No. 16-2607

In the
United States Court of Appeals
for the Eighth Circuit

IN RE LORNA CLAUSE,

Petitioner.

On Petition for a Writ of Mandamus to the United States District Court for the Eastern District of Missouri in No. 4:16-cv-00071-RLW, Hon. Ronnie L. White

---

PETITION FOR A WRIT OF MANDAMUS

Peter K. Stris
Daniel L. Geyser
Lead Counsel
Douglas D. Geyser
STRIS & MAHER LLP
725 S. Figueroa Street,
Suite 1830
Los Angeles, CA 90017
Tel.: (213) 995-6811
Fax: (213) 261-0299
peter.stris@strismaher.com
daniel.geyser@strismaher.com
douglas.geyser@strismaher.com

Counsel for Petitioner Lorna Clause

FILED
JUN - 8 2016
MICHAEL GANS
CLERK OF COURT

[Oral Argument Requested]

TABLE OF CONTENTS

Page

Introduction ... 1

Relief sought ... 5

Issue presented ... 5

Statement regarding oral argument ... 5

Statement ... 5

Reasons why the writ should issue ... 11

I. Mandamus is an appropriate remedy for reviewing and correcting erroneous transfer rulings ... 11

II. The district court clearly abused its discretion in superseding ERISA's statutory venue provision with the plan's inconsistent forum-selection clause ... 14

A. Clause's initial filing in Arizona fit comfortably within ERISA's broad venue provision ... 14

B. The plan's forum-selection clause is invalid under ERISA, and the district court's transfer order was thus clearly erroneous as a matter of law ... 15

1. The plan's forum-selection clause conflicts with ERISA and is therefore unenforceable ... 15

2. The arguments pressed below for upholding the forum-selection clause only underscore why the clause is impermissible under ERISA ... 20

Conclusion ... 30

TABLE OF AUTHORITIES

Page(s)

Cases

Aetna Health Inc. v. *Davila*, 542 U.S. 200 (2004) 6, 25

Apple, Inc., *In re*, 602 F.3d 909 (8th Cir. 2010) 11, 12, 14

Atl. Marine Constr. Co. v. *U.S. Dist. Ct. for W.D. Tex.*, 134 S. Ct. 568 (2013) .... *passim*

Bernikow v. *Xerox*, No. CV 06-2612, 2006 WL 2536590 (C.D. Cal. August 29, 2006)..30

Bieter Co., *In re*, 16 F.3d 929 (8th Cir. 1994) 12, 13

Bostic v. *Ohio River Co. Basic Pension Plan*, 517 F. Supp. 627 (S.D.W. Va. 1981)..15

Boyd v. *Grand Trunk W. R.R.*, 338 U.S. 263 (1949) 20

Cent. Microfilm Serv. Corp. v. *Basic/Four Corp.*, 688 F.2d 1206 (8th Cir. 1982)... 12, 13

Cheney v. *U.S. Dist. Ct. for D.C.*, 542 U.S. 367 (2004) 11, 14

Clyma v. *Sunoco, Inc.*, 594 F.3d 777 (10th Cir. 2010)..14

Coleman v. *Supervalu, Inc. Short Term Disability Program*, 920 F. Supp. 2d 901 (N.D. Ill. 2013)..18

Cortez Byrd Chips, Inc. v. *Bill Harbert Constr. Co.*, 529 U.S. 193 (2000) 23

Egelhoff v. *Egelhoff*, 532 U.S. 141 (2001)...25

Esden v. *Bank of Boston*, 229 F.3d 154 (2d Cir. 2000) 16

Fulk v. *Bagley*, 88 F.R.D. 153 (M.D.N.C. 1980)..15

Gastronomical Workers Union Local 610 v. *Dorado Beach Hotel Corp.*, 617 F.3d 54 (1st Cir. 2010) 16

Gulf Life Ins. Co. v. *Arnold*, 809 F.2d 1520 (11th Cir. 1987) .... *passim*

Hill v. *Henderson*, 195 F.3d 671 (D.C. Cir. 1999) 2

TABLE OF AUTHORITIES
(continued)

Page(s)

Kawasaki Kishen Kaisha Ltd. v. *Regal-Beloit Corp.*, 561 U.S. 89 (2010) 19

Kellogg Brown & Root, Inc., *In re*, 756 F.3d 754 (D.C. Cir. 2014) 13

Nicolas v. *MCI Health & Welfare Plan No. 501*, 453 F. Supp. 2d 972 (E.D. Tex. 2006) 16

Nine Mile Ltd., *In re*, 673 F.2d 242 (8th Cir. 1982) 10

Pet Quarters, Inc. v. *Depository Trust & Clearing Corp.*, 559 F.3d 772 (8th Cir. 2009) 22

Pruett, *In re*, 133 F.3d 275 (4th Cir. 1997)..13

Rodriguez v. *PepsiCo*, 716 F. Supp. 2d 855 (N.D. Cal. 2010)................................30

Rolls Royce Corp., *In re*, 775 F.3d 671 (5th Cir. 2014) 13

Roman Catholic Diocese of Albany, N.Y., Inc., *In re*, 745 F.3d 30 (2d Cir. 2014)..................13

Smallwood v. *Allied Van Lines, Inc.*, 660 F.3d 1115 (9th Cir. 2011)......................19

Smith v. *Aegon Cos. Pension Plan*, 769 F.3d 922 (6th Cir. 2014) .... *passim*

Smith v. *Aegon Cos. Pension Plan*, No. 14-1168 (U.S. June 1, 2015)....................11

St. Jude Med. Inc. v. *Lifecare Int'l, Inc.*, 250 F.3d 587 (8th Cir. 2001)....................2

Stein v. *KPMG, LLP*, 486 F.3d 753 (2d Cir. 2007) 14

The Bremen v. *Zapata Off-Shore Co.*, 407 U.S. 1 (1972) 20, 27

Trustees of the Plumbers & Pipefitters Nat'l Pension Fund v. *Plumbing Servs., Inc.*, 791 F.3d 436 (4th Cir. 2015)..................16

United States v. *Rodgers*, 461 U.S. 677 (1983) 23

Van Dusen v. *Barrack*, 376 U.S. 612 (1964).. 12, 14

Varsic v. *U.S. Dist. Ct. for C.D. Cal.*, 607 F.2d 245 (9th Cir. 1979) 6, 16

Volkswagen of Am., Inc., *In re*, 545 F.3d 304 (5th Cir. 2008)......................... 12, 14

TABLE OF AUTHORITIES
(continued)

Page(s)

Statutes

9 U.S.C. 1 27

28 U.S.C. 1292(b) 11

28 U.S.C. 1404 .... 12, 21

29 U.S.C. 1001 1

29 U.S.C. 1001(b) 1, 6, 15, 17

29 U.S.C. 1104(a)(1)(D) .... *passim*

29 U.S.C. 1132(e)(2) .... *passim*

29 U.S.C. 1144(a) 25

45 U.S.C. 51 20

Regulations

29 C.F.R. 2560.503-1(h)(2)(iii) 7

Other Authorities

14D Charles Alan Wright et al., *Federal Practice and Procedure* § 3825 (4th ed. 2013) 15

H.R. Rep. No. 93-533 (1973).................... 4, 6, 16

Ryan T. Holt, Note, *A Uniform System for the Enforceability of Forum Selection Clauses in Federal Courts*, 62 Van. L. Rev. 1913 (2009) 23

Edward A. Purcell, Jr., *Geography as a Litigation Weapon: Consumers, Forum-Selection Clauses, and the Rehnquist Court*, 40 UCLA L. Rev. 423 (1992) 30

U.S. Invitation Brief, *Smith* v. *Aegon Cos. Pension Plan*, No. 14-1168 (U.S.) 11

Appellate Case: 16-2607 Page: 5 Date Filed: 06/08/2016 Entry ID: 4409410

INTRODUCTION

Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1001 *et seq.*, "to protect * * * the interests of participants in employee benefit plans and their beneficiaries," securing their rights with "appropriate remedies, sanctions, and ready access to the Federal courts." 29 U.S.C. 1001(b). A key component of ERISA's judicial remedies was a liberal venue provision. That provision afforded aggrieved beneficiaries the right to bring ERISA claims in any of three places: "where the plan is administered, where the breach took place, or where a defendant resides or may be found." 29 U.S.C. 1132(e)(2). Congress granted that important right specifically to ensure and protect judicial access. Congress realized that ERISA beneficiaries (widows, disabled workers, pensioners) are often poor and vulnerable, and they routinely lack the resources and sophistication to litigate in remote venues against institutional defendants. ERISA's venue provision eliminated that roadblock to judicial review: by securing beneficiaries a broad choice of venue, Congress guaranteed that geography would not prevent this protected class from enforcing its statutory rights.

Petitioner Lorna Clause (Clause) has lived and worked in Arizona for well over a decade. She worked for the same company for 11 years, until a serious disability forced her to give up her position. When Defendants refused to provide her the benefits she earned under her ERISA plan, she exhausted her administrative

Appellate Case: 16-2607 Page: 6 Date Filed: 06/08/2016 Entry ID: 4409410

remedies and sought judicial relief. She availed herself of ERISA's protective venue provision, filing suit against Defendants in the U.S. District Court for the District of Arizona, *i.e.*, "where the breach took place."

Defendants, however, moved to transfer the suit to Missouri. No one disputed that Clause properly filed suit in Arizona under ERISA's venue provision. But Defendants maintained that Clause's statutory rights were trumped by a forum-selection clause in her ERISA plan. Under that clause, beneficiaries were deprived of the specific choice of venue that Congress demanded; instead, all suits—no matter how far away from their natural location—had to be filed in "the U.S. District Court for the Eastern District of Missouri." Treating this case like any private contract dispute outside ERISA, the district court enforced the forum-selection clause, transferring the case to Missouri, a forum over a thousand miles away with no connection to Clause or her decades of employment. Clause immediately sought re-transfer, but the Missouri district court refused, again citing the same contract principles applied in general disputes unrelated to any overarching statutory scheme.[1]

---

[1] A retransfer motion is the accepted means of preserving legal challenges to a transfer order. See, *e.g.*, *St. Jude Med. Inc.* v. *Lifecare Int'l, Inc.*, 250 F.3d 587, 593 (8th Cir. 2001) (so explaining); cf. *Hill* v. *Henderson*, 195 F.3d 671, 677 & n.2 (D.C. Cir. 1999) ("If the party transferred against its will to a new court failed to move for retransfer, the omission might waive any claim on the subject.").

Appellate Case: 16-2607 Page: 7 Date Filed: 06/08/2016 Entry ID: 4409410

According to Defendants, the plan's forum-selection clause properly restricts the statutory rights of all ERISA beneficiaries—no matter where those individuals are located, how far they would have to travel to litigate in Missouri, or what kind of debilitating jurisdictional or procedural obstacles this may pose for their federal rights. Defendants insist this case is just like any other private contractual dispute: if two parties agree to litigate in a single venue, that agreement is binding, even if venue was proper under ERISA. Private contracts, in short, can freely displace this critical statutory safeguard.

Defendants are mistaken. A private contract cannot override ERISA's controlling venue provision. Congress deliberately granted beneficiaries a *choice* of venue, knowing that restricting venue to any specific district would impose insurmountable barriers in common suits. An ERISA plan may not forbid what the governing statute expressly allows. See 29 U.S.C. 1104(a)(1)(D). This forum-selection clause is thus invalid as a matter of law. It is directly at odds with ERISA's plain text, structure, and purpose, and it is accordingly unenforceable. Defendants' plan can no more eliminate Clause's venue rights than it could disclaim any other substantive protections under ERISA.

This petition presents a pure legal issue of exceptional importance and extraordinary practical significance. The issue has already divided the Sixth Circuit, which is the only appellate court to have squarely resolved the issue. See *Smith* v.

Appellate Case: 16-2607 Page: 8 Date Filed: 06/08/2016 Entry ID: 4409410

Aegon Cos. Pension Plan, 769 F.3d 922 (6th Cir. 2014). The U.S. Department of Labor—the agency charged with administering ERISA—has officially told both the Sixth Circuit and the U.S. Supreme Court that such forum-selection clauses conflict with ERISA's statutory framework, and thus violate federal law. Nor is this issue merely academic: unless she obtains relief, Clause will lack the practical means to litigate this suit at all. Defendants are aware that beneficiaries like Clause lack the financial resources and legal sophistication to retain counsel in unfamiliar, far-away venues, especially where a suit's economic stakes are low. Congress granted unobstructed access to federal court precisely to eliminate such "jurisdictional and procedural obstacles." H.R. Rep. No. 93-533, at 17 (1973). This issue is thus mission-critical for Clause, just as it is for countless litigants in her position.

Defendants represent a growing trend of ERISA plans and fiduciaries using forum-selection clauses to cut back the venue rights that Congress affirmatively granted. Without immediate relief, Clause will be forced to abandon her statutory rights, as she is in no position to litigate in Missouri. And even if she somehow could litigate the merits, this issue would otherwise be unreviewable upon final judgment. This Court should hold that Defendants' restrictive forum-selection clause violates ERISA and is unenforceable. Mandamus should be granted, and the district court should be directed to return this matter to its proper venue in Arizona.

Appellate Case: 16-2607 Page: 9 Date Filed: 06/08/2016 Entry ID: 4409410

RELIEF SOUGHT

Clause respectfully seeks a writ of mandamus directing the district court to retransfer this action to the U.S. District Court for the District of Arizona.

ISSUE PRESENTED

ERISA's venue provision instructs that plan beneficiaries have a choice to bring suit "in the district where the plan is administered, where the breach took place, or where a defendant resides or may be found." 29 U.S.C. 1132(e)(2). Clause filed suit in Arizona as expressly authorized by that provision. But Defendants moved to transfer her suit under the plan's forum-selection clause, which eliminates ERISA's statutory choice and requires beneficiaries to file suit exclusively in the U.S. District Court for the Eastern District of Missouri.

The question presented is:

Whether a contractual forum-selection clause purporting to override ERISA's venue provision is invalid and unenforceable under ERISA.

STATEMENT REGARDING ORAL ARGUMENT

Clause believes oral argument would assist the Court in its consideration of these important and complex issues.

STATEMENT

1. "Congress enacted ERISA to 'protect * * * the interests of participants in employee benefit plans and their beneficiaries' by setting out substantive regulatory requirements for employee benefit plans and to 'provid[e] for appropriate reme-

dies, sanctions, and ready access to the Federal courts.'" *Aetna Health Inc.* v. *Davila*, 542 U.S. 200, 207 (2004) (quoting 29 U.S.C. 1001(b)). Congress recognized that past "jurisdictional and procedural obstacles" had "hampered effective enforcement of fiduciary responsibilities." H.R. Rep. No. 93-533, at 17 (1973). It accordingly sought to secure judicial access with a liberal venue provision, granting beneficiaries the right to seek relief in *any* of three forums:

> 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.

29 U.S.C. 1132(e)(2). Through this provision, Congress "intended to expand, rather than restrict, the range of permissible venue locations." *Varsic* v. *U.S. Dist. Ct. for C.D. Cal.*, 607 F.2d 245, 248 (9th Cir. 1979).

2. Clause is a participant in the Ascension Long-Term Disability Plan administered through Respondents Ascension Health Alliance and Sedgwick Claims Management Services, Inc. (Defendants). Doc. 12-1 at 1. The plan is governed by ERISA. *Ibid.* Clause's suit arises from a denial of benefits under the plan.

Clause began her employment at Carondolet in Tucson, Arizona, in 2001. Doc. 12-1 at 2. In August 2012, when she became disabled, she was a Patient Care Technician earning less than $14.41 per hour. *Ibid.* Due to a series of debilitating ailments—two shoulder surgeries, calcifying tendonitis, supraspinatus-tendon-tear

Appellate Case: 16-2607 Page: 11 Date Filed: 06/08/2016 Entry ID: 4409410

shoulder impingement, and trapezius pain—Clause has been unable to work as a Patient Care Technician since August 2012. *Ibid.*

Clause made a claim under the plan for long-term disability benefits. Although her claim was initially accepted, Defendants in the following years whipsawed Clause through a series of shifting and inconsistent administrative rulings. After granting her claim in August 2012, Defendants first changed course in October 2013 and notified Clause that her benefits were terminated. Doc. 12-1 at 3. Clause filed a successful administrative appeal (*ibid.*), only to have Defendants again terminate her benefits six months later. Defendants justified this new decision on the ground that they supposedly had "not been supplied with medical information to substantiate that [Clause] continue[d] to be disabled." *Id.* at 4.

