

## Seventh Circuit Rules ERISA Plan's Venue Selection Clause is Enforceable

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On August 10, 2017, the U.S. Court of Appeals for the Seventh Circuit held in *In re: Mathias* that an ERISA-covered plan's venue selection clause limiting where civil lawsuits may be filed against the plan was enforceable, joining the Sixth Circuit which reached a similar conclusion in 2014 in the case of *Smith v. Aegon Cos. Pension Plan*. ERISA Section 502(e)(2) provides that a civil action may be brought: (i) in the district where the plan is administered, (ii) where the breach took place, or (iii) where a defendant resides or may be found. The Court held that the statute's language (*i.e.* "may") is permissive and that neither the statute nor the legislative history indicates that plans should be prevented from contractually limiting these options. The Seventh Circuit appeared to give weight to the fact that the plan's venue selection provision required suit to be filed where the plan administrator was located, meaning one of the venue selection options under ERISA Section 502(e)(2) was still available. By contrast, the Sixth Circuit's earlier *Smith* ruling held that a plan's venue selection provision would control even if none of the options under ERISA Section 502(e)(2) were available. The Sixth and Seventh Circuits are the only circuit courts to rule on this issue to date. There are a number of district court opinions that are generally consistent with the *Mathias* and *Smith* opinions, but there are a few outliers among the federal district courts that have ruled that a plan could not limit ERISA's venue selection provision. The DOL has filed a number of amicus briefs in support of the plaintiffs' position that ERISA plans should not be able to limit ERISA's venue selection provision, including in both the *Mathias* and *Smith* cases, but the courts have largely ignored the DOL's arguments. Employers may wish to review their plan documents and consider adding a venue selection provision.