.*, 134 S. Ct. 568, 575 (2013).

As in all mandamus proceedings, however, the party seeking mandamus in the transfer context "has an uphill fight"; the writ may be used to reverse a transfer decision "only if the applicant can show that the transfer order is a 'violation of a clear and indisputable legal right, or, at the very least, is patently erroneous.'" *Hudson*, 710 F.3d at 718–19 (quoting *In re Rhone-Poulenc Rorer, Inc.*, 51 F.3d 1293, 1295 (7th Cir. 1995) (alteration omitted)); *see also In re Balsimo*, 68 F.3d

185, 187 (7th Cir. 1995). That steep standard has not been met here.

The transfer statute provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." § 1404(a). The Supreme Court has recently reiterated that § 1404(a) is the proper "mechanism for enforcement of forum-selection clauses that point to a particular federal district." *Atl. Marine*, 134 S. Ct. at 579. But the § 1404(a) analysis is much narrower in this context:

> In the typical case not involving a forum-selection clause, a district court considering a § 1404(a) motion (or a *forum non conveniens* motion) must evaluate both the convenience of the parties and various public-interest considerations. Ordinarily, the district court would weigh the relevant factors and decide whether, on balance, a transfer would serve "the convenience of parties and witnesses" and otherwise promote "the interest of justice." § 1404(a)
>
> The calculus changes, however, when the parties' contract contains a valid forum-selection clause, which "represents the parties' agreement as to the most proper forum." *Stewart* [*Org., Inc. v. Ricoh Corp.*, 487 U.S. 22, 31 (1988)]. The "enforcement of valid forum-selection

> clauses, bargained for by the parties, protects their legitimate expectations and furthers vital interests of the justice system." *Id.* at 33 (Kennedy, J., concurring). For that reason, and because the overarching consideration under § 1404(a) is whether a transfer would promote "the interest of justice," "a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases." *Id.*

Atl. Marine, 134 S. Ct. at 581.

Atlantic Marine clarified that "[t]he presence of a valid forum-selection clause requires district courts to adjust their usual § 1404(a) analysis in three ways. First, the plaintiff's choice of forum merits no weight." *Id.* Second, and relatedly, "a court evaluating a defendant's § 1404(a) motion to transfer based on a forum-selection clause should not consider arguments about the parties' private interests." *Id.* at 582. The Court explained that a contractual forum-selection clause is an agreed-upon predispute allocation of the plaintiff's "venue privilege" and the parties' respective private interests. *Id.* at 581–82. Accordingly, to resolve a transfer motion in this context, "a district court may consider arguments about public-interest factors only." *Id.* at 582. And because public-interest factors will "rarely defeat" a transfer to the contractually chosen forum, "the practical result is that forum-selection clauses should control except in unusual cases." *Id.*

Although ERISA plans are a special kind of contract and courts are attentive to the statutory goal of protecting beneficiaries, an ERISA plan is nonetheless a contract. *Larson v. United Healthcare Ins. Co.*, 723 F.3d 905, 911 (7th Cir. 2013) (explaining that a claim for benefits "is governed by a federal common law of contract keyed to the policies codified in ERISA"); *Herzberger v. Standard Ins. Co.*, 205 F.3d 327, 330 (7th Cir. 2000). And the Supreme Court held long ago—well before *Atlantic Marine* limited the scope of the § 1404(a) analysis in this context—that contractual forum-selection clauses are presumptively valid even in the absence of arm's-length bargaining. *Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593–95 (1991).

What all this means for the present dispute is that the forum-selection clause in the Caterpillar plan is controlling *unless* ERISA invalidates it. The relevant part of ERISA's venue provision states:

> Where an action under this subchapter is brought in a district court of the United States, 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,* and process may be served in any other district where a defendant resides or may be found.

§ 1132(e)(2) (emphasis added). Nothing in this text *expressly* invalidates forum-selection clauses in employee-benefits plans.

Mathias argues that ERISA's broad beneficiary-protection purpose requires us to read this language as conferring on plan beneficiaries a statutory right to choose any of the listed venues without regard to a forum-selection clause contained in the governing plan documents. This beneficiary right of venue choice, the argument goes, maximizes ERISA's goal of "protect[ing] … the interests of participants … by providing … ready access to the Federal courts." 29 U.S.C. § 1001(b). With support from the Secretary of Labor, Mathias argues that forum-selection clauses in plan documents are categorically invalid because they deprive plan participants and beneficiaries of the right to select from the menu of venue options offered by § 1132(e)(2).

The Sixth Circuit has carefully considered and rejected this interpretation of ERISA's venue provision. *Smith*, 769 F.3d at 931–33. At issue in *Smith* was a pension plan's forum-selection clause directing litigation to federal court in Iowa. *Id.* at 925. A beneficiary sued in Kentucky instead, arguing that the plan's forum-selection clause was invalid under § 1132(e)(2). As here, the Secretary of Labor appeared as amicus curiae in support of the beneficiary's position. The Sixth Circuit rejected that view, noting that the statute is not phrased in rights-granting terms: it states only that when a civil action is brought in federal 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." § 1132(e)(2) (emphasis added). This "may be brought" phrasing is entirely permissive, and no other statutory language precludes the parties from contractually narrowing the options to one of the venues listed in the statute. *Smith*, 769 F.3d at 931–32.

The Sixth Circuit also explained that forum-selection clauses channeling litigation to a particular federal court preserve ready access to federal court, consistent with the general policy expressed in § 1001(b). *Id.* at 931. Finally, the court observed that plan language limiting litigation to a single federal district promotes uniformity in decisions interpreting the plan, thus reducing administrative costs for plan sponsors and beneficiaries alike.[3] *Id.* at 931–32.

Though *Smith* was not unanimous, *see id.* at 934–36 (Clay, J. dissenting), we find the majority's reasoning convincing. The Sixth Circuit's analysis is faithful to the statutory text and not inconsistent with the broader statutory policy of maintaining access to federal court. Moreover, the forum-selection clause in the Caterpillar plan funnels litigation to a venue listed in § 1132(e)(2) and so has simply settled on one of the various statutory options. *See Fry v. Exelon Corp. Cash Balance Pension Plan*, 571 F.3d 644, 646 (7th Cir. 2009) ("Employers are entitled to vary by contract those aspects of pension plans ERISA makes variable … ."). As the Sixth Circuit explained in *Smith*, ERISA's statutory scheme "is built around reliance on the face of written plan documents," 769 F.3d at 929–30 (quoting *US Airways, Inc. v. McCutchen*, 133 S. Ct. 1537, 1548 (2013)), and sponsoring employers and plan administrators are given significant leeway in the design of benefits plans.

In support of their position, Mathias and the Secretary direct us to an obscure decision of the Supreme Court: In *Boyd v. Grand Trunk Western Railroad Co.*, 338 U.S. 263 (1949) (per curiam), the Court invalidated a contractual

[3] The Sixth Circuit declined to defer to the views of the Secretary of Labor. *See Smith v. Aegon Cos. Pension Plan*, 769 F.3d 922, 926–29 (7th Cir. 2014). The Secretary has not argued for agency deference in this case.

forum-selection clause as inconsistent with the Federal Employers' Liability Act ("FELA"). *Boyd* involved a railroad employee who was injured on the job and twice received advances from his employer while he was recuperating, each time signing a stipulation that any suit regarding the accident would be brought in the county or district where the injury occurred. *Id.* at 263–64.