In response to this adverse decision, Clause immediately asserted her statutory right to obtain all documents relevant to her claim. Doc. 12-1 at 5 (citing 29 C.F.R. 2560.503-1(h)(2)(iii)). But Defendants refused to comply, saying they were reconsidering the termination decision. *Id.* at 6.

In January 2015, however, Defendants again terminated Clause's benefits, this time asserting still another rationale. Without mentioning their earlier termination, Defendants now stated that Clause was not sufficiently disabled. They admitted that Clause was physically unable to perform any work that was not sedentary, but they felt she could perform certain occupations (*e.g.*, receptionist or adminis-

trative clerk). Doc. 12-1 at 7. This new termination was the first notice that Defendants believed Clause had transferable skills to work as a receptionist, a point Clause contests. *Id.* at 8.

Clause again appealed her benefits termination, but Defendants denied the appeal in June 2015. Doc. 12-1 at 9. Rather than address her challenges on the merits, Defendants instead modified their rationale (again) for terminating her benefits. Defendants now claimed that Clause's orthopedic surgeon wrongly assessed the restrictions for her job performance. *Id.* at 10-11.

3. Having exhausted her administrative remedies, Clause initiated this ERISA action to enforce her rights under the plan. She filed suit in Arizona, where she has lived and worked for over a decade. Doc. 12-1. Defendants nevertheless sought to dismiss or transfer the action to the Eastern District of Missouri. Doc. 15. Without suggesting that the initial venue was improper under ERISA's broad venue provision, Defendants instead invoked a forum-selection clause in the plan's documents, mandating that beneficiaries bring suit "only" in Eastern Missouri. Doc. 16-1 at 42. Defendants asserted that this venue provision trumped Clause's rights under ERISA and required her to pursue her claims in a venue over a thousand miles from where she lived, worked, and received benefits under the plan.

a. The Arizona district court granted Defendants' motion and transferred the case to the Eastern District of Missouri. Doc. 26. The court reasoned that forum-

Appellate Case: 16-2607 Page: 13 Date Filed: 06/08/2016 Entry ID: 4409410

selection clauses are presumptively valid, requiring Clause to make "'a strong showing that [the forum-selection clause] should be set aside.'" *Id.* at 3-4 (citation omitted). Focusing chiefly on cases unrelated to any comprehensive statutory scheme, the court found Clause failed that burden.

It first found that Defendants provided adequate notice of the clause's inclusion in the plan, though it never suggested the clause was directly negotiated (or negotiable) by Clause. Doc. 26 at 4-5. The court also concluded that transfer would not deny Clause her day in court, because (i) the case might be decided without trial or discovery; (ii) any discovery from Defendants would be located in Missouri; and (iii) if a trial became necessary, Clause could request a retransfer to Arizona. *Id.* at 5-6. Regardless, the court explained, "Clause's personal interests" were irrelevant under *Atl. Marine Constr. Co.* v. *U.S. Dist. Ct. for W.D. Tex.*, 134 S. Ct. 568 (2013), which outlined the effects of a "valid" forum-selection clause on an ordinary transfer analysis. Doc. 26 at 6.

The court finally held that the forum-selection clause did not "'contravene'" ERISA's strong public policy. Doc. 26 at 6-8. The court asserted that forcing all disputes to Missouri would advance ERISA's interests "by bringing uniformity to ERISA decisions." *Id.* at 7. It also found ERISA distinguishable from other statutes with controlling venue provisions, as ERISA's version "has permissive," not man-

Appellate Case: 16-2607 Page: 14 Date Filed: 06/08/2016 Entry ID: 4409410

datory, language. *Ibid.* And the court analogized forum-selection clauses to arbitration clauses, which have been upheld under ERISA. *Id.* at 7-8.

The district court thus ordered the clerk to transfer the matter to the Eastern District of Missouri. Doc. 26 at 8. The clerk implemented the order that same day (Doc. 27), foreclosing any opportunity for Clause to seek review of the initial transfer order in the U.S. Court of Appeals for the Ninth Circuit. See, *e.g.*, *In re Nine Mile Ltd.*, 673 F.2d 242, 243 (8th Cir. 1982) (per curiam) ("'physical transfer of the original papers in a case to a permissible transferee forum deprives the transferor circuit of jurisdiction to review the transfer'").

b. In the Eastern District of Missouri, Clause immediately requested a short stay to litigate the transfer issue (Docs. 39, 40), and then moved to retransfer her case to Arizona. Doc. 45. She argued that the plan's forum-selection clause was unenforceable because it conflicted with ERISA's venue provision.

The Missouri district court rejected Clause's retransfer motion and denied her stay request as moot. Doc. 51 at 5. In a brief analysis, the court invoked the "general rule" that "courts enforce valid forum selection clauses," "'which represent[] the parties' agreement as to the most proper forum.'" *Id.* at 2 (quoting *Atl. Marine*, 134 S. Ct. at 581). The court "agree[d]" with the Arizona district court and other courts finding that "ERISA forum selection clauses are enforceable." *Id.* at 3. It cited language reasoning that if Congress actually wanted parties to honor

ERISA's venue provision, Congress "'could have specifically prohibited" private agreements "waiving" that provision. *Ibid.* It further declared that Clause could "litigate effectively" in Missouri, and that keeping the case will result in "greater uniformity" for ERISA plans. *Id.* at 3-4. It accordingly entered an order refusing the retransfer.[2]

REASONS WHY THE WRIT SHOULD ISSUE

I. MANDAMUS IS AN APPROPRIATE REMEDY FOR REVIEWING AND CORRECTING ERRONEOUS TRANSFER RULINGS

Mandamus serves "to correct [a district court's] 'clear abuse of discretion.'" *In re Apple, Inc.*, 602 F.3d 909, 911 (8th Cir. 2010) (per curiam) (quoting *Cheney* v. *U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380 (2004)). The standard is "demanding"

---

[2] The court also declined to certify the issue for interlocutory appeal under 28 U.S.C. 1292(b). *Id.* at 4-5. In addition to suggesting transfer was not a "controlling question of law," the court found no "'substantial grounds for difference of opinion,'" saying other courts were not "significantly split" on the issue. *Ibid.* The court did not attempt to square that finding with the fact that (i) this issue directly divided the Sixth Circuit; (ii) the federal agency charged with enforcing ERISA thinks the district court's analysis is wrong; (iii) other district courts (at least two flagged by the district court itself (at 2)) also disagree with the court's analysis; and (iv) the U.S. Supreme Court called for the views of the Solicitor General after only a *single* circuit (the Sixth Circuit) decided the question, suggesting the issue is indeed substantial (see *Smith* v. *Aegon Cos. Pension Plan*, No. 14-1168 (U.S. June 1, 2015) (inviting the Solicitor General to express the government's views on this issue); U.S. Br., *Smith* v. *Aegon Cos. Pension Plan*, No. 14-1168 (U.S.), available at https://www.justice.gov/sites/default/files/osg/briefs/2015/12/01/14-1168_bsac_smith_v._aegon.pdf (arguing that forum-selection clauses are unenforceable under ERISA, but recommending additional percolation before granting review)).

Appellate Case: 16-2607 Page: 16 Date Filed: 06/08/2016 Entry ID: 4409410

but "not insuperable." *Cheney*, 542 U.S. at 381. Directly relevant here, this Court has confirmed that "mandamus is proper, albeit extraordinary, relief for an erroneous ruling" on venue transfer. *Apple*, 602 F.3d at 912; see also, *e.g.*, *In re Volkswagen of Am., Inc.*, 545 F.3d 304, 309 (5th Cir. 2008) (en banc) (the courts of appeals "have expressly 'recognized the availability of mandamus as a limited means to test the district court's discretion in issuing transfer orders'").

This case is an even stronger candidate for mandamus than the successful petition in *Apple*. Like most transfer issues, the *Apple* transfer turned on a discretionary balancing of multiple facts and circumstances; this case, by contrast, presents a pure question of law: whether a forum-selection clause in an ERISA plan is unenforceable under ERISA. Courts, including the Supreme Court and this Circuit, regularly award mandamus relief to correct such legal errors. See, *e.g.*, *Atl. Marine*, 134 S. Ct. at 575 (holding the Fifth Circuit erred in denying mandamus where the district court "misunderstood the standards to be applied in adjudicating a § 1404(a) motion"); *Van Dusen* v. *Barrack*, 376 U.S. 612, 615 n.3 (1964) (mandamus is proper where "the courts below erred in interpreting the legal limitations upon and criteria for a [Section] 1404(a) transfer"); *In re Bieter Co.*, 16 F.3d 929, 933 (8th Cir. 1994) (mandamus is permissible if the district court's "decision relie[d] on erroneous legal conclusions") (internal quotation marks omitted); *Cent. Microfilm Serv. Corp.* v. *Basic/Four Corp.*, 688 F.2d 1206, 1213 (8th Cir. 1982)

Appellate Case: 16-2607 Page: 17 Date Filed: 06/08/2016 Entry ID: 4409410

("This is a discrete question of law and fact, the resolution of which is clear on the record and does not turn on a trial court's proximity to the proceedings.").[3]

Moreover, as discussed below, the question presented here is exceptionally important and has sharply divided the courts (including the only circuit to have squarely resolved the issue). Mandamus is particularly compelling where the legal issue is both novel and important, creating a needed opportunity to provide guidance to lower courts. See, *e.g.*, *Bieter*, 16 F.3d at 931 (noting the importance of "the presence of 'serious policy considerations * * * sufficiently compelling to require immediate appellate attention'"); *Cent. Microfilm*, 688 F.2d at 1212 (stating that mandamus was "not only appropriate but compelling" due partly to the opportunity to "provide guidelines for the resolution of novel and important questions"); *In re Kellogg Brown & Root, Inc.*, 756 F.3d 754, 763 (D.C. Cir. 2014) (mandamus is proper to "'eliminate uncertainty' in important areas of law"). Legal certainty is paramount here: beneficiaries are currently left without any meaningful guidance as to where to sue, creating confusion for district courts and all parties alike. The

---

[3] See also, *e.g.*, *In re Rolls Royce Corp.*, 775 F.3d 671, 681 (5th Cir. 2014) ("we conclude that the district court erred in its construction of law, and thus mandamus is appropriate"); *In re Roman Catholic Diocese of Albany, N.Y., Inc.*, 745 F.3d 30, 37 (2d Cir. 2014) ("[a] district court abuses its discretion if it * * * 'base[s] its ruling on an erroneous view of the law'"); *In re Pruett*, 133 F.3d 275, 280 (4th Cir. 1997) (petitioner had a clear and indisputable right to mandamus because "the district court had no authority to order discovery upon an ex parte motion").

Appellate Case: 16-2607 Page: 18 Date Filed: 06/08/2016 Entry ID: 4409410

issue is likely unreviewable upon final judgment, and it takes extraordinary effort to challenge an incorrect ruling on an interlocutory basis. Together, this dynamic will sharply limit the Court's opportunities to review this critical issue. This vehicle thus presents an ideal chance to resolve the issue for thousands of beneficiaries who otherwise will simply throw in the towel or acquiesce in litigating in Defendants' preferred location. The viability of ERISA's venue provision should not be immunized from appellate scrutiny, and mandamus is the "appropriate" means for resolving this critical legal question. *Cheney*, 542 U.S. at 381; see, *e.g.*, *Atl. Marine*, 134 S. Ct. at 575; *Van Dusen*, 376 U.S. at 615 n.3; *Apple*, 602 F.3d at 912.[4]

II. THE DISTRICT COURT CLEARLY ABUSED ITS DISCRETION IN SUPERSEDING ERISA'S STATUTORY VENUE PROVISION WITH THE PLAN'S INCONSISTENT FORUM-SELECTION CLAUSE

A. Clause's Initial Filing In Arizona Fit Comfortably Within ERISA's Broad Venue Provision

There is no serious dispute that Clause's initial choice of venue in Arizona was proper. ERISA authorizes a beneficiary to sue in the district "where the breach took place." 29 U.S.C. 1132(e)(2). Courts traditionally understand the "breach" to

---

[4] See also, *e.g.*, *Clyma* v. *Sunoco, Inc.*, 594 F.3d 777, 782 (10th Cir. 2010) (one guideline for mandamus review is whether "the district court's order raises new and important problems of law or issues of first impression"); *Volkswagen*, 545 F.3d at 319 (stating that mandamus is "particularly appropriate when the issues also have an importance beyond the immediate case"); *Stein* v. *KPMG, LLP*, 486 F.3d 753, 759 (2d Cir. 2007) (the "'touchstones' of mandamus review" include "the presence of an issue of first impression").

Appellate Case: 16-2607 Page: 19 Date Filed: 06/08/2016 Entry ID: 4409410

occur "where the payment was to be received." 14D Charles Alan Wright et al., *Federal Practice and Procedure* § 3825, at 476 (4th ed. 2013). Here, payment was due in Clause's residence in Arizona. See also *Bostic* v. *Ohio River Co. Basic Pension Plan*, 517 F. Supp. 627, 636 (S.D.W. Va. 1981). Clause thus had a statutory right under ERISA to file suit in that district—which is why Defendants had to resort to a restrictive forum-selection clause to attack her proper choice of venue. That forum-selection clause was the single basis supporting transfer, and its validity was (and remains) the only issue disputed below.

B. The Plan's Forum-Selection Clause Is Invalid Under ERISA, And The District Court's Transfer Order Was Thus Clearly Erroneous As A Matter Of Law

1. The plan's forum-selection clause conflicts with ERISA and is therefore unenforceable

a. The plan's forum-selection clause violates ERISA and therefore is unenforceable. A core goal of ERISA was guaranteeing "ready access to the Federal courts" (29 U.S.C. 1001(b)), and Congress accomplished that goal with an expansive venue provision. This provision specifically granted beneficiaries a broad choice of where to sue: ERISA claims "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." 29 U.S.C. 1132(e)(2). "Congress intended to open the federal forum to ERISA claims to the fullest extent possible." *Fulk* v. *Bagley*, 88 F.R.D. 153, 167 (M.D.N.C. 1980). By "expand[ing]" "the range of permissible venue loca-

Appellate Case: 16-2607 Page: 20 Date Filed: 06/08/2016 Entry ID: 4409410

tions" (*Varsic*, 607 F.2d at 248), this liberal venue provision maximized judicial access and eliminated the "jurisdictional and procedural obstacles" that previously "hampered effective enforcement of fiduciary duties." H.R. Rep. No. 93-533, at 17; see also, *e.g.*, *Trustees of the Plumbers & Pipefitters Nat'l Pension Fund* v. *Plumbing Servs., Inc.*, 791 F.3d 436, 444 (4th Cir. 2015) (noting "ERISA's 'liberal venue provision'"); *Nicolas* v. *MCI Health & Welfare Plan No. 501*, 453 F. Supp. 2d 972, 974 (E.D. Tex. 2006) ("Congress intended that the venue provision for ERISA claimants be broad so as to advance their claims.").

To protect a beneficiary's choice of venue (and ERISA's other statutory rights), Congress left no doubt about how to resolve a conflict between ERISA and a benefit plan: any plan terms "[in]consistent with" ERISA's core statutory framework are unenforceable. 29 U.S.C. 1104(a)(1)(D). Plans thus "cannot contract around the statute." *Esden* v. *Bank of Boston*, 229 F.3d 154, 173 (2d Cir. 2000) (invoking Section 1104(a)(1)(D)). "Were the rule otherwise, parties could elude ERISA's commands by the simple expedient of sharp bargaining." *Gastronomical Workers Union Local 610* v. *Dorado Beach Hotel Corp.*, 617 F.3d 54, 62 (1st Cir. 2010).

