

## ERISA & DISABILITY BENEFITS NEWSLETTER

### ABOUT OUR FIRM

Eric Buchanan & Associates, PLLC is a full-service disability benefits, employee benefits, and insurance law firm. The attorneys at our firm have helped thousands of disabled people who have been denied social security disability benefits, ERISA LTD benefits, health insurance, life insurance and other ERISA employee benefits, as well as private disability and health insurance benefits. Eric Buchanan and R. Scott Wilson are certified as Social Security Disability Specialists by the National Board of Social Security Disability Advocacy. For more information, visit our website at [www.buchanandisability.com](http://www.buchanandisability.com).

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### VENUE AND FORUM ISSUES IN ERISA BENEFITS LITIGATION - BY JEREMY BORDELON

A plaintiff's attorney in an ERISA benefits case usually has several different options available in which to file his or her case. While the process of making that choice is often given the much-maligned title of "forum shopping," it remains a perfectly legal and necessary choice that attorneys have to make for their clients. How to make that choice, and what to do if one's first choice is challenged, are the subjects of this article.

The venue rules in ERISA cases are quite broad, consistent with Congress's intent in enacting the law "to remove jurisdictional obstacles which in the past appear to have hampered effective enforcement of fiduciary responsibilities...."<sup>1</sup> Two statutes speak to venue in ERISA cases. First, there is 28 U.S.C. § 1391 (b), which describes general venue provisions for a federal question case.<sup>2</sup> Second, and more importantly, there is the ERISA statute's own jurisdiction and venue statement, 29 U.S.C. § 1132(e), ERISA § 502(e), which states that benefits actions may be brought in federal court for the district:

where the plan is administered,  
where the breach took place, or  
where a defendant resides or may be found.

*Id.*, § 1132(e)(2). "Where the plan is administered" is usually read to mean the plan administrator's address, listed in the plan documents.<sup>3</sup> "Where the breach took place" is also subject to interpretation, but is most commonly read as the place where the claimant was to receive the denied benefits – usually, his home district.<sup>4</sup> However, a minority of courts have interpreted this clause to include the district from which the denial itself was issued.<sup>5</sup> Finally, and broadest, is the option to file "where a defendant ... may be found." In most ERISA benefits cases today, at least one of the defendants will likely be a nationally-operating insurance company, such as Unum, Hartford, MetLife, or Cigna. Because these companies operate nearly everywhere in one name or another, they may be "found" there.<sup>6</sup>

So establishing proper venue, at least in most ERISA cases, is easy. Unfortunately, that means it is also easy to identify several alternative proper venues if your opponent (or the court *sua sponte*) seeks to transfer the case elsewhere. This leads to a question of convenience to the parties and witnesses under the federal venue transfer statute, 28 U.S.C. § 1404(a).

Pursuant to 28 U.S.C. § 1404(a), courts have broad discretionary powers to transfer civil actions. The

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**ERISA & DISABILITY BENEFITS NEWSLETTER**

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statute, in relevant part, provides: "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought." While courts can, and sometimes do, transfer cases *sua sponte* with no warning, they will usually inform the parties of their concerns and give them an opportunity to be heard on the matter.<sup>7</sup> If it is one of the parties requesting transfer, the moving party bears the burden of demonstrating by a preponderance of the evidence that, "in light of these factors, 'fairness and practicality strongly favor the forum to which transfer is sought.'"<sup>8</sup>

In a typical ERISA benefits case, no trial will be held, so the convenience to the parties themselves is largely irrelevant. It is quite common for none of the parties to ever see the inside of a courtroom, no matter where the case is decided. This leaves the convenience to witnesses, and the convenience of discovery generally, as the sole remaining questions. If a case was not brought in the plaintiff's home district for some reason, that is often one of the first alternatives for where it should be transferred if that question arises. However, transferring to the plaintiff's home district makes perhaps the least amount of sense in an ERISA benefits case.

In cases concerning a denied claim for ERISA welfare benefits, the court's review is generally limited to the ERISA Record, which is largely and often entirely comprised of the insurer's claim file.<sup>9</sup> Any discovery beyond that administrative record may be had "only if that evidence is offered in support of a procedural challenge to the administrator's decision, such as an alleged lack of due process afforded by the administrator or alleged bias on its part."<sup>10</sup> For the most part, when any discovery occurs in ERISA cases at all, it is the defendant answering questions on these topics posed by the plaintiff. If any witnesses are deposed, they are typically employees of the insurer, answering questions regarding potential bias or lack of due process. The plaintiff does not typically testify in these

cases, nor do her doctors or employer. All of the evidence regarding those issues which will be before the court in deciding these cases is already contained in the claim file.