In a brief per curiam opinion, the Court invalidated the stipulated forum clause, noting that the agreements were signed after the employee was injured and limited fora otherwise available under FELA. *Id.* at 265–66. This limitation, the Court held, violated a provision in FELA voiding "[a]ny 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 created by this Act." *Id.* at 265.

Boyd is a bit of a relic, but it has not been overruled. Mathias and the Secretary urge us to give it controlling force here. We're not inclined to extend *Boyd* to modern forum-clause jurisprudence. *Boyd* was decided in an era of marked judicial suspicion of contractual forum selection. The Court has since adopted "a more hospitable attitude toward forum-selection clauses." *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 10 (1972). Indeed, as *Atlantic Marine* holds, a contractual choice of forum is now considered controlling "except in unusual cases." 134 S. Ct. at 582.

More to the point here, *Boyd* sheds no light on the proper interpretation of ERISA's venue provision. As we've explained, nothing in the text of § 1132(e)(2) precludes the parties from contractually channeling litigation to a particular federal district. Nor is contractual forum selection incompatible with ERISA's policy goals more generally. "ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans." *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459, 2470 (2014) (quoting *Conkright v. Frommert*, 559 U.S. 506, 517 (2010)); *see also Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996) (explaining that "courts may have to take account of competing congressional purposes" when examining to what extent ERISA requires departing from common-law trust requirements). As the Sixth Circuit observed in *Smith*, forum-selection clauses promote uniformity in plan administration and reduce administrative costs and in that sense are consistent with the broader statutory goals of ERISA. 769 F.3d at 931–32.

The forum-selection clause in the Caterpillar plan chooses from among the venue options listed in § 1132(e)(2), and nothing in the statute makes that choice invalid. Accordingly, we hold that the plan's forum-selection clause is enforceable.[4] Mathias's petition for a writ of mandamus is DENIED.

---

[4] The Eighth Circuit recently considered a very similar petition for a writ of mandamus in which the petitioner argued that a contractual forum-selection clause was invalid under ERISA's venue provision and sought retransfer of the case. *In re Clause*, No. 16-2607 (8th Cir. Sept. 27, 2016), *cert. denied*, 84 U.S.L.W. 3344 (U.S. Jan. 17, 2017) (No. 16-641). After consideration of an amicus curiae brief filed by the Secretary of Labor, the Eighth Circuit denied the petition without explanation. *Id.*

RIPPLE, *Circuit Judge*, dissenting. My esteemed colleagues have voted to deny the petition. Their opinion, as well as the thoughtful opinions of other courts that have taken that position, demonstrate that their view is a very defensible perspective on a very difficult issue.[1] Nevertheless, I part company

---

[1] As my colleagues have noted, the question presented here has been presented previously in many district courts throughout the country, and the majority have determined that forum selection clauses are not inconsistent with ERISA. Among our sister circuits, only the Sixth has considered the question. In *Smith v. Aegon Cos. Pension Plan*, 769 F.3d 922 (6th Cir. 2014), *cert. denied*, 136 S. Ct. 791 (2016), the panel held, over a dissent, that the clause was enforceable. It first considered the views of the Secretary and concluded that they were entitled to no deference both because the question was one of pure statutory interpretation and because the opinion expressed by the Secretary had not been consistently asserted over the life of the statute. Turning to the statutory question without the benefit of the Secretary's position, the court concluded that ERISA's venue provision is permissive, because its language provides only that an ERISA action "*may* be brought" in one of several districts and that Congress nowhere prohibited the parties from narrowing those options. *Id.* at 932. The court further reasoned that forum selection clauses are consistent with ERISA's statutory scheme because it is built around reliance on the face of written plan documents and because employers are given large leeway in the design of pension plans. *Id.* at 929–30 (*citing US Airways, Inc. v. McCutchen*, 133 S. Ct. 1537, 1548 (2013)).

Judge Clay dissented. He concluded that the public policy embodied in ERISA was designed to protect the interests of plan participants and the statute explicitly set forth as an enacted purpose to remove jurisdictional and procedural obstacles. *Id.* at 935–36 (Clay, J., dissenting). He wrote that the broad venue provision

> is indispensable for many of those individuals whose rights ERISA seeks to protect, since claimants in suits for

because, in my view, the statutory text of ERISA, read in context and in light of the purposes of the statute, gives plan participants certain procedural protections, including a right to select from among the venues enumerated in the statute.

Mr. Mathias admittedly has to face an array of general principles that militate against acceptance of his position. First, although federal law once disfavored forum selection clauses, after the Supreme Court's decision in *The Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1 (1972), courts have accepted them as prima facie valid. Indeed, the Supreme Court has not required forum selection clauses to be the result of arms-length negotiations in order to be enforceable. *See Carnival Cruise Lines, Inc. v. Shute*, 499 U.S. 585, 593–95 (1991). General principles governing the transfer of cases within the federal system also militate against his position, as outlined in the majority opinion. *See* Op. at 7–8 (discussing *Atl. Marine Constr. Co., Inc. v. United States Dist. Court for the W. Dist. of Tex.*, 134 S. Ct. 568 (2013)). Mr. Mathias also must contend with the basic principle of ERISA interpretation that the Plan must be administered according to the plan documents, and, here, the documents plainly state that suit can be brought only in the Central District of Illinois.

In the face of these general principles, Mr. Mathias, along with the Secretary of Labor, contend that the forum selection

---

> plan benefits—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.

Id. at 935.

clause in this case is *invalid*, and that therefore the district court should have employed the traditional 1404(a) inquiry without any reference to the forum selection clause in the plan documents. Their core contention is that forum selection clauses in ERISA plan documents cannot narrow the venues available to a plaintiff so as to exclude a venue specifically authorized by the ERISA venue provision. That provision states that a challenge under the relevant subchapter of ERISA "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, and process may be served in any other district where a defendant resides or may be found." 29 U.S.C. § 1132(e)(2). The Secretary views this provision as intentionally protective of the ERISA beneficiary. It ensures that the beneficiary has recourse to the federal court at a place near where the benefit was due. While he acknowledges that fiduciaries must "discharge … duties … in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of" the statute, *id.* § 1104(a)(1), he points out that the statute ought to be read "to protect … the interests of participants in employee benefit plans … by providing for appropriate remedies, sanctions, and ready access to the Federal courts," *id.* § 1001(b). Therefore, he argues, the special venue provisions cannot be cancelled out by agreement between the employer and the plan.