Yet "sharp bargaining" is exactly what Defendants tried to do here. The conflict between Section 1132(e)(2) and the plan's forum-selection clause is plain. ERISA grants beneficiaries the right to sue in any of three places, whereas the fo-

Appellate Case: 16-2607 Page: 21 Date Filed: 06/08/2016 Entry ID: 4409410

rum-selection clause forbids beneficiaries from suing in two of them. The plan thus prohibits suit in jurisdictions expressly authorized under ERISA. And the choice guaranteed by statute is essential: not all statutory venues are readily accessible to each beneficiary, so the statute secures multiple options for pursuing a beneficiary's rights. The attempt to eliminate the choices conferred by statute defies ERISA's text and frustrates its purpose. See 29 U.S.C. 1001(b), 1132(e)(2). Section 1104(a)(1)(D) therefore explicitly precludes its enforcement. See, *e.g.*, *Gulf Life Ins. Co.* v. *Arnold*, 809 F.2d 1520, 1525 & n.7 (11th Cir. 1987) (finding incompatible with ERISA's "unequivocal purpose" a related attempt to "defeat efforts by participants/beneficiaries to avail themselves of ERISA's broad venue provision").[5]

---

[5] While *Gulf Life* did not directly address a forum-selection clause, the Eleventh Circuit's decision is nonetheless instructive for its reasoning and understanding of ERISA's fundamental goals. In that case, a plan participant filed a claim for benefits under his plan in Tennessee, where he lived and worked. 890 F.2d at 1522. Gulf Life filed for declaratory judgment and invoked Section 1132(e)(2) in the hope of litigating in Florida—a venue lacking any connection to the participant. *Ibid.* The Eleventh Circuit determined that an ERISA fiduciary could not avail itself of Section 1132(e)(2). *Id.* at 1525. Importantly, the Eleventh Circuit concluded that ERISA's text and purpose established that *only* participants and beneficiaries have the authority to invoke ERISA's liberal venue provision. *Id.* at 1524-1525. The decision thus confirms ERISA's overriding aim, which is providing participants and beneficiaries with "ready access to the Federal courts." Clause had a statutory right to file suit in Arizona district court; Defendants cannot use a restrictive forum-selection clause to negate her proper choice of venue under ERISA.

Appellate Case: 16-2607 Page: 22 Date Filed: 06/08/2016 Entry ID: 4409410

Nor is it any response that the plan's forum-selection clause picked a forum permitted by Section 1132(e). The *choice itself* is an essential part of the statutory grant: Section 1132(e)(2) "is not a neutral provision merely describing the venues in which ERISA actions can be heard, but is rather intended to grant an affirmative right to ERISA participants and beneficiaries." *Coleman* v. *Supervalu, Inc. Short Term Disability Program*, 920 F. Supp. 2d 901, 906 (N.D. Ill. 2013). The entire purpose of ERISA is to facilitate access to the courts for beneficiaries, not to let plan defendants impede that access via restrictive forum-selection clauses (even if those clauses permit one of the *three, distinct* options that Congress guaranteed). Congress gave beneficiaries, not plans, the right to select the suit's location, and that remains true whether or not the plan's (irrelevant) preference is codified in a forum-selection clause. Cf. *Gulf Life Ins.*, 809 F.2d at 1523-1524 (only beneficiaries can bring a claim for benefits and invoke ERISA's venue provision).

Unlike the statute that Congress drafted, this forum-selection clause limits all litigation to a single location—"the United States District Court for the Eastern District of Missouri." Doc. 26 at 5. ERISA guarantees beneficiaries the right to sue in districts where the breach occurred, and Defendants' forum-selection clause strikes that option. Such an attempt to eliminate a proper statutory venue is directly at odds with ERISA and its protective purposes, and it is accordingly unenforceable. See, *e.g.*, *Smith*, 769 F.3d at 935 (Clay, J., dissenting) ("Such a restrictive

Appellate Case: 16-2607 Page: 23 Date Filed: 06/08/2016 Entry ID: 4409410

clause not only conflicts with the broad venue provision set forth in § 502(e) of ERISA, but also undermines the very purpose of ERISA and contravenes the strong public policy evinced by the statute.").

b. In other statutory contexts, courts have consistently used the same analysis to invalidate forum-selection clauses. For instance, the Ninth Circuit invalidated such a clause as inconsistent with the venue provisions of the Carmack Amendment, which governs interstate-shipping contracts. See *Smallwood* v. *Allied Van Lines, Inc.*, 660 F.3d 1115 (9th Cir. 2011). Similar to ERISA, the Carmack Amendment provided that a lawsuit "may be brought" in one of two "judicial district[s]," "assur[ing] the shipper a choice of forums as plaintiff." *Id.* at 1121-1122. Because the forum-selection clause would have "limit[ed] shippers' choice of venues enumerated in the statute," it was "unenforceable under Carmack." *Id.* at 1123; see also *Kawasaki Kishen Kaisha Ltd.* v. *Regal-Beloit Corp.*, 561 U.S. 89, 98 (2010) ("it can be assumed that if Carmack's terms apply to the bills of lading here, the cargo owners would have a substantial argument that the Tokyo forum-selection clause in the bills is pre-empted by Carmack's venue provisions"). Just so here: the plan's forum-selection clause is unenforceable for limiting beneficiaries' choice of venue under Section 1132(e)(2).

And the same result follows again from the Supreme Court's general refusal to enforce forum-selection clauses that "contravene a strong public policy of the

Appellate Case: 16-2607 Page: 24 Date Filed: 06/08/2016 Entry ID: 4409410

forum in which suit is brought, *whether declared by statute* or by judicial decision." *The Bremen* v. *Zapata Off-Shore Co.*, 407 U.S. 1, 12-13 (1972) (emphasis added). As *The Bremen* made clear, this "strong public policy" is often reflected in statutory venue provisions. *The Bremen* itself relied specifically on *Boyd* v. *Grand Trunk W. R.R.*, 338 U.S. 263 (1949) (per curiam), where the Court invalidated a forum-selection clause for improperly restricting statutory choice of venue under the Federal Employers' Liability Act (FELA), 45 U.S.C. 51 *et seq*. The same logic applies here: in each circumstance, enforcing a forum-selection clause "would thwart" the rights secured by a statutory venue provision (*Boyd*, 338 U.S. at 265-266), undermining Congress's goal of securing claimants easy access to federal court.

In sum, because the "preclusive venue selection clause" is "inconsistent with the purpose, policy, and text of ERISA, and contravenes the 'strong public policy' declared by ERISA," Defendants' forum-selection clause is "unenforceable." *Smith*, 769 F.3d at 934 (Clay, J., dissenting) (quoting *The Bremen*, 407 U.S. at 15).

2. The arguments pressed below for upholding the forum-selection clause only underscore why the clause is impermissible under ERISA

As established above, Congress gave ERISA plaintiffs the power to choose the forum, and that statutory grant cannot be overridden by private contract. De-

fendants convinced the courts below to displace ERISA's venue provision, but their arguments are unavailing.

a. The courts below, at Defendants' urging, improperly relied on principles regarding generic forum-selection clauses in private contract disputes. This misses the point entirely. This is *not* an ordinary contract dispute, where parties are free to contract however they wish. This is a dispute under a comprehensive statutory scheme, where Congress carefully crafted protections to ensure sophisticated parties (like Defendants) could not subvert beneficiaries' rights to judicial relief. This is not a question of engaging in any conventional Section 1404 analysis. This is a pure question of law asking whether ERISA permits private parties to unwind the very protections that ERISA afforded to avoid Defendants' roadblocks to judicial review. If Defendants wish to enforce their forum-selection clause, they have to square it with ERISA, not with the factors undergirding the usual transfer analysis for forum-selection clauses in private disputes.

This is also why Defendants and the courts below were wrong in asserting that *Atlantic Marine* controls this analysis. See, *e.g.*, Doc. 26 at 3 ("The presence of a valid forum-selection clause requires district courts to adjust their usual § 1404(a) analysis in three ways.") (quoting *Atl. Marine*, 134 S. Ct. at 581); Doc. 51 at 2 (following *Atlantic Marine* to enforce the plan's forum-selection clause as a "valid" contract provision "'represent[ing] the parties' agreement as to the most

proper forum'"). Their thinking is entirely question-begging: *Atlantic Marine* applies when a forum-selection clause is "*valid*." 134 S. Ct. at 581 (emphasis added). The Supreme Court expressly conditioned its "analysis" on the presence of "a contractually valid forum-selection clause." *Id.* at 581 n.5. Unlike *Atlantic Marine*, Defendants' forum-selection clause flunks that test because it directly conflicts with ERISA's venue provision. The issue thus is not whether this particular forum-selection clause is *fair* under a conventional balancing analysis, but whether it is *unenforceable* under ERISA's controlling statutory scheme. Considerations relevant to generic forum-selection clauses are irrelevant here.[6]

b. Defendants argue that forum-selection clauses are consistent with ERISA because ERISA's venue provision uses permissive, not mandatory, language: it provides that a case "may"—rather than "shall"—be brought in one of three places. Doc. 47 at 7. But that language is permissive only in the sense that it permits beneficiaries to *choose* one of three options; it is mandatory in the sense that beneficiaries have the absolute right to make that choice. Forbidding the protected class from selecting any of the three options still creates a clear conflict. Cf. *Pet Quarters, Inc.* v. *Depository Trust & Clearing Corp.*, 559 F.3d 772, 780 (8th Cir. 2009)

---

[6] As discussed above, even if Clause's mere participation in the plan could somehow represent an "agreement as to the most proper forum" (Doc. 51 at 2)—which stretches the fiction of the parties' "bargaining" to the breaking point—parties may not contract around ERISA's directives. See 29 U.S.C. 1104(a)(1)(D).

Appellate Case: 16-2607 Page: 27 Date Filed: 06/08/2016 Entry ID: 4409410

("conflict preemption applies where state law forbids conduct that federal law authorizes").[7]

This stark conflict is highlighted by the forum-selection clause's destructive effects on Clause's rights. Defendants are using the clause to uproot this dispute from her home in Arizona, and transfer it to a district over a thousand miles away, where she has no connection of any kind. Defendants are aware that Clause is unlikely to obtain legal representation in this district, and thus may be forced to abandon her statutory rights by default. See, *e.g.*, Ryan T. Holt, Note, *A Uniform System for the Enforceability of Forum Selection Clauses in Federal Courts*, 62 Van. L. Rev. 1913, 1917 (2009). This is precisely the kind of impermissible barrier that Congress sought to eliminate in authorizing a wide choice of venue. See, *e.g.*, *Gulf Life*, 809 F.2d at 1525 n.7 ("We believe that ERISA's legislative history unques-

---

[7] Moreover, the use of the word "may" to preface an array of venue options *for beneficiaries* does not give *the plan* the right to modify or restrict those options. See, *e.g.*, *Cortez Byrd Chips, Inc.* v. *Bill Harbert Constr. Co.*, 529 U.S. 193, 198-199 (2000) ("the mere use of 'may' is not necessarily conclusive of congressional intent to provide for a permissive or discretionary authority"); *United States* v. *Rodgers*, 461 U.S. 677, 706 (1983) ("[t]he word 'may,' when used in a statute, usually implies some degree of discretion[, but] [t]his common-sense principle of statutory construction * * * can be defeated by indications of legislative intent to the contrary or by obvious inferences from the structure and purpose of the statute") (footnote and citations omitted). As noted, there are plain "indications of [contrary] legislative intent" in ERISA, which was designed specifically to remove jurisdictional and procedural hurdles preventing *plaintiffs* from enforcing their statutory rights.

Appellate Case: 16-2607 Page: 28 Date Filed: 06/08/2016 Entry ID: 4409410

tionably demonstrates that Congress did not intend to allow a fiduciary to force a plan participant/beneficiary who worked for a company for 30 years in Maine and who files a claim for benefits with that company, to be required to litigate his claim in Los Angeles.").

Indeed, ERISA suits are typically brought by some of the most vulnerable members of the population: retirees on limited budgets, sick and disabled workers, or widows and dependents. These individuals rarely have the financial means or legal sophistication to navigate a lawsuit in a venue hundreds or thousands of miles away, in a district with no connection to their personal or professional lives. Even if these cases are often litigated on the papers, cf. Doc. 51 at 4, that is cold comfort to beneficiaries—who must still find a lawyer willing to represent them on the assumption that the case *may* require a trial (or at least appearances in an unfamiliar court thousands of miles away).[8] The expected return on such suits is already limited, and thus the ability to find legal representation is limited as well. Where Defendants elevate the expected cost by even a few hundred or thousand dollars, they

---

[8] Nor is it useful that a case theoretically *may* be transferred back to its natural location for any trial. Doc. 26 at 6. There is no guarantee that a trial court will exercise its discretion to grant such a transfer, and lawyers have to take that risk into account before agreeing to undertake a representation. If a lawyer has to try a case thousands of miles from home, the expense of the action can quickly overtake its expected return.

erect a serious impediment to the already-imposing challenge of securing counsel to litigate technical ERISA claims.

c. The courts below accepted Defendants' position that limiting all suits to a single district court promotes ERISA's interests in "uniformity." Doc. 51 at 4; Doc. 26 at 7 (Congress wanted ERISA to "bring[] a measure of uniformity in an area where decisions under the same set of facts may differ as a result of geographic location") (internal quotation marks omitted). According to Defendants, "[b]ecause Ascension operates in more than 20 states, the Plan and its participants would be subject to varying interpretations and outcomes without the [forum-selection clause]." Doc. 47 at 11. Defendants are confused.

Congress was indeed concerned about uniformity, but a very *different* kind of uniformity: the problem of subjecting plans to multiple legal regimes with different requirements. *Egelhoff* v. *Egelhoff*, 532 U.S. 141, 148 (2001) ("Uniformity is impossible, however, if plans are subject to different legal obligations in different States."). That is why Congress preempted conflicting state laws in this area. See 29 U.S.C. 1144(a); *Davila*, 542 U.S. at 208. But that kind of uniformity is not relevant here. No matter where this action is brought, all federal courts will be applying the same law and the same plan, construed the same way by the same plan administrator, and these courts can take the decisions of their sister courts into account when issuing decisions. If Congress felt that uniformity required vesting a

single court with jurisdiction over all claims, it would not have granted beneficiaries an affirmative right to select among three different venues.

d. According to the district court, "'if Congress had wanted to prevent private parties from waiving ERISA's venue provision, Congress could have specifically prohibited such action.'" Doc. 51 at 3. This flips the law on its head. When Congress imposes a statutory directive, it presumably means what it says. Parties are not free to ignore that directive simply because Congress never repeated that it was actually serious about the requirement; the presumption is that Congress was serious the first time. And that is especially true where Congress mandates specific safeguards to benefit a protected class.

In any event, the district court overlooks that Congress effectively *did* prohibit such "waivers": It granted beneficiaries a right to choose venue, and then prohibited any plan requirements inconsistent with the statute. See 29 U.S.C. 1104(a)(1)(D). An attempt to narrow the universe of permissible venue choices is inconsistent with the statute.

e. Defendants' contrary authority is also unpersuasive. Some courts, for example, simply assume that because ERISA claims are likely subject to arbitration, they must also be subject to forum-selection clauses: "It is illogical to say that, under ERISA, a plan may preclude venue in federal court entirely, but a plan may not channel venue to one particular federal court." *Smith*, 769 F.3d at 932; Doc. 26 at

Appellate Case: 16-2607 Page: 31 Date Filed: 06/08/2016 Entry ID: 4409410

7-8 ("an arbitration clause is similar to a specialized forum selection clause"); but see *Smith*, 769 F.3d at 935-936 (Clay, J., dissenting) (refuting this logic). These decisions overlook that arbitration is permitted as a result of the *compelling federal policy favoring arbitration*, which itself is codified in an independent federal statute (the Federal Arbitration Act, 9 U.S.C. 1 *et seq.*). Arbitration agreements can override a statutory venue provision because a *separate* federal statute (the FAA) says they can. There is no analogous statute for forum-selection clauses. Thus it may be true, per Defendants, that courts have upheld "arbitration clauses in ERISA plans" (Doc. 47 at 9), but those cases are irrelevant. Congress, by statute, has given ERISA plaintiffs the right to choose the venue in which they bring their benefit claims, and there is no statute like the FAA to supersede this by way of a forum-selection clause.

f. The decisions below suggest that courts can account for any true problems via case-specific balancing, allowing transfer where a distant forum is truly oppressive. Doc. 26 at 6. But that is no answer for avoiding the jurisdictional and procedural barriers that Congress targeted in ERISA. The "heavy burden of proof" required for transfer (*The Bremen*, 407 U.S. at 17) would tolerate the serious impediments to judicial access that ERISA sought to eliminate. And the additional litigation itself adds unnecessary obstacles to swift judicial review of benefit denials—obstacles made worse by protracted litigation (which is common, as reflected

by Defendants' conduct here). See, *e.g.*, *Gulf Life*, 809 F.2d at 1525 n.8 ("even if the change of venue were granted, the participant/beneficiary would have had the additional expense, time and aggravation of litigating the change of venue motion in a distant forum"). While transfer could mitigate harm in the most egregious cases, the possibility of transfer is not an adequate substitute for enforcing ERISA's venue provision as Congress drafted it.

g. Finally, the district court "d[id] not believe that Clause will be unable to litigate effectively in this forum." Doc. 51 at 3-4. This is both irrelevant and wrong. It is irrelevant because it was improper to enforce the forum-selection clause regardless of the particular facts of Clause's situation. Congress made a uniform determination—for all beneficiaries and all plans—that ERISA plaintiffs need not bear the burden of litigating hundreds of miles (or more) from home, in a venue where they have no contacts.

In any event, the district court was wrong. It had no basis for concluding that Clause—a 58-year-old Arizonan with multiple physical ailments and a maximum pre-disability earning potential below $15 per hour, see Doc. 12-1 at 13—could

Appellate Case: 16-2607 Page: 33 Date Filed: 06/08/2016 Entry ID: 4409410

easily litigate her claim half a continent away in Missouri.[9] Judge Clay's dissent in *Smith* encapsulates the problems with the district court's view:

> Requiring Plaintiff to litigate in a distant venue imposes a substantial increase in expense and inconvenience that obstructs his access to federal courts. Because the express purpose and policy of ERISA is to provide unobstructed access to a forum in which participants and beneficiaries can pursue their claims for benefits, the unilaterally added venue selection clause at issue in this case should be deemed unenforceable * * * .

Smith, 769 F.3d at 935 (Clay, J., dissenting). Likewise, the Eleventh Circuit found such a clause directly at odds with ERISA's purpose, explaining how it could "force [a plaintiff] to litigate his benefit plan rights in [Guam]." *Gulf Life*, 809 F.2d at 1525 n.7. This "most extreme" scenario, the court continued, was anathema to ERISA, which would not allow a fiduciary to force "a plan participant/beneficiary who worked for a company for 30 years in Maine and who files a claim for benefits with that company, to be required to litigate his claims in Los Angeles." *Ibid.*

Unfortunately, such scenarios now are hardly uncommon: due to the enforcement of restrictive forum-selection clauses, society's most vulnerable (the ill, the aged, the disabled, the poor) are forced to litigate far from home in a remote

---

[9] It is true enough "that Clause has retained counsel," Doc. 51 at 4, but this observation is incomplete. Undersigned counsel specialize in Supreme Court and appellate litigation, and were retained exclusively for the specific purpose of litigating the public-interest venue issue on appeal. This representation specifically excludes any role in litigating the merits of the claim in district court. At present, Clause accordingly would still have to find other counsel to press the merits of her lawsuit should it remain in Missouri—again, a location with which she has no connection.

Appellate Case: 16-2607 Page: 34 Date Filed: 06/08/2016 Entry ID: 4409410

and unfamiliar venue. See, *e.g.*, *Rodriguez* v. *PepsiCo*, 716 F. Supp. 2d 855 (N.D. Cal. 2010) (enforcing forum-selection clause that forced a low-income, physically disabled resident in California to litigate a benefits dispute in New York); *Bernikow* v. *Xerox*, No. CV 06-2612, 2006 WL 2536590 (C.D. Cal. August 29, 2006) (same). "The threshold task of merely retaining counsel in a distant location, which may seem routine to attorneys and judges, is profoundly daunting to ordinary people." Edward A. Purcell, Jr., *Geography as a Litigation Weapon: Consumers, Forum-Selection Clauses, and the Rehnquist Court*, 40 UCLA L. Rev. 423, 446-447 (1992). The untenable scenario that *Gulf Life* envisaged in 1987 has now become a reality.

Defendants' attempt to obstruct Clause's access to her choice of venue imposes precisely the kind of hardship that ERISA's venue provision aimed to avoid. ERISA's minimum requirements guarantee beneficiaries the right to sue in districts where the breach occurred, and Defendants' forum-selection clause directly conflicts with that right. The clause therefore violates federal law and is unenforceable. Clause respectfully submits that mandamus is warranted.

CONCLUSION

The Court should issue a writ of mandamus directing the district court to transfer this matter to the U.S. District Court for the District of Arizona.

Appellate Case: 16-2607 Page: 35 Date Filed: 06/08/2016 Entry ID: 4409410

Respectfully submitted.

/s/ *Daniel L. Geyser*
Peter K. Stris
Daniel L. Geyser
Lead Counsel
Douglas D. Geyser
STRIS & MAHER LLP
725 S. Figueroa Street, Suite 1830
Los Angeles, CA 90017
Tel.: (213) 995-6811
Fax: (213) 261-0299
peter.stris@strismaher.com
daniel.geyser@strismaher.com
douglas.geyser@strismaher.com

Counsel for Petitioner Lorna Clause

June 7, 2016

Appellate Case: 16-2607 Page: 36 Date Filed: 06/08/2016 Entry ID: 4409410

APPENDIX

Appellate Case: 16-2607 Page: 37 Date Filed: 06/08/2016 Entry ID: 4409410

APPENDIX—TABLE OF CONTENTS

Exhibit

Order Granting Transfer, Doc. 26 (Jan. 19, 2016) (D. Ariz.) .... A

Memorandum & Order Denying Retransfer,
Doc. 51 (May 17, 2016) (E.D. Mo.) .... B

First Amended Complaint, Doc. 12 (Oct. 1, 2015) C

Civil Docket Sheet, Case No. 4:16-cv-00071-RLW .... D

EXHIBIT A

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Lorna Clause,

Plaintiff,

vs.

Sedgwick Claims Management Services, Inc., et al.,

Defendants.

No. CIV 15-388-TUC-CKJ

ORDER

Pending before the Court is the Motion to Dismiss, or in the Alternative, to Transfer Venue (Doc. 15) filed by Defendants Sedgwick Claims Management Services, Inc. (Sedgwick") and Ascension Health Alliance ("Ascension") (collectively, "Defendants"). The Court declines to schedule this matter for argument. See LRCiv 7.2(f); 27A Fed.Proc., L. Ed. § 62:367 ("A district court generally is not required to hold a hearing or oral argument before ruling on a motion.").

Factual and Procedural History[1]

Plaintiff Lorna Sue Clause ("Clause") was employed as a Patient Care Technician for Carondelet. Because of two shoulder surgeries, calcifying tendonitis, supraspinatus tendon tear shoulder impingement and trapezius pain, Clause has been unable to work since August

[1]For purposes of this Motion to Dismiss, the facts are taken from the First Amended Complaint (Doc. 14).

2012 as a Patient Care Technician.

Clause applied for disability benefits through the Ascension Long-Term Disability Plan ("Plan"). The Plan is administered through Ascension and Sedgwick provides benefits and performs as the Claim Administrator of the Plan. Clause's claim for long-term disability benefits was accepted, reflecting an onset of disability by August 2012.

Following an initial termination of benefits and a successful appeal, Clause's benefits were again terminated on November 18, 2014. By letter of January 8, 2015, Defendants again terminated Clause's benefits without mentioning its previous November 18, 2014, termination letter – the rationale for the termination of benefits was modified.

Clause appealed the termination of her benefits. Defendants confirmed the termination of benefits, but again modified its rationale for the termination of benefits.

Clause initiated this action seeking declaratory relief, to recover benefits and enforce her rights under the Plan, and to obtain equitable relief.[2]

Defendants filed their Motion to Dismiss, or in the Alternative, to Transfer Venue (Docs. 15 and 16).[3] A response and a reply have been filed.

Forum Selection Clause

Defendants claim that venue is improper in this Court because the forum selection clause contained in the Plan identifies the United States District Court for the Eastern District of Missouri as the exclusive venue for any claim "relating to or arising under" the Plan. Motion, Ex. A, § 9.20 (Doc. 16-1). Defendants assert that, absent exceptional circumstances,

---

[2]Although the First Amended Complaint requests supplemental relief pursuant to "1131(a)(3)." there is no such provision. Indeed, 29 U.S.C. § 1131 addresses criminal remedies. The Court accepts Clause's reference to "1131(a)(3)" as a reference to 29 U.S.C. § 1132(a)(3) which provides for injunctive and equitable relief.

[3]This motion supersedes the prior Motion to Dismiss filed by Sedgwick. The Court will deny the superseded motion as moot.

1 the forum selection clause is mandatory and must be enforced. Further, Defendants assert
2 Clause has not and cannot show exceptional circumstances. Clause asserts, however, that
3 when Congress has granted a plaintiff the a right to choose venue in a statute, as in the venue
4 provision of the Employee Retirement Income Security Act of 1974 (ERISA), codified at 29
5 U.S.C. § 1132(e)(2), a defendant may not restrict or alter that statute's special venue
6 provision through contract.[4]

7 "The presence of a valid forum-selection clause requires district courts to adjust their
8 usual § 1404(a) analysis in three ways." *Atl. Marine Const. Co., Inc. v. U.S. Dist. Court for*
9 *W. Dist. of Texas*, — U.S. — , 134 S.Ct. 568, 581, 187 L.Ed.2d 487 (2013). "First, the
10 plaintiffs choice of forum merits no weight ..., as the party defying the forum-selection
11 clause, the plaintiff bears the burden of establishing that transfer to the forum for which the
12 parties bargained is unwarranted." *Id.* at 582. Second, the district court should not "consider
13 arguments about the parties' private interests." *Id.* "When parties agree to a forum-selection
14 clause, they waive the right to challenge the preselected forum as inconvenient or less
15 convenient for themselves or their witnesses, or for their pursuit of the litigation. A court
16 accordingly must deem the private-interest factors to weigh entirely in favor of the
17 preselected forum." *Id.* A district court is to only consider arguments regarding
18 public-interest factors. *Id.* "Third, when a party bound by a forum-selection clause flouts
19 its contractual obligation and files suit in a different forum, a § 1404(a) transfer of venue will
20 not carry with it the original venue's choice-of-law rules – a factor that in some circumstances
21 may affect public-interest considerations." *Id.*

22 The enforceability of forum selection clauses is governed by federal law.
23
24

25 [4]Clause points out that the Supreme Court has been asked to make a determination as
26 to whether the policy considerations underlying ERISA's venue provision preclude enforcement of forum selection clauses that plan administrators include in ERISA plans.
27 Since the filing of the response, the Supreme Court has denied review. *Smith v. Aegon Companies Pension Plan*, 2016 WL 100358 (Mem) (Jan. 11, 2016).
28

1 *Manetti–Farrow, Inc. v. Gucci Am., Inc.*, 858 F.2d 509, 513 (9th Cir.1988). A forum
2 selection clause is presumptively valid and "should control absent a strong showing that it
3 should be set aside." *M/S Bremen v. Zapata Off-Shore Co.*, 407 U.S. 1, 15 (1972); *Argueta*
4 *v. Banco Mexicano, S.A.*, 87 F.3d 320, 325 (9th Cir. 1996) ("Although *Bremen* is an
5 admiralty case, its standard has been widely applied to forum selection clauses in general.").
6 To avoid the application of a forum selection clause, the party opposing its enforcement must
7 show that it is unreasonable under the circumstances. *M/S Bremen*, 407 U.S. at 10; *see also*
8 *Manetti-Farrow,* 858 F.2d at 514-15. The enforcement of a forum selection clause is
9 unreasonable where: (1) the inclusion of the clause in the agreement was the product of fraud
10 or overreaching; (2) the party objecting to the clause would effectively be deprived of his day
11 in court if the clause is enforced; and (3) the enforcement of the clause would "contravene
12 a strong public policy of the forum in which suit is brought." *Murphy v. Schneider Nat'l, Inc.*,
13 362 F.3d 1133, 1140 (9th Cir. 2004) (citations omitted). Forum selection clauses are also
14 evaluated for fundamental fairness. To determine whether a forum selection clause is
15 fundamentally fair, and thus enforceable, courts consider the absence of a bad-faith motive,
16 the absence of fraud or overreaching, and notice of the forum provision. *Carnival Cruise*
17 *Lines, Inc. v. Shute*, 499 U.S. 585, 595 (1991); *Dempsey v. Norwegian Cruise Line*, 972 F.2d
18 998, 999 (9th Cir.1992)).
19 In this case, Clause asserts that Defendants concealed an oppressive change of venue
20 clause in the Plan documents to cause participants, including Clause, to lack a judicial
21 remedy without obtaining counsel and engaging in litigation away from their home state.
22 However, information regarding the forum selection clause was not only included in the Plan,
23 Motion, Ex. A, § 9.20 (Doc. 16-1), it was also included in the Summary Plan Description
24 ("SPD"). After discussing administrative remedies, including an appeal of a denial of
25 benefits, the SPD discusses other recourses available to someone seeking to challenge a
26 denial of benefits. The SPD informs the reader he/she has right to bring a civil action under
27 Section 502(a) of ERISA, he/she may have other voluntary alternative dispute resolution
28

Appellate Case: 16-2607 Page: 43 Date Filed: 06/08/2016 Entry ID: 4409410

options, he/she may contact the U.S. Department of Labor office and your state insurance regulatory agency for information as to options available, and he/she could contact the Employee Benefits Security Administration (providing a contact number). The SPD then states:

> **The Plan contains a forum selection clause, which requires that any action relating to or arising under this Plan shall be brought in and resolved only in the U.S. District Court for the Eastern District of Missouri, and in any courts in which appeals from that court are heard.**

Motion, Ex. C, SPD, p. 22 (Doc. 16-3). Additionally, Defendants assert the SPD is posted on the Carondelet Health Network benefits website, and participants are notified that an SPD is available upon request at any time from the benefits department. The Court finds there is no evidence of a bad-faith motive by Defendants, fraud or overreaching. Moreover, as the clause is included in both the Plan and the SPD, the Court finds Plan and the SPD provided sufficient notice of the forum selection clause. *See e.g. Scharff v. Raytheon Co. Short Term Disability Plan*, 581 F.3d 899, 908 (9th Cir. 2009) (there is no duty on plan administrators to "inform participants separately of provisions already contained in the SPD").

Here, the forum selection clause removes any uncertainty about where jurisdiction lies, thus avoiding confusion regarding venue selection. Moreover, since it is arguably more cost efficient for Defendants to litigate in Missouri, those savings could be passed along to the Plan itself. *See Cent. States, Southeast and Southwest Areas Pension Fund v. O'Brien & Nye Cartage Co.*, No. 06-4988, 2007 WL 625430, at *3 (N.D. Ill. Feb. 22, 2007) (finding that "[t]he purpose of including the venue selection clauses is obviously to allow for the Trustees to better exercise efficient administration of the Funds by reducing cost associated with litigating claims against multiple employers . . . ."). Additionally, lead counsel for Defendants are located in Missouri. Clause argues, however, that the restrictive forum selection clause would require her to litigate in a venue that is more than 1000 miles from her home and most recent place of work and in a venue with which Clause has no connection. Further, Clause asserts that her disability has already worked a substantial financial hardship

Appellate Case: 16-2607 Page: 44 Date Filed: 06/08/2016 Entry ID: 4409410

upon her and litigating in Missouri, where she cannot afford to travel to hearings, would present an oppressive burden. Clause also asserts that she would be unable to have her current counsel represent her and it would be burdensome to retain another attorney to represent her in Missouri.[5] In other words, Clause asserts that enforcement of the forum selection clause would deprive her of her day in court. *Murphy v. Schneider Nat'l, Inc.*, 362 F.3d 1133, 1140 (9th Cir. 2004) (refusing to enforce forum selection clause where party's substantial "physical and financial limitations" would preclude him from having "his day in court").