I think there is merit in the Secretary's view. Certainly, the Supreme Court's cases have sanctioned the widespread use of forum selection clauses. But, as the Supreme Court has made clear, "[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." *The Bremen*, 407 U.S. at 15. In my view, a contractual clause that restricts the right of an ERISA plan participant to an action in a forum far away from his home and his place of employment[2] with the defendant contravenes the strong public policy embodied in ERISA itself. I am persuaded by the opinion of Judge Torresen in the District of Maine, in *Dumont v. PepsiCo, Inc.*, No. 1:15-cv-469-NT, -- F. Supp. 3d --, 2016 WL 3620736 (D. Me. June 29, 2016). As she notes, ERISA was enacted in 1974 against a backdrop of public dissatisfaction with the private pension system. The subchapter before us in the present action,

> entitled "Protection of Employee Benefit Rights[,]" sets forth the Congressional findings and contains a declaration of policy. 29 U.S.C. § 1001. In enacting ERISA, Congress found that the "continued well-being and security of millions of employees and their dependents are directly affected by [employee benefit plans]." Id. § 1001(a). Congress further declared that a policy of ERISA was "to protect … the interests of participants in employee benefit plans and their beneficiaries … by providing for appropriate

[2] Mr. Mathias, a resident of Hanover, Pennsylvania, employed by Caterpillar most recently in York, Pennsylvania, brought this action against his employer and the relevant plans in the Eastern District of Pennsylvania. Both of these cities are within the confines of the Middle District of Pennsylvania. Mr. Mathias claimed venue was proper in the Eastern District under the clause of the ERISA venue provision allowing an action "where a defendant resides or may be found," 29 U.S.C. § 1132(e)(2), citing Caterpillar's distributorships throughout the Eastern District. See R.7-3 at 1–2.

> remedies, sanctions, and *ready access to the Federal Courts*." Id. § 1001(b) (emphasis added).

Dumont, 2016 WL 3620736, at *7 (second, third, and fourth alterations in original). In ERISA, Congress chose to enact a specific venue provision, rather than relying on the general federal venue rules provided by § 1391. As Judge Torresen notes, the Supreme Court considered a similarly worded special venue provision under the Federal Employers' Liability Act in *Boyd v. Grand Trunk Western Railroad Co.*, 338 U.S. 263 (1949), and concluded that "[t]he right to select the forum granted in [FELA's venue provision] is a substantial right. It would thwart the express purpose of the [statute] to sanction defeat of that right by the device at bar." *Id.* at 266. The "device at bar" that the Court considered was an *individually negotiated instrument* between an injured worker and his employer, following the injury, that limited the worker's choice of venue in exchange for money. In short, in considering a different protective statute, the Court found a "right" to the venue that could not be abrogated by a directly negotiated contract for consideration with the beneficiary. Although *Boyd* was decided prior to *The Bremen* and in an era of skepticism toward forum selection clauses, its holding on the question of statutory interpretation remains intact. Although the Sixth Circuit concluded that the "permissive" language of the ERISA venue provision did not create a right to the enumerated venues, *see Smith v. Aegon Companies Pension Plan*, 769 F.3d 922, 932 (6th Cir. 2014), such a decision is hard to square with *Boyd*'s holding.

As Judge Torresen notes, an ERISA plan beneficiary is in a unique and difficult position with respect to a forum selection clause embedded in the plan documents. An ERISA beneficiary has *no* role in the negotiation or even the acceptance of the plan terms. Unlike the plaintiffs in cases like *Shute*, who chose to enter a contract as a party, even though they did not negotiate the terms in an arms-length transaction, an ERISA beneficiary is, as a practical matter, simply a *beneficiary* of an agreement that other parties have negotiated and accepted.

Although I reach this result on the basis of my own interpretation of the statute, I hasten to add that I also am persuaded that the Secretary's interpretation is indeed entitled to respect. Although "[c]ertain aspects of statutory interpretation remain within the purview of the courts" rather than "properly understood as delegated by Congress to an expert and accountable administrative body," *Negusie v. Holder*, 555 U.S. 511, 531 (2009) (Stevens, J., concurring in part and dissenting in part), I believe that we need to give some respect to the interpretation of the officer charged with the administration of the statute. While I would reach the same result on the basis of my own analysis, I respectfully acknowledge the Secretary's expertise with respect to the statute.

Accordingly, I respectfully part company with my esteemed colleagues**.** In my view, the forum selection clause at issue is invalid and unenforceable because it is inconsistent with the forum selection rights protected by § 1132. I therefore conclude that mandamus relief is appropriate in the present case. I would direct the district court to retransfer the case for adjudication.

APPENDIX B

U.S. District Court
CENTRAL DISTRICT OF ILLINOIS (Peoria)
CIVIL DOCKET FOR CASE #: 1:16-cv-01323-MMM-JEH

Mathias v. Caterpillar, Inc. et al
Assigned to: Judge Michael M. Mihm
Referred to: Magistrate Judge Jonathan E. Hawley
Case in other court: Pennsylvania Eastern, 2:16-cv-01846
Cause: 29:1132 E.R.I.S.A.-Employee Benefits

Date Filed: 08/30/2016
Jury Demand: None
Nature of Suit: 791 Labor: E.R.I.S.A.
Jurisdiction: Federal Question

Date Filed	#	Docket Text
10/19/2017		TEXT ONLY ORDER RE: Case Status. The United States Court of Appeals for the Seventh Circuit issued its Order denying Plaintiff's Petition for Writ of Mandamus. (ECF No. 30-1). Consistent with the previous Order of the Seventh Circuit (ECF No. 28), the stay in this matter is lifted, and the Defendants are directed to file answer or otherwise plead within 30 days from the date of this Order. This matter is referred to the Magistrate Judge for further handling. Entered by Judge Michael M. Mihm on 10/19/2017. (MMM4, ilcd) (Entered: 10/19/2017)

APPENDIX C

U.S. District Court
CENTRAL DISTRICT OF ILLINOIS (Peoria)
CIVIL DOCKET FOR CASE #: 1:16-cv-01323-MMM-JEH

Mathias v. Caterpillar, Inc. et al
Assigned to: Judge Michael M. Mihm
Referred to: Magistrate Judge Jonathan E. Hawley
Case in other court: Pennsylvania Eastern, 2:16-cv-01846
Cause: 29:1132 E.R.I.S.A.-Employee Benefits

Date Filed: 08/30/2016
Jury Demand: None
Nature of Suit: 791 Labor: E.R.I.S.A.
Jurisdiction: Federal Question

Date Filed	#	Docket Text
11/03/2017	34	TEXT ORDER denying 33 Plaintiff's Motion to Stay. The Plaintiff seeks to stay this case pending the filing of, and the United States Supreme Court's disposition of, a petition for certiorari before that Court. Given the statistical unlikelihood of a grant of a petition for certiorari in this case, or any other case for that matter, the case before this Court should not be delayed on the slim chance that the United States Supreme Court will accept review. Should the United States Supreme Court grant the petition for certiorari, then this Court will reconsider the Plaintiff's motion. Entered by Magistrate Judge Jonathan E. Hawley on 11/3/2017. (Hawley, Jonathan) (Entered: 11/03/2017)

APPENDIX D

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION

GEORGE W. MATHIAS,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 16-1323**
	)	
CATERPILLAR, INC., et al.,	)	
	)	
Defendants.	)	

ORDER

This matter is now before the Court on Plaintiff George W. Mathias' ("Plaintiff" or "Mathias") Motion to Re-Transfer (ECF No. 19) this matter back to the United Stated District Court for the Eastern District of Pennsylvania. For reasons stated herein, the Motion is DENIED. The Court lifts the stay in this proceeding. Pursuant to the Magistrate Judge's Order dated October 11, 2016, any Rule 12 motions or answer is due 30 days from the date of this Order.