Initially, the Court notes that it is more than likely that neither Clause nor her attorney would be required to travel to Missouri; ERISA cases are normally decided by cross-motions and without the need for trial or discovery. *See, e.g., Russell v. Comcast Corp.*, 381 Fed.Appx. 657 (9th Cir. 2010). Further, even if Clause could obtain discovery in this case, any information that Clause could theoretically discover would likewise be located in Missouri, making travel possible no matter where the case is litigated. Additionally, if a trial were to occur, Clause could then seek a transfer of venue back to this district, based on her inability to appear in Missouri. 28 U.S.C. § 1404(a) (allowing the court to "transfer any civil action to any other district or division where it might have been brought" "[f]or the convenience of parties and witnesses" and "in the interest of justice"). *See e.g. Rodriguez v. PepsiCo Long Term Disability Plan*, 716 F.Supp.2d 855, 862 (N.D.Cal. 2010). Further, these factors address Clause's personal interests, which the *Atl. Marine Const. Co., Inc.*, Court stated should not be considered. "Enforcement of the forum selection clause [] will not deprive [Clause] of [her] day in court." *Rodriguez*, 716 F.Supp.2d at 862.

Additionally, the record fails to establish that the enforcement of the forum selection clause would "contravene a strong public policy of the forum in which suit is brought."

---

[5]Defendants point out that out-of-state counsel are regularly admitted *pro hac vice* to litigate on behalf of their clients against the Plan without any need for local counsel and without the need for physical appearances.

Bremen, 407 U.S. at 15. Rather, as another district court has stated:

> Enforcement of the forum selection clause in this case, moreover, actually furthers one of the purposes of ERISA by 'bring[ing] a measure of uniformity in an area where decisions under the same set of facts may differ' as a result of geographic location. . . . (quoting H.R. Rep. No. 93-533 (1973), reprinted in 1974 U.S.C.C.A.N. 4639, 4650). The forum selection clause contained in [the] LTD Plan allows one federal court to oversee the administration of the LTD Plan and gain special familiarity with the LTD Plan Document, thereby furthering ERISA's goal of establishing a uniform administrative scheme.

Klotz v. Xerox Corp., 519 F. Supp. 2d 430 (S.D.N.Y. 2007). Although Clause argues that public policy requires fiduciaries to "discharge [their] duties with respect to a plan solely in the interest of the participants and beneficiaries" and "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this subchapter and subchapter III of this chapter," 29 U.S.C. § 1104(a)(1)(D), and the enforcement of the forum selection clause would violate that fiduciary duty. The interests of all participants and beneficiaries are benefitted by bringing uniformity to ERISA decisions.

Lastly, the Court does not find Clause's argument that *Boyd v. Grand Trunk W. R. Co.*, 338 U.S. 263 (1949), and similar cases should govern the enforceability of forum selection clauses in ERISA cases. Rather, *Boyd* did not involve a forum selection clause in an ERISA case. The Court agrees with Defendants that, not only have the rules governing the validity of forum selection clauses been relaxed, *see* 7 Williston on Contracts § 15:15 (4th ed.), but the venue statute in *Boyd* was mandatory, while the ERISA venue provision has permissive language. Further, the federal governing statute has been broadened since *Boyd*. Additionally, the Ninth Circuit was discussing an arbitration clause in a contract case in *Smallwood v. Allied Van Lines, Inc.*, 660 F.3d 1115 (9th Cir. 2011), which is relied upon by Clause. The Ninth Circuit has recognized that "in the past, [it has] expressed skepticism about the arbitrability of ERISA claims, *see Amaro v. Cont'l Can Co.*, 724 F.2d 747, 750 (9th Cir.1984), but those doubts seem to have been put to rest by the Supreme Court's opinions in [*Shearson/American Exp., Inc. v. McMahon*, 482 U.S. 220, 226 (1987)] and [*Rodriguez*

de Quijas v. Shearson/American Express, Inc., 490 U.S. 477, 481 (1989)]." *Comer v. Micor, Inc.*, 436 F.3d 1098, 1100 (9th Cir. 2006). As an arbitration clause is similar to a specialized forum selection clause, *Smith v. Aegon Companies Pension Plan*, 769 F.3d 922, 932 (6th Cir. 2014), it is difficult to conclude that *Smallwood* should govern in this case.

The Court finds Clause has failed to overcome the strong presumption in favor of enforcing forum selection clauses. Further, Clause has not set forth any basis for which this Court should schedule an evidentiary hearing, as requested by Clause, to determine whether the forum selection clause was included in the Plan for a motive contrary to public policy.

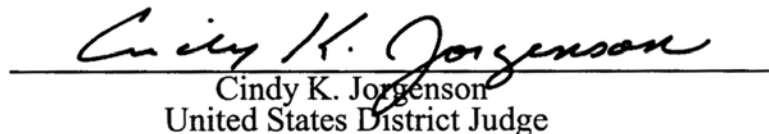
Dismiss or Transfer

Because Clause would likely incur additional costs should this Court dismiss this case rather than transfer venue, the Court will deny the Motion to Dismiss, but will grant the Motion to Transfer Venue.

Accordingly, IT IS ORDERED:

1. The Motion to Dismiss, or in the Alternative, to Transfer Venue (Doc. 10) is DENIED AS MOOT.
2. The Motion to Dismiss, or in the Alternative, to Transfer Venue (Doc. 15) is GRANTED IN PART AND DENIED IN PART.
3. The Clerk of Court shall transfer this matter to the United States District Court for the Eastern District of Missouri.

DATED this 15th day of January, 2016.



Cindy K. Jorgenson
United States District Judge

EXHIBIT B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LORNA CLAUSE,)
)
Plaintiff,) No. 4:16-CV-71 RLW
)
v.)
)
SEDGWICK CLAIMS MANAGEMENT)
SERVICES, INC., et al.,)
)
Defendant.)

MEMORANDUM AND ORDER

This matter is before the Court on Plaintiff's Motion to Retransfer (ECF No. 44), filed on February 22, 2016. This matter is fully briefed and ready for disposition.

DISCUSSION

In this action, Plaintiff alleges a claim under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§1101, *et seq*. Plaintiff asks this Court to (1) retransfer this action to the U.S. District Court for the District of Arizona,[1] which transferred this action to this Court on January 19, 2016; and (2) preserve her appellate rights to challenge the improper transfer of this action under a forum-selection clause that is invalid under ERISA. (ECF No. 45 at 1).

A. Retransfer

Clause contends that the forum selection clause in the Ascension Plan is in conflict with ERISA's liberal venue provision. (ECF No. 48 at 3-4; ECF No. 45 at 9-11). Clause relies on ERISA's provision that states an ERISA action "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."

[1] *Clause v. Sedgwick Claims Mgmt. Servs., Inc.*, No. CIV 15-388-TUC-CKJ, 2016 WL 213008 (D. Ariz. Jan. 19, 2016).

(ECF No. 48 at 4 (citing 29 U.S.C. §1132(e)(2)). Clause maintains that the use of the word "may" is permissive in the sense that it lets the plaintiff choose one of the three options, but it does not give the plan the right to unilaterally modify or restrict those options. (ECF No. 48 at 6). Clause emphasizes the difficulty for an individual to litigate in a foreign court. (ECF No. 45 at 12). Clause contends that Congress gave plaintiffs, not plans, the right to select the location of the suit. (ECF No. 48 at 5).

In response, Defendants argue that the forum selection clause at issue in this case is valid. (ECF No. 47 at 7). Defendants maintain that ERISA's venue clause is permissive and not mandatory in that it uses "may" rather than "shall." (ECF No. 47 at 7). Further, Defendants assert that the forum selection clause does not contravene public policy in either Arizona or the United States. (ECF No. 47 at 6). Defendants state that a "clear majority" of the lower federal courts have found such forum selection clauses to be valid. Indeed, Defendants note that only two district courts have found that a plan's forum selection clause was invalid. (ECF No. 47 at 6). Finally, Defendants assert that their forum selection clause furthers the goal of bringing uniformity to ERISA decisions. (ECF No. 47 at 10-11). Defendants contend that otherwise the Plan and its participants would be subject to varying interpretations and outcomes. (ECF No. 47 at 11).

As a general rule, courts enforce valid forum selection clauses. "[W]hen the parties' contract contains a valid forum-selection clause, which represents the parties' agreement as to the most proper forum.'" *Atl. Marine Const. Co. v. U.S. Dist. Court for W. Dist. of Texas*, 134 S. Ct. 568, 581 (2013) (quoting *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." *Stewart Org., Inc.*, 487

U.S. at 33. The Arizona District Court has previously held that the forum selection clause in this case is enforceable. *See Clause v. Sedgwick Claims Mgmt. Servs., Inc.*, No. CIV 15-388-TUC-CKJ, 2016 WL 213008, at *4 (D. Ariz. Jan. 19, 2016) ("Clause has failed to overcome the strong presumption in favor of enforcing forum selection clauses."). The Court agrees with the Arizona District Court and numerous district and circuit courts that have found that ERISA forum selection clauses are enforceable. *See Smith v. Aegon Companies Pension Plan*, 769 F.3d 922, 931 (6th Cir. 2014), *cert. denied*, 136 S. Ct. 791, 193 L. Ed. 2d 708 (2016) ("A majority of courts that have considered this question have upheld the validity of venue selection clauses in ERISA-governed plans. These courts reason that if Congress had wanted to prevent private parties from waiving ERISA's venue provision, Congress could have specifically prohibited such action."); *Clause*, 2016 WL 213008, at *4; *Bernikow v. Xerox Corp. Long-Term Disability Income Plan*, No. CV 06-2612 RGKSHX, 2006 WL 2536590, at *2 (C.D. Cal. Aug. 29, 2006) ("Had Congress sought to prevent plaintiffs from waiving the statutory venue provision by private agreement, it could have done so by express provision."); *Klotz v. Xerox Corp.*, 519 F. Supp. 2d 430, 435 (S.D.N.Y. 2007) ("The vast majority of district courts have enforced forum selection clauses in ERISA plans."); *Sneed v. Wellmark Blue Cross & Blue Shield of Iowa*, No. 1:07CV292, 2008 WL 1929985, at *2 (E.D. Tenn. Apr. 30, 2008) ("Every other court that considered this issue upheld the forum selection clause."); *Schoemann ex rel. Schoemann v. Excellus Health Plan, Inc.*, 447 F. Supp. 2d 1000, 1007 (D. Minn. 2006) ("The Court finds nothing in the language or purposes of ERISA that renders invalid a forum-selection clause in a welfare-benefit plan.").

Further, the Court does not believe that any of Clause's concerns weigh in favor of re-transfer of this action. In particular, the Court does not believe that Clause will be unable to

litigate effectively in this forum. The Court notes that Clause has retained counsel to represent her interests. Likewise, the Court finds little inconvenience for plaintiff because this matter will more likely than not be decided on the administrative record. *See Schoemann ex rel. Schoemann v. Excellus Health Plan, Inc.*, 447 F. Supp. 2d 1000, 1005 (D. Minn. 2006). Indeed, the Court agrees that greater uniformity will result from having this district review the ERISA decisions. Therefore, the Court finds that the interests of justice weigh in favor of this Court enforcing the forum selection clause and retaining this action.

B. Interlocutory Appeal

Clause requests that this Court *sua sponte* certify the retransfer issue under 28 U.S.C. §1292(b) for interlocutory appeal. (ECF No. 45 at 13-14). Clause notes that if the Court does not *sua sponte* certify this issue, then she will file a formal motion seeking permission for interlocutory appeal and will solicit amicus support from the U.S. Department of Labor. (ECF No. 48 at 11).

Defendants state that certification of the transfer order is not appropriate in this case. First, Defendants argue that transfer under §1404(a) is not a controlling question of law. (ECF No. 47 at 14-15). Likewise, Defendants assert that Clause has overstated the difference of opinions related to this issue, particularly because there is no circuit split and the district opinions overwhelmingly support enforcing the forum selection clauses.

The Court will not *sua sponte* certify this action for interlocutory appeal. The Court agrees that the transfer under §1404(a) does not present a controlling issue of law. That is, the Court's transfer decision does not affect the ultimate outcome of this case. *Moses v. Bus. Card Exp., Inc.*, 929 F.2d 1131, 1136 (6th Cir. 1991). The Court further holds that "substantial grounds for difference of opinion" does not exist here. Substantial grounds exist when: "(1) the

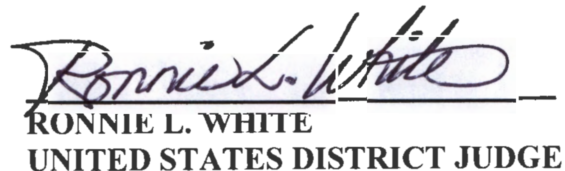
question is difficult, novel and either a question on which there is little precedent or one whose correct resolution is not substantially guided by previous decisions; (2) the question is one of first impression; (3) a difference of opinion exists within the controlling circuit; or (4) the circuits are split on the question." *Graham v. Hubbs Mach. & Mfg., Inc.*, 49 F. Supp. 3d 600, 612 (E.D. Mo. 2014) (citing *Emerson Elec. Co. v. Yeo*, No. 4:12CV1578 JAR, 2013 WL 440578, at *2 (E.D. Mo. Feb. 5, 2013)). As previously noted, the courts are not significantly split on this issue. Rather, courts have largely enforced the forum selection clauses in ERISA contracts. Based upon the foregoing, the Court will not *sua sponte* certify its Order.

Accordingly,

IT IS HEREBY ORDERED that Plaintiff's Motion to Retransfer (ECF No. 44) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiff's Motion to Stay Proceedings Pending the Final Disposition of Plaintiff's Forthcoming Retransfer Motion (ECF No. 39) is **DENIED** as moot.

Dated this 17th day of May, 2016.



RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

EXHIBIT C

WATERFALL, ECONOMIDIS, CALDWELL,
HANSHAW & VILLAMANA, P.C.
Williams Centre, Suite 800
5210 E. Williams Circle
Tucson, AZ 85711-4482

Barry Kirschner/SBN 005592
bkirschner@wechv.com
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Lorna Clause, a single woman, Plaintiff, vs. Sedgwick Claims Management Services, Inc.; and Ascension Health Alliance, Defendants.	No. 4:15-cv-00388-CKJ **NOTICE OF FILING PLAINTIFF'S FIRST AMENDED COMPLAINT**

Plaintiff Lorna Sue Clause (Clause) hereby gives notice of her filing, as a matter of right pursuant to Rule 15 (a)(1)(B) of the Federal Rules of Civil procedure (FRCP), her First Amended Complaint. The First Amended Complaint differs from the original filing in two ways. First, it includes a heading after current Paragraph 73:

> Defendants Have Concealed an Oppressive Change of Venue Clause in their Plan Documents to Cause Participants like Clause to Lack a Judicial Remedy Without Retaining New Counsel and Engaging in Litigation Away from their Home and Home State

It also contains the subsequent Paragraphs 73.1-73.13. The second difference is that the Amended Complaint also has Paragraph 78(h) which reads: "Creating and concealing an oppressive change of venue language designed to burden participants like Clause from

1 being able to pursue their legal rights in their state of residence and where they worked,
2 and for those reasons further set forth in paragraphs 73.1-73.13 above."
3
4 RESPECTFULLY SUBMITTED this 1st day of October, 2015.
5 WATERFALL, ECONOMIDIS, CALDWELL,
6 HANSHAW & VILLAMANA, P.C.
7
8 By *\/s/ Barry Kirschner*
Barry Kirschner
9 *Attorneys for Clause*
10
11 **CERTIFICATE OF SERVICE**
12 I certify that a true and correct copy of the foregoing Notice of Filing Amended
13 Complaint was forwarded via Electronic Mail on the 1st day of October, 2015, to the
14 following counsel of record:
15
16 D. B. Udall, Esq.
UDALL LAW FIRM
17 4801 E., Broadway Blvd., Suite 400
Tucson, Arizona 85711
18 Main: (214) 579-9319/Fax: (469) 444-6456
Email: budall@udalllaw.com
19 *Attorney for Defendants*
20
21 By *\/s/ Barry Kirschner*
22
23
24
25
26

WATERFALL, ECONOMIDIS, CALDWELL,
HANSHAW & VILLAMANA, P.C.
Williams Centre, Suite 800
5210 E. Williams Circle
Tucson, AZ 85711-4482

Barry Kirschner/SBN 005592
bkirschner@wechv.com
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

Lorna Clause, a single woman,

Plaintiff,

vs.