BACKGROUND

On April 19, 2016, Plaintiff filed his Complaint in the Eastern District of Pennsylvania pursuant to the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., against Caterpillar, Inc., Caterpillar Inc. Group Insurance Plan A, Caterpillar, Inc. Group Insurance Plan B, and Caterpillar Inc. Retiree Group Insurance Plan (collectively "Defendants") alleging, among other things, the Defendants arbitrarily and capriciously terminated his health insurance coverage benefits. (ECF No. 1).

On July 7, 2016, Defendants moved to transfer (and dismiss) this case to the Central District of Illinois arguing that the Caterpillar Retiree Group Insurance Plan, an ERISA-governed employee benefit plan, contained a forum selection clause that required all actions brought under the plan to be brought in the United States District Court for the Central District of Illinois. (ECF No. 6). Plaintiff opposed the Motion. (ECF No. 7).

On August 29, 2016, the Honorable Judge Eduardo C. Robreno of the Eastern District of Pennsylvania entered his Order (ECF No. 16) and accompanying Memorandum (ECF No. 15) transferring this case to this Court[1]. In his Memorandum, Judge Robreno employed a two-part analysis – (1) determining whether the forum selection clause is valid and enforceable; and (2) whether pursuant to 28 U.S.C. § 1404(a), there are "extraordinary circumstances" against enforcing the forum selection clause – finding:

> [T]he Court is satisfied that he forum selection clause is not fundamentally unfair and that Plaintiff received adequate notice of the presence of the forum selection clause in the Plan. The Defendant was not obligated to provide Plaintiff with a specific form of notice, and under the circumstances of this case, deficiency of notice cannot be a basis for finding the forum selection clause unenforceable. For these reasons, the Court concludes that the forum selection clause in the RGIP is valid and enforceable.
>
> ***
>
> Because Plaintiff has failed to overcome the presumption in favor of enforcing the forum selection cause, the Court rules that the clause should be enforced.

(ECF No. 15 at 9, 20).

On August 30, 2016, this case was docketed in this Court. (ECF No. 17). On October 6, 2016, Plaintiff filed the instant Motion to Re-Transfer this case back to the Eastern District of Pennsylvania. (ECF No. 19). On October 11, 2016, Magistrate Judge Jonathon Hawley entered an Order staying all further proceedings in this matter pending the final resolution on the Plaintiff's Motion to Re-Transfer. (ECF No. 22). Defendants have filed their opposition to the Motion. (ECF No. 23). Plaintiff filed a Motion for Leave to File a Reply Brief. (ECF No. 24). The Court

[1] On August 17, 2016, Judge Rebreno held a hearing on the Motion and determined he would only consider the Motion to Transfer find that the Defendants' Motion to Dismiss would be better addressed in the transferee forum in the event the Motion to Transfer was granted.

has considered the Reply[2]. (ECF No. 25). This Order follows.

DISCUSSION

This case comes before the Court on a procedural posture that should be noted. Plaintiff, explaining that he does not have an avenue to directly seek review on the Eastern District of Pennsylvania's grant of the Defendants' Motion, brings this matter on a Motion to Re-Transfer in order to preserve appellate rights. *See Alexander v. Erie Ins. Exch.*, 982 F.2d 1153, 1156 (7th Cir. 1993) ("Our case law makes clear that we cannot review the decision of a court in another circuit to transfer a case to a district court in this circuit. We may review such a transfer only if a party moves, in the transferee court in this circuit, to retransfer the case."). Nonetheless, the purpose of Plaintiff's Motion is, to again, argue against the transfer of this case from the Eastern District of Pennsylvania. In that regard, the Plaintiff argues:

> [T]his case was transferred under an improper forum-selection clause that violates ERISA. While the Pennsylvania court granted that transfer, its order failed to account for ERISA's plain text, statutory structure, legislative purpose, or historical backdrop. Contrary to that court's view, the question is not whether this particular forum-selection clause is fair, but whether it is unenforceable under the controlling statutory scheme. This means that considerations relevant to generic forum-selection clauses are irrelevant here: those clauses receive deference when they are "valid," a predicate consideration that this clause readily fails. Atl. Marine Constr. Co., Inc. v. U.S. Dist. Ct. for W. Dist. of Tex., 134 S. Ct. 568, 581 (2013) (emphasis added). By failing to fully appreciate this predicate question of law, the Pennsylvania court wrongly transferred the case to this district. Its decision implicates a federal statutory question of profound importance, one that threatens to destroy the practical ability of ERISA beneficiaries to enforce their statutory rights in any court. This Court should accordingly recognize that the Plan's forum-selection clause is invalid, and retransfer the case back to Pennsylvania.

(ECF No. 19 at 7-8). The arguments made by the Plaintiff are not novel. In fact, similar arguments have been presented to several District Courts. There is, however, the lack of any binding precedent on this Court by way of the Supreme Court or the Seventh Circuit Court of Appeals.

[2] Plaintiff uses his Reply to address Defendants' argument that venue was never proper in the Eastern District of Pennsylvania. The Court need not consider this issue since it finds the forum selection clause is enforceable.

Recently, Judge Nancy J. Rosenstengel of the Southern District of Illinois outlined the Courts that have found that forum selection clauses in ERISA plans were enforceable and not inconsistent with the purposes of ERISA generally or its venue statute in particular. *See LISA FEATHER, on behalf of herself, individually, & on behalf of all others similarly situated, & on behalf of the SSM Plan, Plaintiff, v. SSM HEALTH CARE, PENSION COMMITTEE FOR THE RETIREMENT PLAN FOR SSM EMPLOYEES, JOHN & JANE DOES 1-40, Members of the Pension Comm. for the Ret. Plan for SSM Employees, & JOHN & JANE DOES 21-40, Defendants.*, No. 16-CV-393-NJR-SCW, 2016 WL 6235772, at *4 (S.D. Ill. Oct. 25, 2016) *citing Mroch v. Sedgwick Claims Mgmt. Servs., Inc.*, No. 14-CV-4087, 2014 WL 7005003, at *3 (N.D. Ill. Dec. 10, 2014); *Loeffelholz v. Ascension Health, Inc.,* No. 13–CV– 1495, 2014 WL 3817289, at *4 (M.D. Fla. June 25, 2014); *Haughton v. Plan Adm'r of Xerox Corp. Ret. Income Guar. Plan,* 2 F.Supp.3d 928 (W.D.La. 2014); *Price v. PBG Hourly Pension Plan*, No. 12-15028, 2013 WL 1563573, at *2 (E.D. Mich. Apr. 15, 2013); *Marin v. Xerox Corp.*, 935 F.Supp.2d 943, 946–47 (N.D. Cal. 2013); *Scaglione v. Pepsi-Cola Metropolitan Botteling Co. Inc.*, 884 F. Supp. 2d 642 (N.D. Ohio 2012); *Drapeau v. Airpax Holdings, Inc. Severance Plan*, No. CIV. 11-64 DWF/JSM, 2011 WL 3477082, at *3 (D. Minn. Aug. 9, 2011)**;** *Williams v. CIGNA Corp.*, No. 5:10-CV-00155, 2010 WL 5147257, at *4 (W.D. Ky. Dec. 13, 2010); *Testa v. Becker*, No. CV10638GHKFMOX, 2010 WL 1644883, at *5 (C.D. Cal. Apr. 22, 2010); *Angel Jet Servs., L.L.C. v. Red Dot Bldg. Sys.' Employee Ben. Plan*, No. CV-09-2123-PHX-GMS, 2010 WL 481420, at *1 (D. Ariz. Feb. 8, 2010); *Rodriguez v. PepsiCo Long Term Disability Plan*, 716 F. Supp. 2d 855, 861 (N.D. Cal. 2010); *Sneed v. Wellmark Blue Cross & Blue Shield of Iowa*, No. 1:07CV292, 2008 WL 1929985, at *2 (E.D. Tenn. Apr. 30, 2008); *Laasko v. Xerox Corp.*, 566 F. Supp. 2d 1018, 1023 (C.D. Cal. 2008); *Klotz v. Xerox Corp.*, 519 F. Supp. 2d 430, 435–436 (S.D. N.Y. 2007); *Rogal v. Skilstaf, Inc.*, 446 F. Supp. 2d 334, 338 (E.D.

Pa. 2006); *Schoemann ex rel. Schoemann v. Excellus Health Plan, Inc*., 447 F. Supp. 2d 1000, 1007 (D. Minn. 2006).

Judge Rosenstengel acknowledged that there were a few Courts that have held a forum-selection clause in an ERISA plan was invalid because it contravenes ERISA. *Id. citing Dumont v. PepsiCo, Inc.*, No. 1:15-CV-369-NT, 2016 WL 3620736, at *10 (D. Me. June 29, 2016); *Coleman v. Supervalu, Inc. Short Term Disability Program*, 920 F. Supp. 2d 901 (N.D. Ill. 2013); *Nicolas v. MCI Health and Welfare Plan No. 501*, 453 F. Supp. 2d 972, 974 (E.D. Tex. 2006).

The Court has considered Plaintiff's argument that ERISA establishes a beneficiaries' statutory right to their choice of venue. However, as noted by several Courts holding that forum selections clauses are enforceable and not inconsistent with the purposes of ERISA generally or its venue statute in particular, a forum selection clause allows a plaintiff access to federal courts when it provides for venue in a federal court and further promotes other ERISA policies, including uniformity of administration and reducing costs, which benefit all participants and beneficiaries. *Id*. While Plaintiff urges this Court to adopt the minority opinion in his case, the Court declines to do so. For reasons outlined in the majority opinions provided above, Judge Robreno's Order and Memorandum, and in this Order, this Court finds no defect in the Eastern District Court's opinion that the forum selection clause contained in the Retiree Group Insurance Plan is valid and enforceable. Indeed, this Court finds the same. Notably, Plaintiff does not raise any other previously explored arguments that there are "extraordinary circumstances" or other reasons against enforcing the forum selection clause. (*See* ECF No. 15 at 12, Plaintiff argued "the lack of notice and arm's length negotiation on his part render[ed] the forum selection clause unfair and unenforceable."). Those arguments appear to be now abandoned.

Finally, Plaintiff requests that this Court stay this proceeding pending an appellate review. This Court declines to do so. The Court recognizes, as noted above, there is no binding precedent on this Court. Nonetheless, the majority of Courts have upheld the validity of a forum selection clause and the Court is inclined to believe the Plaintiff's chances of success on appeal would not be high. Moreover, there is no indication at this time that the Seventh Circuit would undertake an interlocutory appeal to resolve this issue. Finally, as noted by the Defendants, these types of cases are typically resolved on the administrative record and subsequent briefing by the Parties. The compiling of the administrative record, and argument on the same, will occur regardless of the forum. In the end, the Court finds that a continued stay in this proceeding is not warranted. Accordingly, the stay is lifted and any Rule 12 motions or answer is now due 30 days from the date of this Order.

CONCLUSION

For reasons stated herein, Plaintiff George W. Mathias' Motion to Re-Transfer (ECF No. 19) is DENIED. The stay is now lifted. Pursuant to the Magistrate Judge's Order dated October 11, 2016, any Rule 12 motions or answer is due 30 days from the date of this Order.

ENTERED this 27th day of October 2016.

/s/ Michael M. Mihm
Michael M. Mihm
U.S. District Court Judge

APPENDIX E

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GEORGE W. MATHIAS,	:	CIVIL ACTION
	:	NO. 16-1846
Plaintiff,	:	
	:	
v.	:	
	:	
CATERPILLAR, INC., et al.,	:	
	:	
Defendants.	:	

M E M O R A N D U M

EDUARDO C. ROBRENO, J. August 29, 2016

This Employee Retirement Income Security Act, or ERISA, action arises out of a billing dispute related to the retirement of Plaintiff George Mathias. Plaintiff alleges that his health insurance plan, Defendant Caterpillar, Inc. Retiree Group Insurance Plan (the "RGIP"), which is sponsored by Defendant Caterpillar, Inc., mistakenly under-billed him for premium payments for several years. Then, when Plaintiff could not pay the accumulated sum that he owed, the RGIP improperly terminated his benefits.

Before the Court is Defendants' motion to transfer this matter to the United States District Court for the Central District of Illinois, based on a forum selection clause in the RGIP. ECF No. 6. In the alternative, Defendants argue that this Court is an "inappropriate forum," because (1) Plaintiff lives and worked in York County, Pennsylvania, which is located within the Middle District of Pennsylvania, and (2) the administration of the ERISA plans primarily occurred in the Central District of Illinois, where Caterpillar's central offices are located. Still in the alternative, Defendants also move to dismiss Plaintiff's claims pursuant to Federal Rule of Civil Procedure 12(b)(6) as time-barred and otherwise not cognizable under ERISA. For the reasons that follow, the Court will enforce the RGIP's forum selection clause and transfer this matter, pursuant to 28 U.S.C. § 1404(a), to the Central District of Illinois.

I. FACTUAL BACKGOUND

Plaintiff, who currently resides in Hanover, Pennsylvania, worked as a machine tool operator for Defendant Caterpillar, Inc., beginning in 1978, most recently in Caterpillar's York, Pennsylvania, plant. Compl. ¶¶ 1, 13. Defendants Caterpillar, Inc.; Caterpillar, Inc. Group Insurance Plan A; Caterpillar, Inc. Group Insurance Plan B; and Caterpillar, Inc. Retiree Group Insurance Plan are the "plan administrator" and "plan sponsor" within the meaning of ERISA, 29 U.S.C. § 1002(16)(A), (B). Id. ¶ 4. Caterpillar, Inc. is an Illinois corporation with its headquarters in Illinois. Id. ¶ 3.

In the Complaint, Plaintiff alleges that he "went out on disability in 1997" due to chronic, severe chest pain that he suffered after undergoing a quintuple coronary artery bypass surgery, which required him to take narcotic drugs. Id. ¶¶ 13-17. From 1997 until approximately 2013, Plaintiff was covered "by Defendant's health insurance plans as an employee on long-term disability, and [paid] insurance premiums at the disabled employee rate." Id. ¶ 18.

On September 5, 2012, Plaintiff retroactively retired effective October 1, 2009. Compl. ¶¶ 28(a), 31; Compl. Ex. O at 2. Due to an "administrative oversight," Caterpillar continued to provide Plaintiff with "health care benefits under [one of the employee health care plans] as an employee on disability" through May 2013. Compl. ¶ 33(a), (c). For the period from October 1, 2009, to May 2013, Caterpillar billed Plaintiff for health insurance benefits at the lower employee premium rate, rather than at the higher premium rate charged to retirees. Id. ¶¶ 31-32.