Sedgwick Claims Management Services, Inc.; and Ascension Health Alliance,

Defendants.

No. 4:15-cv-00388-CKJ

FIRST AMENDED COMPLAINT

Plaintiff Lorna Sue Clause ("Clause") alleges:

PARTIES

1. Clause is a participant and claimant in the Ascension Long-Term Disability Plan ("Plan") administered through Ascension Health Alliance.

2. On information and belief, Ascension Health Alliance's Plan is a disability benefit plan governed pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U. S.C. §1101, *et seq.* Jurisdiction of this claim is proper, 29 U.S.C. §1132(a)(1)(B) and (a)(3).

3. Defendant Sedgwick Claims Management Services, Inc. ("Sedgwick") is an insurance company which agreed to provide benefits and perform as the Claim Administrator of the Plan.

1 4. Clause is an intended beneficiary and participant of the protections of the
2 Ascension Plan.

3 **ERISA AND THE ASCENSION PLAN**

4 5. The United States Congress described its purpose in enacting ERISA in
5 1974:

6 7 8 9 10
> It is hereby declared to be the policy of this chapter to protect interstate commerce and the interests of participants in employee benefit plans and their beneficiaries, by requiring the disclosure and reporting to participants and beneficiaries of financial and other information with respect thereto, by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.

11 ERISA §2, 29 U.S.C. §1001(b)

12 **LORNA SUE CLAUSE**

13 6. Clause was born June 21, 1956.

14 7. Clause began her employment with Carondelet in March, 2001.

15 8. In 2012, Clause earned a salary of $14.41 per hour before becoming disabled
16 as a Patient Care Technician. This hourly rate does not include extra pay for night shift
17 differentials or over-time pay. It does not include COLA adjustments, which have since
18 become applicable.

19 9. Clause has been unable to work since August 2012 as a Patient Care
20 Technician.

21 10. Clause applied for disability benefits. Her claim for long-term disability
22 benefits was accepted, reflecting an onset of disability by August 2012.

23 11. Clause's medical conditions include two shoulder surgeries, calcifying
24 tendonitis, supraspinatus tendon tear shoulder impingement and trapezius pain.

25
26

1 **FIRST TERMINATION OF BENEFITS AND SUCCESSFUL APPEAL**

2 12. In 2013, Defendants set in motion a process of review which terminated
3 Clause's benefits effective October 9, 2013.

4 13. The adverse determination which terminated benefits was placed in writing
5 and communicated to Clause by letter of October 30, 2013.

6 14. Clause appealed the adverse decision on April 24, 2014. The
7 "administrative" appeal is attached as Exhibit A to this Complaint. [The first page is
8 incorrectly dated April 24, 2013.]

9 15. When Defendants shared Clause's medical information with the doctor of its
10 choice, Darryl Thomas, this Board Certified Orthopedic Surgeon agreed that Clause was
11 disabled from her regular occupation. Thomas gave his May 16, 2014 opinion:

12
13
14
15
16
17

> The claimant underwent right shoulder arthroscopic debridement, capsular release, and manipulation under anesthesia in February of 2013. Post-operatively, the claimant continued to demonstrate right shoulder pain and was recommended to be aggressive with physical therapy. Despite physical therapy, the claimant's functional capacity reevaluation from 04/14/2014 has revealed that the claimant was unable to perform lifting up to and over 50 pounds, which required by her job. The functional capacity evaluation demonstrated consistent and valid findings.
>
> These findings would impact the claimant's ability to function to in the material duties of her regular occupation from an orthopedic surgery perspective. Specifically, the claimant would have difficulty lifting, carrying, reaching, pushing, or pulling. [Emphasis added.]

18
19
20

21 **DEFENDANTS' SECOND TERMINATION OF BENEFITS**

22
23 16. Six months after reinstating benefits, on November 18, 2014, Defendants
again terminated the disability benefits of Lorna Clause.

24
25
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

17. The November 18, 2014 termination letter stated: "This denial is based on the fact that we have not been supplied with medical information to substantiate that you continue to be disabled."

18. The termination letter states that attempts to reach Drs. Siegel and Anderson had not succeeded in getting their oral contribution to Defendants' reviewers.

19. The internal file of Defendants referred to this as a "soft" denial.

20. At the time of the termination letter, Sedgwick had a Functional Capacity Evaluation (FCE) of April 18, 2014 endorsed by Clause's treating orthopedic surgeon that the FCE reasonably stated Clause's limitations.

21. The FCE described Clause as unable to perform work beyond sedentary, and definitely not able to perform the work she had performed in her regular occupation of Patient Care Technician.

22. Defendants had their own reviewer's May 16, 2014 opinion recognizing Clause would have difficulties carrying, reaching, pushing, or pulling.

23. On April 18, 2014, Dr. Kersey's Assessment/Plan stated:

> **ASSESSMENT/PLAN**
> **Calcifying tendinitis of shoulder (726.11)**
> We discussed the diagnosis, prognosis and treatment. I wrote a prescription for more physical therapy. We discussed various etiologies of her persistent pain. I do not feel that she is fully rehabilitated and regain her strength. We discussed appropriate home exercises in addition to the therapy. I did look at her recommendations for work restrictions based upon functional capacity evaluation that was performed. These are reasonable given her pathology and symptoms….

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26

24. Clause's symptoms continued to be troublesome and she was prescribed a TENS (electronic stimulator) for pain relief and continued physical therapy as of May 30, 2014.

25. Clause required an urgent care visit for trapezius spasms and was prescribed muscle relaxants in September 2014.

26. On September 29, 2014, treating surgeon Dr. Kersey performed an intra-articular steroid injection and made a physical therapy referral hoping for pain relief, increased function, improvement of activities of daily living, and education.

27. In addition to these indicators of significant continuing medical problems, Dr. Kersey recommended that Clause ice her shoulder for one hour, one to three times per day, plus perform home exercises.

28. When Sedgwick shared this information with its medical reviewer, December 4, 2014, 16 days after benefits were terminated, she concluded that Clause could perform a *sedentary* occupation. The reviewer was asked and answered:

> Q. If the employee is unable to perform any occupation at a sedentary level of work 8 hours per day, 5 days per week, what is/are the disabling diagnoses, complicating factors, and/or comorbidities?
>
> A. Not applicable, as she is able to perform any occupation at a **sedentary** level 8-hours a day, 5-days a week.

29. Clause asserted her right to obtain her claim file and all relevant data as defined by the Department of Labor within 29 CFR §2560 503-1(m)(8).

30. The Department of Labor Regulations require that when a termination or other adverse decision denying benefits is made, that the insurer/claim administrator must

provide an adequate written description of the reasons for termination at the time benefits are terminated. *See Halpin v. W.W.* Grainger, 962 F.2d 685, 688 (7th Cir. 1992); *Schneider v. Sentry Long Term Disability Plan*, 432 F.3d 621, 628-631 (7th Cir. 2005).

31. After receiving the November 25, 2014 letter requesting the claims file from Clause's counsel, Defendants declared that the decision was being reconsidered, and because of that it was not obligated to, and would not, provide the claims file.

32. Defendants delayed providing the file to Clause and counsel for two months.

33. Defendants involved its "NCM" (on information and belief, "National Claim Manager") in a reconsideration of its termination of Clause's benefits.

34. Defendants ignored their own November 18, 2014 termination letter, but refused to pay benefits between the dates of that letter and the January letter which offered a completely different rationale for terminating benefits.

35. Defendants never reconsidered whether they would pay Clause's benefits. They did not reinstate Clause to receive benefits during this "reconsideration".

36. Clause informed Defendants that if they had rescinded or otherwise withdrawn the November 18, 2014 letter terminating benefits, they were required to pay Clause benefits until they complied with the Department of Labor regulations to fully explain the basis for any termination. *See*, *Schneider v. Sentry Long Term Disability Plan, supra.*

37. Defendants refused to pay benefits back to November 18, 2014.

38. Defendants refused to acknowledge their requirement to terminate the payment of benefits only upon providing the reasoned basis for the termination.

39. Defendants only reconsidered its rationale for termination of benefits.

40. Defendants changed their rationale for terminating Clause’s benefits.

DEFENDANTS ABANDONED THEIR REASON FOR TERMINATION AND REPLACED IT WITH A NEW RATIONALE

41. By letter of January 8, 2015, Defendants again terminated Clause's benefits without mentioning their previous termination letter of November 18, 2014.

42. Defendants admitted that Clause was **not** physically capable of doing work beyond sedentary, the lowest physical requirement, in its revised rationale.

43. Instead of claiming that Clause had not provided medical information to prove a capacity of work at no higher than a sedentary level, this January 8, 2015 denial based its reasons for termination on Clause's ability to perform the ***sedentary*** occupations of receptionist and administrative clerk.

44. The January 8, 2015 termination letter claimed that Clause had prior relevant history to perform the occupation of receptionist because she had performed in that capacity for her former husband prior to her work at St Joseph's Hospital.

45. Nowhere in the November 18, 2014 letter had Defendants engaged in any analysis related to transferable occupational skills, or suggested that Clause could perform an occupation consistent with a gainful occupational income as provided in her disability contract.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26

46. The basis of the January termination letter did not re-urge the explanation provided in the November termination.

47. Clause requested the file again, as is her right, and had been her right since her benefits were terminated in November 2014.

48. When the claim file finally arrived, it substantiated that the transferable skills analysis (TSA) done by Defendants had relied on incorrect information.

49. Defendants argued that Clause had the proven skills to act as a receptionist, and, therefore, could earn a gainful wage in a gainful occupation consistent with her contractual rights. The gainful wage minimum for Clause was $11.53/hour.

50. Clause had no skills which would enable her to perform as a receptionist earning $11.53/hour or more.

51. Again cut off from benefits and forced to the expense of appealing her claim, Clause asked Rehabilitation and Occupational Expert Marcy Tigerman to consider Clause's occupational capacities, alternatives, and to author a report. That report is attached as Exhibit B, Tigerman March 26, 2015 report.

52. Tigerman is a Certified Rehabilitation Counselor, Certified Disability Management Specialist, and Certified Case Manager with 30 years of experience providing rehabilitation services. Tigerman's designations include: MS, CRC, CDMS, CCM, and CLCP.

53. Tigerman interviewed Clause, studied the file, and rendered her opinions concluding that Defendants had been unreasonable in their assessment that Clause had

1 relevant experience as a receptionist, or that she had the skills necessary to perform
2 successfully in the occupations of receptionist or clerk.
3
4 54. Tigerman correctly concluded that:

5 a) Clause did not have the requisite skills or education to perform the
6 positions listed by Defendants;

7 b) Defendants used incorrect assumptions of past performed work, decades
8 old, to claim Clause had current abilities she does not have;

9 c) That Clause lacked the skill and education to command a gainful occupation wage of $11.53 in the Pima County economy.

10 **DEFENDANTS REJECT CLAUSE'S APPEAL WITHOUT CONSIDERING**
11 **THE OCCUPATIONAL ANAYLSIS, AND AGAIN CHANGE THEIR**
RATIONALE FOR TERMINATION OF BENEFITS

12 55. In their June 4, 2015 denial of Clause's appeal, Tigerman's report and
13 conclusions were not addressed by Defendants. The denial of Clause's appeal did not
14 address her inability to work as a receptionist, information clerk, or the thrust of the appeal
15 of Clause. *See* Exhibit C, Clause April 6, 2015 appeal.

16 56. In the review of documents by Defendants' medical reviewers, there is no
17 indication that they considered, or even received the report of Clause's occupational
18 reviewer, Tigerman.

19 57. After filing the appeal which directed Defendants' attention to the
20 occupational inability for Clause to resume gainful employment as described in the Group
21 Plan, Clause's counsel wrote a letter after receiving an unusual phone call from the
22 Sedgwick representative. *See* Exhibit D, Kirschner April 22, 2015 letter.

23 58. The denial of Clause's appeal did not address her inability to work as a
24 receptionist, information clerk, or the thrust of the appeal of Clause. *See* Exhibit C, Clause
25 April 6, 2015 appeal.
26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ADDITIONAL PROCEDURAL IRREGULARITIES

59. After receiving Clause's appeal of the January 8, 2015 denial letter, Defendants realized the basis for termination of benefits could not reasonably be defended.

60. Instead of defending its January 2015 position that Clause could perform sedentary work and had sufficient skills and education to perform the gainful occupations of receptionist or administrative clerk, Defendants again changed their rationale and claimed that Clause could work in any occupation without physical limitation.

61. Defendants never informed Clause that they had changed their position that she could perform any job without physical limitations until the denial of appeal on June 4, 2015.

62. A review of the medical records available to Defendants caused them to concede, in their letter of January 8, 2015, terminating Clause's benefits that Clause was limited physically to a sedentary position. Defendants did NOT claim that Clause could perform medium or heavy physical work, as required in her regular occupation.

63. The failure to inform Clause that Defendants were going to deny her appeal based on a reason not stated in the January 2015 claim denial, that she could perform an occupation without limitation, caused Clause not to include the December 1, 2014 medical record of Dr. Kersey in her appeal. That record, not part of the administrative record, but something which would have been made part of the record had Clause been alerted that Defendants were contending she could again perform her regular occupation unrestricted, is attached in its entirety as Exhibit E to this Complaint.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

64. Records of treating orthopedic surgeon Robert Kersey continue to document Clause's shoulder difficulties. The medical record of Clause's December 1, 2014 office visit states:

> **OFFICE VISIT- RIGHT SHOULDER PAIN, CALCIFYING TENDINITIS, SUPRASPRINATUS TENDON TEAR, STIFFNESS OF SHOULDER JOINT**
> Today's instructions/ counseling include(s) call with questions or concerns, continue careful strengthening, Ice shoulder 1 hour 1-3 times per day. Limit reaching and heavy lifting and Perform home exercises as instructed. She is to schedule a follow-up visit with Robert Kersey, M.D. as needed.

65. After receiving Clause's appeal, Defendants initiated contact which is described in letter of April 22, 2015, by Barry Kirschner, attached as Exhibit D.

66. At no time prior to its June 5, 2015 letter denying Clause's appeal did Defendants provide any notice to Clause that it claimed Dr. Kersey had never restricted or acknowledged the correctness of restrictions of what was medically appropriate for Clause to perform which could relate to affect job performance.

67. In fact, Dr. Kersey had agreed that the elaborately detailed stated restrictions to sedentary work, after extensive physical examination and testing of the work of FCE examiner Karen Lunda, was reasonable given her pathology and symptoms.

68. In fact, Dr. Kersey's records reflect that on September 29, 2014, and again two weeks after the termination of Clause's benefits on December 1, 2014, that Clause continued to have problems justifying injections and referred her to physical therapy for pain relief and increased function.

69. On September 29, 2014, Dr. Kersey assessed Clause with symptomatic calcifying tendinitis of her shoulder, supraspinatus tendon tear and cervical spine degeneration with C5-6 degenerative disk disease.