In May 2013, Caterpillar corrected the administrative error, and properly classified Plaintiff as a retiree on and after September 30, 2009. Id. ¶¶ 28(a), 33(c). Caterpillar then refunded Plaintiff his employee premiums and billed him for the higher retiree premiums he should have been paying beginning on October 1, 2009, the date of his retirement. Id. ¶¶ 21, 33; Ex.

O at 3. The amount Plaintiff owed was $9,513.13. Compl. ¶ 33(d); Ex. O at 3.

Faced with this invoice, Plaintiff filed an administrative claim under the RGIP. Id. Ex. O at 1. On October 1, 2013, the Plan Administrator denied the claim. Id. The denial letter explained that upon Plaintiff's retirement, he became eligible for retiree benefits, which required higher premiums. Id. at 2-3. Although the Plan Administrator admitted that the billing error resulted from an "administrative oversight," Plaintiff was nonetheless obligated to pay the premium amounts he should have paid as a retiree. Id. at 3. The Plan Administrator extended the deadline for Plaintiff to make payment until a "final decision is made on appeal if Mr. Mathias files an appeal." Id. at 3 n.5.

On March 28, 2014, Plaintiff filed an appeal of the denial. On April 25, 2014, the Caterpillar Benefits Appeals Committee denied the appeal. Kyleen Martin Decl. Ex. F at 1, ECF Nos. 6-10.[1] The Committee determined that the administrative mistakes "were the result of processing a retroactive retirement, which is an atypical process," and that Plaintiff

[1] At the August 17, 2016 hearing on the motion to dismiss, Plaintiff conceded that the documents attached to Kyleen Martin's Declaration are true and correct copies of documents contained in Plaintiff's benefits file and that the Court may consider the contents of these documents in deciding Defendants' motion to transfer.

was still required to pay the retiree premium amounts for the period beginning on October 1, 2009. Id. at 3. The Committee further noted that it "has the authority and the fiduciary obligation to interpret and enforce the terms of [the Plans] as written, including the provisions regarding the determination of and the payment of premiums, and the authority and obligations to decide questions of eligibility for participation in the plans." Id.

The appeal denial letter pointed out to Plaintiff that "[p]ursuant to the terms of the [RGIP], any court action to (a) recover plan benefits or (b) enforce or clarify rights under Section 502 of ERISA[] must be commenced within six months after the date of this letter and such action must be brought in the U.S. District for the Central District of Illinois where RGIP is administered." Id. at 6. As discussed below, this directive was contained in the plan documents in effect at the time Plaintiff agreed to accept benefits under the RGIP.

Plaintiff did not file this action until nearly two years later, on April 19, 2016. See ECF No. 1. He brings two counts in his complaint. First, he alleges that the termination of his health care benefits was "arbitrary and capricious" because, among other things, the "accumulation of premiums was due to [Defendants'] own mistake, and not any misconduct on the part of the Plaintiff." Compl. ¶ 41. He therefore seeks payment of his health insurance premiums, reinstatement of his health insurance benefits, reimbursement for health care expenses which should have been paid under the Plan, and attorney's fees and costs pursuant to 29 U.S.C. §§ 1132(a)(1)(B), (a)(3), and (g)(1). Second, he alleges, pursuant to 29 U.S.C. § 1132(l)(1)(A), that Defendants breached their fiduciary duty by, among other things, "ignor[ing] uncontradicted evidence of Mathias having paid all of his premiums required under the circumstances"; "terminat[ing] benefits where there was no evidence to support a change in the Defendants' prior determination of Mathias' status as a beneficiary of the Plan"; "allow[ing] the existence of a conflict of interest, namely, the fact that Defendants' benefits are funded directly out of Caterpillar's operating income, to adversely impact the neutrality of the decision making process"; and "breach[ing] numerous procedural errors that adversely [a]ffected the decision making process." Id. ¶ 44.

II. PROCEDURAL HISTORY

On April 19, 2016, Plaintiff filed an application to proceed in forma pauperis, attaching the Complaint. ECF No. 1. The following day, the Court granted Plaintiff leave to proceed in forma pauperis, and Plaintiff filed his Complaint. ECF Nos. 2, 3.

Defendants filed a joint Motion to Transfer or Dismiss on July 7, 2016. ECF No. 6. Plaintiff filed a response in opposition thereto on July 20, 2016. ECF No. 7.

The Court held a hearing on Defendants' motion on August 17, 2016. ECF Nos. 9, 10. At the hearing, the Court explained that it would consider only the motion to transfer at this time, because arguments made in connection with the motion to dismiss would be better addressed by the transferee forum in the event that transfer was ordered.[2]

III. MOTION TO TRANSFER

Defendants submit that the RGIP contains a forum selection clause requiring this suit to be brought in the United States District Court for the Central District of Illinois. They explain that the RGIP, Martin Decl. Ex. A at § 5, ECF No. 6-3, incorporates the claims procedure found in the Caterpillar Retiree Benefit Plan, id. Ex. C at §§ 10.1-10.5. The claims procedure, in turn, contains a forum selection clause requiring that "[a]ny court action to recover Program benefits, or to enforce or clarify rights under the Program under section 502 of

[2] After the hearing, the Court permitted the parties to submit letter briefs addressing the applicability of the Supreme Court's decision in Atlantic Marine Construction Co. v. United States District Court for the Western District of Texas, 134 S. Ct. 568, 581 (2013), which both parties had failed to consider in their initial submissions. Subsequently, both parties submitted letter briefs in support of their respective positions, which the Court has considered. ECF Nos. 13, 14.

ERISA . . . be brought in the U.S. District Court for the Central District of Illinois, where the Program is administered." Id. at § 10.5. Defendants ask the Court to enforce the RGIP's forum selection clause and transfer this case to the Central District of Illinois. Defs.' Mot. Transfer at 7, ECF No. 6.

Pursuant to 28 U.S.C. § 1404, a district court may transfer an action to any other district "where it might have been brought," so long as the transfer is "[f]or the convenience of parties and witnesses" and "in the interest of justice." 28 U.S.C. § 1404(a).

Ordinarily, in a case not involving a forum selection clause, a court evaluates a § 1404(a) motion using such factors as the convenience of the parties and the relevant public interests. Atl. Marine Constr. Co. v. U.S. Dist. Ct. for W. Dist. Tex., 134 S. Ct. 568, 581 (2013). "The calculus changes, however, when the parties' contract contains a valid forum-selection clause, which 'represents the parties' agreement as to the most proper forum.'" Id. (quoting Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 31 (1988)). Because forum selection clauses are "'bargained for by the parties,'" "'a valid forum-selection clause [should be] given controlling weight in all but the most exceptional cases.'" Id. (alteration in original) (quoting Stewart, 487 U.S. at 33).

Accordingly, courts conduct a two-part analysis when deciding whether to enforce a forum-selection clause.

First, the district court must determine whether the forum selection clause is valid and enforceable.[3] See Atl. Marine, 134 S. Ct. at 581 n.5. Forum selection clauses are "prima facie valid and should be enforced unless enforcement is shown by the resisting party to be 'unreasonable' under the circumstances," or obtained by "fraud, undue influence, or overweening bargaining power." Foster v. Chesapeake Ins. Co., 933 F.2d 1207, 1219 (3d Cir. 1991) (quoting M/S Bremen v. Zapata Off-Shore Co., 407 U.S. 1, 10, 12 (1972)).