70. Dr. Kersey's September 29, 2014 record reflects billing "Injection Major Joint."

1 71. Sedgwick has been found to have abused its discretion in handling ERISA
2 claims repeatedly, including by hiring biased doctors to review claim and assigning
3 sufficient weight to biased doctors to overcome the reasonable opinions of treating
4 physicians. *E.g., Shaw v. AT&T*, ___ F.3___, 2015 WL 454, 8232 (6th Cir., July 29, 2015).
5 72. Sedgwick Defendants have established a pattern of ignoring their obligations
6 to continue to pay disability benefits until it provides an adequate written explanation for
7 the termination of benefits. Sedgwick Defendants unlawfully cut off Clause's benefits
8 without timely written notification effective October 9, 2013, and did it again effective
9 November 18, 2014.
10 73. On information and belief, Defendants have either a pattern or practice of
11 cutting off benefits without providing timely written notice, or have handled Clause's claim
12 with a particularized bias against her, refusing to comply with regulations of the
13 Department of Labor.
14
15 **DEFENDANTS HAVE CONCEALED AN OPPRESSIVE CHANGE OF VENUE CLAUSE IN THEIR PLAN DOCUMENTS TO CAUSE**
16 **PARTICIPANTS LIKE CLAUSE TO LACK A JUDICIAL REMEDY WITHOUT RETAINING NEW COUNSEL AND ENGAGING IN**
17 **LITIGATION AWAY FROM THEIR HOME AND HOME STATE**
18 73.1 Defendant Plan Administrator further burdened the fairness of how its Plan
19 administers remedies for the disabled claimant by inserting language which purportedly
20 requires any litigation remedy to come from lawsuit in a foreign jurisdiction for all other
21 than residents of the state of Missouri.
22 73.2 The effect of placing this provision in the Plan documents is to provide a
23 barrier which is substantial and frequently insurmountable to claimants who have been
24 denied benefits, or whose benefits has been incorrectly terminated.
25
26

1 73.3 The process of inserting this venue provision violates the responsibility of
2 reviewers and fiduciaries to be faithful to their obligations of fairness and to allow full and
3 fair reviews of decisions.
4 73.4 One effect of this provision, if enforced as attorneys for Defendants seek to
5 enforce this against Lorna Clause, is that she would be unable to have her current counsel,
6 a licensed member of the Arizona bar, represent her in litigation without retaining the
7 services of another lawyer licensed to practice in the state of Missouri.
8 73.5 This requirement would be burdensome for any claimant. For a claimant
9 such as Clause who at her maximum earning potential before disability was limited to
10 $14.41/hour, this is an oppressive burden.
11 73.6 The insertion of this venue clause is further evidence that there is a conflict
12 of interest which affects the decision making and claims handling of the Defendants. This
13 conflict of interest is more than structural, but has risen to an oppressive level for
14 Defendants' participants.
15 73.7 The Plan provision on venue which ousts the claimant from statutory ability
16 and tradition to choose an acceptable forum under long accepted rules of jurisdiction and
17 venue was concealed from the participants of Defendants. The Summary Plan Description
18 (SPD) effective January 1, 2013 and Exhibit C to Document 7 in Clause contains a section
19 heading Enforcing Your Rights beginning at page 23 (Page 29 of 31 in Document 7.3)
20 which states in relevant part: "If you have a claim for benefits which is denied or ignored,
21 in whole or in part, *you may file suit in a state or federal court*." (Emphasis added.) There
22 is no mention that you may only file an action in Missouri or that regardless of where an
23 action is filed, Defendants can transfer your litigation to Missouri and force you to litigate
24 away from home.
25
26

1 73.8 The failure to reveal in the SPD the nature of the oppressive venue
2 provision was done purposefully to avoid questions from what would be a rightfully
3 indignant workforce of participants.
4 73.9 Rather than fully and fairly disclose this oppressive provision, Defendants
5 omitted it from the SPD and effectively hid it where virtually no employee will ever find
6 out about it.
7 73.10 On information and belief, fewer than 1% of the workforce is aware of the
8 change of venue provision used by Defendants in their Motion to Dismiss.
9 73.11 On information and belief, Defendants have provided the print copy of its
10 venue change provision to fewer than 100 persons in its workforce of participants.
11 73.12 On information and belief, the total number of participants potentially
12 subject to the change of venue provision if they were denied or terminated claims from
13 Defendants exceeds 50,000 participants.
14 73.13 The Motion to Dismiss or in the alternative change venue to Missouri is
15 an oppressive filing, reflecting the intentions of Defendants to violate its duties of fairness
16 to participants.
17 **COUNT I**
18 **DECLARATORY JUDGMENT**
19 74. Clause incorporates all paragraphs above as if fully set forth herein.
20 75. Defendants acted with a conflict of interest to their fiduciary obligations.
21 76. Sedgwick Claims Management Services, Inc. has a structural conflict of
22 interest because the more it pays in benefits as a fiduciary, the less it gains for itself and its
23 shareholders.
24 77. In addition to the structural conflict of interest, Sedgwick Claims
25 Management Services, Inc.'s conduct has been inflicted with a bias in favor of denial of
26 Clause's claim, including a system designed to ignore or overcome the experts, and

treating physicians who support Clause's claim for benefits. *Metropolitan Life Ins. Co. v. Glenn,* 554 U.S. 105 (2008).

78. Among the acts of Sedgwick Claims Management Services, Inc. evidencing bias are:

a. Failing to interpret 2014 FCE and related endorsements as relevant evidence to its medical review of November 2014;

b. Failing to timely pay benefits until an adequate written explanation for terminating benefits is provided to claimant;

c. Changing the rationale of its termination of benefits from what had been disclosed to claimant;

d. Changing the rationale of its termination of benefits without allowing meaningful dialogue to allow claimant to appreciate that a change in rationale is coming and that an appropriate opportunity to respond to newly formed rationales should be available before termination of benefits and/or denial of appeal of termination of benefits;

e. Unfairly interpreting a treating doctor's statements of never doing disability evaluations as "trumping" the facts of the medical records and the patients' medical needs, where the result is to terminate a claim unfairly and without notice to claimant;

f. Ignoring evidence establishing limitations, and then overruling medical record evidence by a general statement of a doctor that he does not do vocational assessments;

g. Failing to provide claim "relevant" data following receipt of a lawful written request from claimant after she was advised of the adverse determination terminating her benefits effective November 18, 2014;

h. Creating and concealing oppressive change of venue language designed to burden participants like Clause from being able to pursue their legal rights in their state of residence and where they worked, and for those reasons further set forth in paragraphs 73.1-73.13 above.

79. Medical records in Defendants' possession establishing that she could not perform the duties of her regular occupation in 2014 include:

a. A complete Functional Capacity Examination (FCE) performed in April 2014 at claimant's expense, endorsed by her treating physician orthopedic surgeon as its findings are reasonable;

b. Prescription of a TENS unit (nerve stimulator) and continuing physical therapy;

c. A September 29, 2014 intra-articular steroid injection and physical therapy referral, including for pain relief, and increased function, activities of daily living.

80. The facts warrant an order declaring that Lorna Clause is entitled to back benefits, reinstatement, continuing benefits, costs, attorneys' fees, and all other relief available by law or equity.

81. The facts warrant an order that Sedgwick Defendants not terminate benefits of Clause or any other of its beneficiaries prior to complying with the regulations of the United States Department of Labor to provide adequate written explanation of the legitimate basis for terminating benefits, and that Sedgwick Defendants not violate the responsibility to provide all relevant claim information upon receipt of a timely written request for relevant information following termination of benefits.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

COUNT TWO

82. The granting of relief pursuant to 29 USC section 1132 (a)(1)(B) would not provide complete relief to Clause under the circumstances.

83. The abuse of discretion in terminating her benefits in 2013 without justification caused Clause great hardship, expense, anxiety, and legal fees.

84. The actions of Defendants in 2013, and through its multiple procedural irregularities have caused Clause expense, delay in receipt of benefits, and the inability to manage a life on the economic margins.

85. The purpose of ERISA is to protect participants in benefit plans by creating and enforcing standards of conduct.

86. Defendants have violated these standards of conduct.

87. The violations of these standards have enriched Defendants, while causing hardship, including financial hardship and distress to Clause.

WHEREFORE, the relief for Clause from this civil action should not be limited to that available in 1132(a)(1)(B), but should also include all supplemental relief from 1131(a)(3), deemed equitable.

RESPECTFULLY SUBMITTED this 1st day of October, 2015.

WATERFALL, ECONOMIDIS, CALDWELL,
HANSHAW & VILLAMANA, P.C.

By *__/s/ Barry Kirschner__*
Barry Kirschner
Attorneys for Clause

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing First Amended Complaint was forwarded via Electronic Mail on the 1st day of October, 2015, to the following counsel of record:

D. B. Udall, Esq.
UDALL LAW FIRM
4801 E., Broadway Blvd., Suite 400
Tucson, Arizona 85711
Main: (214) 579-9319/Fax: (469) 444-6456
Email: budall@udalllaw.com
Attorney for Defendants

By *___/s/ Barry Kirschner___________*

EXHIBIT D

R16

U.S. District Court
Eastern District of Missouri (St. Louis)
CIVIL DOCKET FOR CASE #: 4:16-cv-00071-RLW

Clause v. Sedgwick Claims Management Services Incorporated et al
Assigned to: District Judge Ronnie L. White
Case in other court: Arizona, 4:15-cv-00388
Cause: 29:1132 E.R.I.S.A.-Employee Benefits

Date Filed: 01/19/2016
Jury Demand: None
Nature of Suit: 791 Labor: E.R.I.S.A.
Jurisdiction: Federal Question

Plaintiff

Lorna Clause
a single woman

represented by **Barry Kirschner**
Waterfall Economidis Caldwell Hanshaw & Villamana PC
5210 E Williams Cir., Ste. 800
Tucson, AZ 85711-7497
520-745-7810
Fax: 520-745-1279
Email: Barry@wechv.com
TERMINATED: 03/22/2016
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Daniel L. Geyser
STRIS AND MAHER LLP
725 S. Figueroa St.
Suite 1830
Los Angeles, CA 90017
213-995-6801
Fax: 213-261-0299
Email: daniel.geyser@strismaher.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Peter K. Stris
STRIS AND MAHER LLP
725 S. Figueroa St.
Suite 1830
Los Angeles, CA 90017
213-995-6801
Fax: 213-261-0299
Email: peter.stris@strismaher.com
LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Michael N. Jones
STRIS AND MAHER LLP
725 S. Figueroa St.
Suite 1830
Los Angeles, CA 90017
213-995-6800
Fax: 213-261-0299
Email: michael.jones@strismaher.com
ATTORNEY TO BE NOTICED

Michelle Kim-Szrom
STRIS AND MAHER LLP
725 S. Figueroa St.
Suite 1830
Los Angeles, CA 90017
213-995-6800
Fax: 213-261-0299
Email:
michelle.kimszrom@strismaher.com
ATTORNEY TO BE NOTICED

V.

Defendant

Sedgwick Claims Management Services, Incorporated represented by

Amy L. Blaisdell
GREENSFELDER AND HEMKER, PC
10 South Broadway
Suite 2000
St. Louis, MO 63102
314-516-2642
Fax: 314-241-3643
Email: apb@greensfelder.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

D. Burr Udall
UDALL LAW FIRM LLP
4801 E. Broadway
Suite 400
Tuscon, AZ 85711
520-623-4353
Fax: 520-792-3426
Email: budall@udalllaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Heather M. Mehta
GREENSFELDER AND HEMKER, PC
10 South Broadway
Suite 2000
St. Louis, MO 63102
314-335-6815
Fax: 314-241-3483
Email: hmm@greensfelder.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lauren A. Daming
GREENSFELDER AND HEMKER, PC
10 South Broadway
Suite 2000
St. Louis, MO 63102
314-345-4768
Fax: 314-241-3643
Email: ldaming@greensfelder.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Ascension Health Alliance represented by **Amy L. Blaisdell**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

D. Burr Udall
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Heather M. Mehta
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Lauren A. Daming
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Entered	#	Docket Text

08/31/2015	1	COMPLAINT. Filing fee received: $ 400.00, receipt number 0970-12052542 filed by Lorna Clause. (Kirschner, Barry) (Attachments: # 1 Civil Cover Sheet, # 2 Exhibit)(DLC) (Entered: 08/31/2015)
08/31/2015	2	SUMMONS Submitted by Lorna Clause. (Kirschner, Barry) (Attachments: # 1 Summons)(DLC) (Entered: 08/31/2015)
08/31/2015	3	Filing fee paid, receipt number 0970-12052542. This case has been assigned to the Honorable Cindy K. Jorgenson. All future pleadings or documents should bear the correct case number: 4:15-CV-388-TUC-CKJ. Notice of Availability of Magistrate Judge to Exercise Jurisdiction form attached. (DLC) (Entered: 08/31/2015)
08/31/2015	4	Summons Issued as to Ascension Health Alliance, Sedgwick Claims Management Services Incorporated. (Attachments: # 1 Summons)(DLC). *** IMPORTANT: When printing the summons, select "Document and stamps" or "Document and comments" for the seal to appear on the document. (Entered: 08/31/2015)
09/24/2015	5	Corporate Disclosure Statement by Ascension Health Alliance. (Udall, D) (Entered: 09/24/2015)
09/24/2015	6	Corporate Disclosure Statement by Sedgwick Claims Management Services Incorporated. (Udall, D) (Entered: 09/24/2015)
09/24/2015	7	*MOTION to Dismiss Case *or, In the Alternative, to Transfer Venue* by Ascension Health Alliance, Sedgwick Claims Management Services Incorporated. (Attachments: # 1 Exhibit Ex A to Motion to Dismiss, # 2 Exhibit Ex B to Motion to Dismiss, # 3 Exhibit Ex C to Motion to Dismiss, # 4 Exhibit Ex D to Motion to Dismiss)(Udall, D) *Document filed in error, attorney filed Notice of Errata and correct PDF document at doc. 10 on 9/24/2015 Modified on 9/25/2015 (KEP). (Entered: 09/24/2015)
09/24/2015	8	MEMORANDUM in Support of 7 MOTION to Dismiss Case *or, In the Alternative, to Transfer Venue* by Defendants Ascension Health Alliance, Sedgwick Claims Management Services Incorporated. (Udall, D) (Entered: 09/24/2015)
09/24/2015	9	NOTICE of Errata re: 7 MOTION to Dismiss Case *or, In the Alternative, to Transfer Venue* by Defendants Ascension Health Alliance, Sedgwick Claims Management Services Incorporated. (Udall, D) (Entered: 09/24/2015)
09/24/2015	10	MOTION to Dismiss Case *or, in the Alternative, Transfer Venue* by Ascension Health Alliance, Sedgwick Claims Management Services Incorporated. (Attachments: # 1 Exhibit Ex A to Motion to Dismiss, # 2 Exhibit Ex B to Motion to Dismiss, # 3 Exhibit Ex C to Motion to Dismiss, # 4 Exhibit Ex D to Motion to Dismiss)(Udall, D) (Entered: 09/24/2015)
10/01/2015	11	MOTION to Continue Deadline for Plaintiff to Respond to Motion to Dismiss by Lorna Clause. (Kirschner, Barry) (Entered: 10/01/2015)
10/01/2015	12	*NOTICE of Filing Amended Pleading pursuant to LRCiv 15.1(b) by Lorna Clause *First Amended Complaint*. (Attachments: # 1 First Amended Complaint)(Kirschner, Barry) *Required document not atached, attorney noticed on 10/2/2015 (KEP). (Entered: 10/01/2015)