Second, a court must consider whether, pursuant to § 1404(a), "extraordinary circumstances" militate against enforcing the forum selection clause. Atl. Marine, 134 S. Ct. at 581. In considering whether such extraordinary circumstances exist, a court may consider "arguments about public-interest factors only," id. at 582, including "'the administrative difficulties flowing from court congestion; the local interest in having localized controversies decided at home; [and] the interest in having the trial of a diversity case in a forum that is at home with the law,'" id. at 581 n.6 (alteration in

3 In Atlantic Marine, the Supreme Court presupposed a valid forum selection clause because validity was not disputed by the parties in that case. 134 S. Ct. at 576, 581 n.5.

original) (quoting Piper Aircraft Co. v. Reyno, 454 U.S. 235, 241 n.6 (1981)). The public interest factors must "overwhelmingly disfavor a transfer" to overcome the forum selection clause. Id. at 583.

Under the Atlantic Marine framework, "the plaintiff's choice of forum merits no weight." Id. at 581. Likewise, the court "should not consider arguments about the parties' private interests." Id. at 582. This is because "[w]hen parties agree to a forum-selection clause, they waive the right to challenge the preselected forum as inconvenient or less convenient for themselves or their witnesses, or for their pursuit of the litigation." Id. at 582; see also Bremen, 407 U.S. at 17-18 ("Whatever 'inconvenience' [the parties] would suffer by being forced to litigate in the contractual forum as [they] agreed to do was clearly foreseeable at the time of contracting.").

Finally, and unlike the burden-shifting paradigm under ordinary § 1404(a) transfers, "the party defying the forum-selection clause . . . bears the burden of establishing that transfer to the forum for which the parties bargained is unwarranted." Id. at 581.

In deciding the motion to transfer, the Court therefore proceeds under the Atlantic Marine framework.

A. The Forum Selection Clause is Valid and Enforceable

First, the Court considers the validity and enforceability of the forum selection clause. Foster, 933 F.2d at 1219.

At the hearing, Defendants argued that Plaintiff agreed to the various terms of the RGIP, including the forum selection clause and other provisions of the claims procedure requirements, in exchange for the receipt of health insurance benefits as a Caterpillar retiree. They noted that Plaintiff was not mandated to accept the health insurance benefits provided by Caterpillar to its retired employees and that many Caterpillar retirees indeed choose not to accept benefits under the RGIP, instead obtaining health insurance benefits through the Medicare program or by buying health care on the marketplace. Plaintiff does not dispute these propositions or otherwise suggest that the RGIP's forum selection clause was procured by "'fraud, undue influence, or overweening bargaining power.'" Id. (quoting Bremen, 407 U.S. at 12).

Instead, Plaintiff argued that he lacked notice of the forum selection clause, because Caterpillar did not provide him with a plan summary document or a copy of the RGIP document containing the claim procedure. Plaintiff further argues that he "had no part" in negotiating the terms of the RGIP. Pl.'s Supp'l Letter Br. at 1, Aug. 17, 2016. Plaintiff suggests that the lack of notice and arm's length negotiations on his part renders the forum selection clause unfair and unenforceable.

First, a forum selection clause need not be the result of arm's length negotiations so long as the clause is fundamentally fair. See Carnival Cruise Lines, Inc. v. Shute, 499 U.S. 585, 595 (1991) (holding that forum selection clauses must be scrutinized for "fundamental fairness," and may be deemed unfair if inclusion of the clause was motivated by bad faith, if "accession to the forum clause" was obtained "by fraud or overreaching."). Here, Plaintiff agrees that his acceptance of the health insurance benefits was entirely voluntary and nothing in the forum selection clause cries of unfairness. Faced with the now increasingly rare situation in which an employer offers its retired former employees health care benefits, Plaintiff had the option of accepting the retirement health insurance benefits provided by Caterpillar or seeking alternate insurance. It was clear that acceptance of the benefits provided by Caterpillar was conditioned upon the acceptance of the terms in the various plan documents.

Second, although Plaintiff maintains that he had no notice of the forum selection clause, he has not pointed to any statutory or regulatory requirement that requires the plan administrator to give actual notice of a forum selection clause to a plan participant or to otherwise highlight in any specific way that the plan contains such a clause. Moreover, he does not contend that the forum selection clause was not in the Plan, that he did not have access to plan documents that would have contained the forum selection clause, or that he was somehow misled as to whether there existed any forum selection clause applicable to his claims. Nor does he allege that the forum selection clause was inserted into the Plan after he accepted its terms, or that he did anything to inquire into the terms of the RGIP and the information was denied by Caterpillar.

Here, where Plaintiff's participation in the Plan was wholly voluntary and Plaintiff demonstrated no interest in the terms of the Plan, Plaintiff now cannot be heard to complain that he was not on notice of the terms of the Plan, which included the forum selection clause.

Accordingly, the Court is satisfied that the forum selection clause is not fundamentally unfair and that Plaintiff received adequate notice of the presence of the forum selection clause in the Plan. The Defendant was not obligated to provide Plaintiff with a specific form of notice, and under the circumstances of this case, deficiency of notice cannot be a basis for finding the forum selection clause unenforceable. For these reasons, the Court concludes that the forum selection clause in the RGIP is valid and enforceable.

B. No Extraordinary Circumstances Exist that Militate Against Enforcing the Forum Selection Clause

Next, pursuant to § 1404(a) and Atlantic Marine, the Court must consider whether "extraordinary circumstances unrelated to the convenience of the parties" militate against enforcing the forum selection clause. Atl. Marine, 134 S. Ct. at 581. As explained above, Plaintiff, "as the party defying the forum-selection clause," id. at 581, has the burden of establishing that the situation is "extraordinary" because of public interest factors. See id. at 581–82.

Attempting to meet this high burden, Plaintiff contends that

> for a company like Cat[erpillar], with world-wide facilities employing thousands of people, to require such employees to travel to Peoria[, Illinois] and retain strange lawyers to represent them in their ERISA disputes with a company ready to 'go to the mat' over disputes it creates unilaterally with employees to whom it gives no notice of the existence of a dispute until the employee inquires as to why his/her health insurance premiums have shot up to 45 times what they were the month before--this to an employee like Plaintiff, who has never set foot in Peoria, let alone Illinois--is more than unreasonable.

Pl.'s Resp. at 3, ECF No. 7. Upon closer prodding at the hearing, Plaintiff honed his argument to two points: first, that forum selection clauses in general contravene ERISA's public policy of providing ready access to the federal courts, and second, that he faces significant physical and financial constraints that make it difficult for him to litigate in the contractual forum. The Court will address each argument in turn.

1. ERISA's Venue Provision and Public Policy

First, Plaintiff argues that ERISA precludes all forum selection clauses in the plans that it governs, because such clauses conflict with ERISA's venue provision. Pl.'s Resp. at 5, ECF No. 7. Because this is the kind of public interest that the Court may properly consider under the second step of the Atlantic Marine analysis, the Court reviews the argument below.

ERISA's venue provision provides that

> [w]here an action under this subchapter is brought in a district court of the United States, 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, and process may be served in any other district where a defendant resides or may be found.