10/01/2015	13	ORDER granting 11 MOTION to Continue Deadline for Plaintiff to Respond to Motion to Dismiss filed by Lorna Clause. IT IS HEREBY ORDERED that the time within which Plaintiff shall respond to the 10 Motion to Dismiss is extended to October 26, 2015. Signed by Judge Cindy K Jorgenson on 10/1/2015. (KEP) (Entered: 10/01/2015)
10/05/2015	14	Additional Attachments to Main Document re: 12 Notice of Filing - Amended Pleading (LRCiv 15.1(b)) *Redlined First Amended Complaint* by Plaintiff Lorna Clause. (Kirschner, Barry) (Entered: 10/05/2015)
10/15/2015	15	MOTION to Dismiss Case *or Transfer Venue* by Ascension Health Alliance, Sedgwick Claims Management Services Incorporated. (Udall, D) (Entered: 10/15/2015)
10/15/2015	16	MEMORANDUM in Support of *Renewed* 15 MOTION to Dismiss Case *or Transfer Venue* by Defendants Ascension Health Alliance, Sedgwick Claims Management Services Incorporated. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Udall, D) (Entered: 10/15/2015)
10/23/2015	17	STIPULATION *to Continue Deadline for Plaintiff to Respond to Motion to Dismiss* by Lorna Clause. (Kirschner, Barry) (Entered: 10/23/2015)
10/28/2015	18	ORDER, the time within which Plaintiff shall respond to the 15 MOTION to Dismiss Case or Transfer Venue is extended from October 26, 2015 to November 6, 2015. Signed by Judge Cindy K Jorgenson on 10/26/2015. (KEP) (Entered: 10/28/2015)
11/06/2015	19	RESPONSE to Motion re: 15 MOTION to Dismiss Case *or Transfer Venue* filed by Lorna Clause. (Attachments: # 1 Exhibit Affidavits)(Kirschner, Barry) (Entered: 11/06/2015)
11/09/2015	20	MOTION for Extension of Time to File Response/Reply as to 15 MOTION to Dismiss Case *or Transfer Venue*, 19 Response to Motion by Ascension Health Alliance, Sedgwick Claims Management Services Incorporated. (Attachments: # 1 Text of Proposed Order Order re Extension of Time for Reply)(Udall, D) (Entered: 11/09/2015)
11/17/2015	21	ORDER granting 20 Motion for Extension of Time to File Reply re: 15 MOTION to Dismiss Case *or Transfer Venue*. Defendants shall file their reply in support of the Motion to Dismiss is extended from November 13, 2015 to November 20, 2015. Signed by Judge Cindy K Jorgenson on 11/16/2015. (KEP) (Entered: 11/17/2015)
11/20/2015	22	MOTION for Leave to File Reply *to Plaintiff's Responses in Opposition to Motion to Dismiss, or in the alternative, to Tansfer Venue, and Response to Plaintiff's Motion for Leave to Conduct Discovery and Hold Evideniary Hearing* by Sedgwick Claims Management Services Incorporated. (Attachments: # 1 Text of Proposed Order Order) (Udall, D) (Entered: 11/20/2015)
11/20/2015	23	(FILED AT DOC. 25)LODGED Proposed Reply re: 10 MOTION to Dismiss Case *or, in the Alternative, Transfer Venue*. Document to be filed by Clerk if Motion or Stipulation for Leave to File or Amend is granted. Filed by Sedgwick Claims Management Services Incorporated. (Attachments: # 1 Exhibit Exhibit E to Reply) (Udall, D) Modified on 12/21/2015 (KEP). (Entered: 11/20/2015)
12/17/2015	24	ORDER Motion (Doc. 22) is GRANTED and Defendants shall be permitted to file a Reply to Plaintiff's Responses in Opposition to Motion to Dismiss, or in the Alternative,

		to Transfer Venue and Response to Plaintiff's Motion for Leave to Conduct Discovery and Hold Evidentiary hearing that does not exceed seventeen (17) pages. Signed by Judge Cindy K Jorgenson on 12/16/2015.(DLC) (Entered: 12/17/2015)
12/21/2015	25	REPLY to Response to Motion re: 10 MOTION to Dismiss Case *or, in the Alternative, Transfer Venue* filed by Ascension Health Alliance, Sedgwick Claims Management Services Incorporated. (Attachments: # 1 Exhibit)(KEP) (Entered: 12/21/2015)
01/19/2016	26	ORDER (from US District of Arionza) denying as moot 10 Motion to Dismiss, or in the Alternative, to Transfer Venue; granting in part and denying in part 15 Motion to Dismiss, or in the Alternative, to Transfer Venue. The Clerk of Court shall transfer this matter to the United States District Court for the Eastern District of Missouri. Signed by Judge Cindy K Jorgenson on 1/15/2016. (See Order for details) (KEP) (Entered: 01/19/2016)
01/19/2016	27	Case transferred in from District of Arizona; Case Number 4:15-cv-00388. Original file certified copy of transfer order and docket sheet received. **Case transferred in electronically.** (Entered: 01/19/2016)
01/19/2016		Case Opening Notification: All parties must file the Notice Regarding Magistrate Judge Jurisdiction Form (moed-0041.pdf) consenting to or opting out of the Magistrate Judge jurisdiction. Judge Assigned: U.S. Magistrate Judge Patricia L. Cohen. (BAK) (Entered: 01/19/2016)
01/19/2016	28	Letter to attorney Barry Kirschner from Clerk re: Admission Pro Hac Vice (BAK) (Entered: 01/19/2016)
01/19/2016	29	Letter to attorney D. Burr Udall from Clerk re: Admission Pro Hac Vice (BAK) (Entered: 01/19/2016)
01/19/2016		Pursuant to Local Rule 2.08, the assigned/referred magistrate judge is designated and authorized by the court to exercise full authority in this assigned/referred action or matter under 28 U.S.C. Sec. 636 and 18 U.S.C Sec. 3401. (CSAW) (Entered: 01/19/2016)
02/01/2016	30	MOTION for Leave to Appear Pro Hac Vice Michael N. Jones. The Certificate of Good Standing was attached.(Filing fee $100 receipt number 0865-5242172) by Plaintiff Lorna Clause. (Attachments: # 1 Certificate of Good Standing)(Jones, Michael) (Entered: 02/01/2016)
02/01/2016	31	MOTION for Leave to Appear Pro Hac Vice Peter K. Stris. The Certificate of Good Standing was attached.(Filing fee $100 receipt number 0865-5242209) by Plaintiff Lorna Clause. (Attachments: # 1 Certificate of Good Standing)(Stris, Peter) (Entered: 02/01/2016)
02/02/2016	32	MOTION for Leave to Appear Pro Hac Vice Daniel L. Geyser. The Certificate of Good Standing was attached.(Filing fee $100 receipt number 0865-5245304) by Plaintiff Lorna Clause. (Attachments: # 1 Certificate of Good Standing)(Geyser, Daniel) (Entered: 02/02/2016)
02/02/2016	33	MOTION for Leave to Appear Pro Hac Vice Michelle Kim-Szrom. The Certificate of Good Standing was attached.(Filing fee $100 receipt number 0865-5245322) by

		Plaintiff Lorna Clause. (Attachments: # 1 Certificate of Good Standing)(Kim-Szrom, Michelle) (Entered: 02/02/2016)
02/03/2016	34	ORDER - IT IS HEREBY ORDERED that the motions for admission pro hac vice [Docs.30, 31, 32, and 33] are GRANTED. Signed by Magistrate Judge Patricia L. Cohen on February 3, 2016. (MCB) (Entered: 02/03/2016)
02/04/2016	35	ANSWER to Complaint 38 by Ascension Health Alliance, Sedgwick Claims Management Services, Incorporated.(Blaisdell, Amy) Modified on 2/8/2016 (MCB). (Entered: 02/04/2016)
02/04/2016	36	MOTION for Extension of Time to File Answer by Defendants Ascension Health Alliance, Sedgwick Claims Management Services, Incorporated. (Blaisdell, Amy) (Entered: 02/04/2016)
02/08/2016	37	ORDER re 36 MOTION for Extension of Time to File Answer filed by Ascension Health Alliance, Sedgwick Claims Management Services, Incorporated GRANTED. The answer Defendants are granted leave to file is the answer that is now Document 35. Signed by Magistrate Judge Patricia L. Cohen on February 8, 2016. (MCB) (Entered: 02/08/2016)
02/08/2016	38	AMENDED COMPLAINT (filed in the District of Arizona) against defendant Ascension Health Alliance, Sedgwick Claims Management Services, Incorporated Amendment to 1 Petition (Removal/Transfer), filed by Lorna Clause. Related document: 1 Petition (Removal/Transfer) filed by Lorna Clause.(MCB) (Entered: 02/08/2016)
02/09/2016	39	MOTION to Stay *Proceedings Pending The Final Disposition of Plaintiff's Forthcoming Retransfer Motion* by Plaintiff Lorna Clause. (Stris, Peter) (Entered: 02/09/2016)
02/09/2016	40	MEMORANDUM in Support of Motion re 39 MOTION to Stay *Proceedings Pending The Final Disposition of Plaintiff's Forthcoming Retransfer Motion* filed by Plaintiff Lorna Clause. (Stris, Peter) (Entered: 02/09/2016)
02/10/2016	41	ENTRY of Appearance by Heather M. Mehta for Defendants Ascension Health Alliance, Sedgwick Claims Management Services, Incorporated. (Mehta, Heather) (Entered: 02/10/2016)
02/10/2016	42	CJRA ORDER (GJL). Judge Magistrate Judge Patricia L. Cohen termed. Case reassigned to Judge District Judge Ronnie L. White for all further proceedings. (MCB) (Entered: 02/10/2016)
02/16/2016	43	RESPONSE in Opposition re 39 MOTION to Stay *Proceedings Pending The Final Disposition of Plaintiff's Forthcoming Retransfer Motion* filed by Defendants Ascension Health Alliance, Sedgwick Claims Management Services, Incorporated. (Mehta, Heather) (Entered: 02/16/2016)
02/22/2016	44	MOTION to Transfer Case to Retransfer to U.S. District Court for District of Arizona by Plaintiff Lorna Clause. (Stris, Peter) (Entered: 02/22/2016)

02/22/2016	45	MEMORANDUM in Support of Motion re 44 MOTION to Transfer Case to Retransfer to U.S. District Court for District of Arizona filed by Plaintiff Lorna Clause. (Stris, Peter) (Entered: 02/22/2016)
02/23/2016	46	REPLY to Response to Motion re 39 MOTION to Stay *Proceedings Pending The Final Disposition of Plaintiff's Forthcoming Retransfer Motion* filed by Plaintiff Lorna Clause. (Stris, Peter) (Entered: 02/23/2016)
02/29/2016	47	MEMORANDUM in Opposition re 44 MOTION to Transfer Case to Retransfer to U.S. District Court for District of Arizona filed by Defendants Ascension Health Alliance, Sedgwick Claims Management Services, Incorporated. (Attachments: # 1 Exhibit A)(Mehta, Heather) (Entered: 02/29/2016)
03/07/2016	48	REPLY to Response to Motion re 44 MOTION to Transfer Case to Retransfer to U.S. District Court for District of Arizona filed by Plaintiff Lorna Clause. (Stris, Peter) (Entered: 03/07/2016)
03/18/2016	49	MOTION to Withdraw as Attorney ;attorney/firm Barry Kirschner/Waterfall, Economidis, Caldwell, Hanshaw & Villamana, P.C. by Plaintiff Lorna Clause. (Stris, Peter) (Entered: 03/18/2016)
03/22/2016	50	Docket Text ORDER: IT IS HEREBY ORDERED that Barry Kirschner's Motion to Withdraw [ECF No. 49] is GRANTED. Signed by District Judge Ronnie L. White on 3/22/16. (JEB) (Entered: 03/22/2016)
05/17/2016	51	MEMORANDUM AND ORDER : IT IS HEREBY ORDERED that Plaintiffs Motion to Retransfer (ECF No. 44) is DENIED. IT IS FURTHER ORDERED that Plaintiff's Motion to Stay Proceedings Pending the Final Disposition of Plaintiff's Forthcoming Retransfer Motion (ECF No. 39) is DENIED as moot. Signed by District Judge Ronnie L. White on 05/17/2016. (KCB) (Entered: 05/17/2016)
05/17/2016	52	RULE 16 ORDER This case is assigned to Track: two: IT IS HEREBY ORDERED that: 1. Scheduling Conference: A Scheduling Conference pursuant to Fed. R. Civ. P. 16 is set for Thursday, June 16, 2016 at 10:30 a.m. in my chambers. Out of town counsel may participate in the conference by telephone, if counsel notifies my office of his or her intent to do so at least twenty-four (24) hours in advance of the scheduled conference by calling my chambers at 314-244-7580. At the scheduling conference counsel will be expected to discuss in detail all matters covered by Fed. R. Civ. P. 16, as well as all matters set forth in their joint proposed scheduling plan described in paragraph 3, and a firm and realistic trial setting will be established at or shortly after the conference. (SEE ORDER FOR COMPLETE DETAILS.) (Joint Scheduling Plan due by 6/9/2016. Rule 16 Conference set for 6/16/2016 10:30 AM in Courtroom 10S before District Judge Ronnie L. White.) Signed by District Judge Ronnie L. White on 05/17/2016. (KCB) (Entered: 05/17/2016)

PACER Service Center
Transaction Receipt
06/07/2016 09:17:13

PACER Login:	dlgeyser:4374884:4867253	**Client Code:**	clause
Description:	Docket Report	**Search Criteria:**	4:16-cv-00071-RLW
Billable Pages:	6	**Cost:**	0.60

CERTIFICATE OF SERVICE

I hereby certify that on June 7, 2016, I have caused the foregoing petition for a writ of mandamus and its accompanying appendix to be served by e-mail and Federal Express on the counsel listed below:

Heather M. Mehta
Amy L. Blaisdell
Lauren A. Daming
GREENSFELDER, HEMKER & GALE, P.C.
10 South Broadway, Suite 2000
St. Louis, MO 63102
Tel.: (314) 241-9090
Fax: (314) 241-3643
apb@greensfelder.com
hmm@greensfelder.com
ldaming@greensfelder.com

Burr Udall
UDALL LAW FIRM, LLP
4801 E. Broadway, Suite 400
Tucson, AZ 85711
budall@udalllaw.com

I further certify that on the same date I have caused the petition and its accompanying appendix to be delivered by Federal Express to the district court at the following address:

The Honorable Ronnie L. White
U.S. District Court for the Eastern District of Missouri
Thomas F. Eagleton U.S. Courthouse
111 S. 10th Street, Suite 10.182
St. Louis, MO 63102
Tel.: (314) 244-7580

/s/ *Daniel L. Geyser*
Daniel L. Geyser
STRIS & MAHER LLP
725 S. Figueroa Street, Suite 1830
Los Angeles, CA 90017
Tel.: (213) 995-6811
Fax: (213) 261-0299
daniel.geyser@strismaher.com

June 7, 2016

United States Court of Appeals
For The Eighth Circuit
Thomas F. Eagleton U.S. Courthouse
111 South 10th Street, Room 24.329
St. Louis, Missouri 63102

Michael E. Gans
Clerk of Court

VOICE (314) 244-2400
FAX (314) 244-2780
www.ca8.uscourts.gov

June 08, 2016

Mr. Daniel Luke Geyser
Mr. Peter K. Stris
STRIS & MAHER
Suite 1830
725 S. Figueroa Street
Los Angeles, CA 90017

RE: 16-2607 In Re: Lorna Clause

Dear Counsel:

We have assigned your petition for a writ the case number shown above. Your case will be referred to a panel of judges for review. We will promptly advise you of the Court's ruling.

Please note that service by pro se parties is governed by Eighth Circuit Rule 25B. A copy of the rule and additional information is attached to the pro se party's copy of this notice.

On June 1, 2007, the Eighth Circuit implemented the appellate version of CM/ECF. Electronic filing is now mandatory for attorneys and voluntary for pro se litigants proceeding without an attorney. Information about electronic filing can be found at the court's web site www.ca8.uscourts.gov. In order to become an authorized Eighth Circuit filer, you must register with the PACER Service Center at https://www.pacer.gov/psco/cgi-bin/cmecf/ea-regform.pl. Questions about CM/ECF may be addressed to the Clerk's office.

Michael E. Gans
Clerk of Court

JMH

Enclosures

cc: Ms. Amy L. Blaisdell
Mr. Gregory J. Linhares
Mr. D. Burr Udall
Honorable Ronnie L. White

District Court Case Number: 4:16-cv-00071-RLW

Caption For Case Number: 16-2607

In re: Lorna Clause

Petitioner

Addresses For Case Participants: 16-2607

Mr. Daniel Luke Geyser
Mr. Peter K. Stris
STRIS & MAHER
Suite 1830
725 S. Figueroa Street
Los Angeles, CA 90017

Ms. Amy L. Blaisdell
GREENSFELDER & HEMKER
Suite 2000
10 S. Broadway
Saint Louis, MO 63102

Mr. Gregory J. Linhares
U.S. DISTRICT COURT
Eastern District of Missouri
111 S. Tenth Street
Saint Louis, MO 63102

Mr. D. Burr Udall
UDALL LAW FIRM
Suite 400
4801 E. Broadway
Tuscon, AZ 85711

Honorable Ronnie L. White
U.S. DISTRICT COURT
Eastern District of Missouri
Room 10.182
111 S. 10th Street
Saint Louis, MO 63102