29 U.S.C. § 1132(e)(2).

In support of his argument, Plaintiff points to only one case: Nicolas v. MCI Health & Welfare Plan No. 501, 453 F. Supp. 2d 972 (E.D. Tex. 2006), a case from the Eastern District of Texas. In that case, the court found that "the policies of the ERISA statutory framework super[s]ede the general policy of enforcing forum selection clauses" and therefore declined to enforce the forum selection clause in the ERISA plan at issue in that case. Id. at 974. The court explained that "Congress intended that the venue provision for ERISA claimants be broad" so as to provide them with "'ready access to the [F]ederal courts.'" Id. (quoting 29 U.S.C. § 1001(b)). Specifically, "Congress intended 'to remove jurisdictional and procedural obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibilities.'" Id. (quoting H.R. Rep. No. 93-533, at 17 (1973)). According to the Nicolas court, enforcing the forum selection clause would undermine these policy goals.

However, Nicolas represents the minority view as to the enforceability of forum selection clauses in ERISA plans. The majority of courts that have considered the issue have enforced forum selection clauses in ERISA plans.

The Third Circuit has not yet considered whether forum selection clauses in ERISA plans are enforceable. The only court of appeals to have considered this issue, the Sixth Circuit, held that ERISA plan sponsors are permitted to designate the federal courts in which their participants may bring claims arising under ERISA. Smith v. Aegon Cos. Pension Plan, 769 F.3d 922, 932 (6th Cir. 2014), cert. denied, 136 S. Ct. 791 (2016).

In reaching this conclusion, the Sixth Circuit began with the proposition that "ERISA's 'statutory scheme . . . is built around reliance on the face of written plan documents.'" Id. at 929-30 (quoting US Airways, Inc. v. McCutchen, 133 S. Ct.

1537, 1548 (2013)). It explained that plan administrators and employers "'are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans.'" Id. at 930 (quoting Coomer v. Bethesda Hosp., Inc., 370 F.3d 499, 508 (6th Cir. 2004)).

The Sixth Circuit then noted that a majority of courts that have considered the question of whether ERISA precludes forum selection clauses have upheld the validity of those clauses in ERISA-governed plans. Id. at 931 n.8 (collecting cases). As the Sixth Circuit explained, those courts generally rely on two reasons, both of which the Sixth Circuit found persuasive.

First, ERISA's venue provision, § 1132(e)(2), is permissive, as it provides that an ERISA action "may be brought" in one of several districts. Id. at 932 (emphasis added). Such language does not mean that the parties cannot narrow the plaintiff's options to one of these venues. Indeed, "if Congress had wanted to prevent private parties from waiving ERISA's venue provision, Congress could have specifically prohibited such action." Id. at 931. A contractual forum selection clause does not infringe upon ERISA's policy to provide "ready access to the Federal courts" so long as the venue provision provides for venue in federal court. Id. (quoting 29 U.S.C. § 1001(b)).

Second, enforcing a plan's forum selection clause advances a uniform administrative scheme, as it centralizes claims under that plan in one federal court jurisdiction. Id. "'[L]imiting claims to one federal district encourages uniformity in the decisions interpreting that plan, which furthers ERISA's goal of enabling employers to establish a uniform administrative scheme so that plans are not subject to different legal obligations in different States.'" Id. (quoting Rodriguez v. PepsiCo Long Term Disability Plan, 716 F. Supp. 2d 855, 861 (N.D. Cal. 2010)).

For those two reasons, the Smith court concluded that ERISA's venue provision did not invalidate the ERISA plan's venue selection clause at issue in that case. Id. at 933.

In the instant case, Plaintiff does not explain why the Nicolas court's reasoning should prevail over the view of the majority of courts that forum selection clauses in ERISA plans are enforceable. The Court finds the reasoning of the majority position, as outlined in Smith, persuasive. Because the inclusion and enforcement of forum selection clauses in ERISA plans is not inconsistent with the language and purpose of the statute, enforcement will not be denied on that basis.

2. Plaintiff's Physical and Financial Limitations

Second, Plaintiff contends that he suffers from physical and financial limitations that will make litigating in the Central District of Illinois burdensome for him. Pl.'s Resp. at 1, ECF No. 7 (explaining that Plaintiff suffers from pain which can be alleviated only by narcotic drugs), ECF No. 7; id. at 4 (indicating that Plaintiff earned $17,340/year before he became disabled in 1997). These circumstances, although sympathetic, represent private factors, which the court may not consider when ruling on a motion to transfer pursuant to a valid and enforceable forum selection clause. See Atl. Marine, 134 S. Ct. at 583–84. Accordingly, any physical or financial constraints imposed on Plaintiff cannot help him to overcome the presumption in favor of enforcing the forum selection clause.[4]

---

[4] In Smith, the Sixth Circuit suggests that a safety valve may still exist under the Atlantic Marine framework where enforcing the forum selection clause might "lead to an excessive burden on [the] ERISA litigant[]." 769 F.3d at 930 (explaining that "a party may always challenge the reasonableness of a forum selection clause" that "could lead to an excessive burden on ERISA litigants"); see also Foster, 933 F.2d at 1219 (finding a forum selection clause enforceable where the plaintiff makes a "strong showing" that litigating the action in the contractual forum would be "'so gravely difficult and inconvenient that he will for all practicable purposes be deprived of his day in court'" (quoting Bremen, 407 U.S. at 18). The Court need not consider this issue here, because Plaintiff does not expressly state that he is unable to travel to Illinois based on his financial circumstances, health, or otherwise. He makes no mention of the distance between his hometown in Hanover, Pennsylvania, and the location of the courthouse for the Central District of Illinois. And he does not suggest that he would be

***

Because Plaintiff has failed to overcome the presumption in favor of enforcing the forum selection cause, the Court rules that the clause should be enforced.

C. Defendants' Forum Non Conveniens Arguments

In the alternative, Defendants ask that this case be transferred to the Central District of Illinois or the Middle District of Pennsylvania based on forum non conveniens grounds. Defs.' Mot. Transfer at 7. Because the Court will enforce the forum selection clause, the Court need not address this argument.

IV. CONCLUSION

For those reasons, the Court will enforce the RGIP's forum selection clause and grant Defendants' motion to transfer this case to the Central District of Illinois pursuant to § 1404(a).

An appropriate order follows.

---

unable to find a lawyer willing and able to represent him in Illinois--a premise which is doubtful, given ERISA's fee-shifting provisions. Plaintiff therefore has not met his burden of establishing that transfer of the case from the Eastern District of Pennsylvania to the Central District of Illinois, pursuant to the RGIP's forum selection clause, would lead to an unreasonable or unjust result.

APPENDIX F

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

September 28, 2017

Before

WILLIAM J. BAUER, *Circuit Judge*

KENNETH F. RIPPLE, *Circuit Judge*

DIANE S. SYKES, *Circuit Judge*

No. 16-3808

IN RE: GEORGE W. MATHIAS, *Petitioner*.	Petition for Writ of Mandamus from the United States District Court for the Central District of Illinois. No. 16-CV-1323 Michael M. Mihm, *Judge*.

O R D E R

On consideration of the petition for rehearing and for rehearing en banc, no judge in active service has requested a vote on the petition for rehearing en banc, and all of the judges on the original panel have voted to deny rehearing. It is therefore ordered that the petition for rehearing and for rehearing en banc is DENIED.