A "fundamental principle" that should guide a court's analysis is "that litigation should proceed in that place where the case finds its center of gravity."<sup>11</sup> However, a plaintiff's choice of forum "is entitled to some deference, and perhaps even 'greater deference' when a claim involves ERISA."<sup>12</sup> Even the physical location of discoverable documentary evidence is of limited importance now, since "[i]n the modern era of photocopying, scanning, fax machines, email, overnight delivery services, etc., the

location of documents should be considered a neutral factor when deciding to transfer venue under § 1404 (a)."<sup>13</sup>

Because venue is technically proper nearly everywhere in ERISA benefits cases, and because the plaintiff's choice of forum is such a powerful factor, it may be helpful to present an alternative suggestion when responding to a motion to transfer venue. For example, if you have filed in District A, and defendant moves to transfer to District B, instead of focusing solely on why the case should remain in District A, think about what the "next best thing" is in the case from your own perspective. Federal Judges are busy people, and an opportunity to transfer a case from their often-overloaded dockets may be a tempting prospect. If you only argue that the case should stay put, and the judge decides to transfer, it will likely be to the defendant's suggested district. Assuming up front that the judge might want to transfer the case, where do YOU think he or she should send it? In the end, the case may stay where you filed it, or it may be transferred, but if it is, it may be transferred to your "second choice" venue, which may still be vastly better than where the Defendant wanted to take the case.

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**End Notes**

<sup>1</sup>H. Rep. No. 93-533, reprinted in U.S.C.C.A.N. at 4396, 4655; accord S. Rep. No. 93-127, reprinted in U.S.C.C.A.N. at 4838, 4871.

<sup>2</sup>Section 1391 states several options for venue in federal question cases generally, some of which overlap substantially with the ERISA venue statute. For this reason, and because general venue rules yield to specific statutory venue rules

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**ERISA & DISABILITY BENEFITS NEWSLETTER**

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when they exist, courts may address § 1391, but more commonly rely on ERISA § 502(e). *Helder v. Hitachi Power Tools, USA Ltd.*, 764 F. Supp. 93, 94 (E.D. Mich. 1991).

<sup>3</sup>Arguments could (and have) been made for a broader reading of this clause, but most courts faced with the question have adopted some version of the *Sprinzen* rule, interpreting the clause's full language finding venue in "the district where the plan was administered" to mean one single district, not multiple alternatives. If the plan is administered in only one district, the logic goes, it must be the one actually stated as such in the plan. *Sprinzen v. Supreme Court of State of N. J.*, 478 F. Supp. 722 (S.D.N.Y. 1979).

<sup>4</sup>See, e.g., *Luebbert v. Employers and Operating Engineers Local 520 Pension Fund*, 2007 U.S. Dist. Lexis 26372, at \*9, 2007 WL 1100455 (E.D. Mo. 2007); *Cole v. Cent. States Southeast & Southwest Areas Health and Welfare Fund*, 225 F. Supp. 2d 96 (D. Ma. 2002) (holding "the place where the breach took place" to mean "the place where payment was to be received"); *Barker v. New Energy Corp.*, 2006 U.S. Dist. Lexis 85190, 2006 WL 3391347 (S.D. Ga. 2006) (breach occurred where benefits denied allegedly in breach of ERISA).

<sup>5</sup>See *Turner v. CF & I Steel Corp.*, 510 F. Supp. 537, 541 (E.D. Pa. 1981); *Seitz v. Bd. Of Trs. Of the Pension and Ret. Fund*, 953 F. Supp. 100, 102 (S.D.N.Y. 1997) (breach took place where claims processed).

<sup>6</sup>For purposes of ERISA, a defendant "resides or may be found" in "any district in which its minimum contacts would support the exercise of personal jurisdiction." *Moore v. Rohm & Haas Co.*, 446 F.3d 643, 646 (6th Cir. 2006) (quoting other sources).

<sup>7</sup>*Id.* at 647.

<sup>8</sup>*Amphion, Inc. v. Buckeye Elec. Co.*, 285 F. Supp. 2d 943, 946 (E.D. Mich. 2003) (quoting *Thomas v. Home Depot U.S.A., Inc.*, 131 F. Supp. 2d 934, 936 (E.D. Mich. 2001)).

<sup>9</sup>See, e.g., *Wilkins v. Baptist Healthcare Sys.*, 150 F.3d 609 (6th Cir. 1998).

<sup>10</sup>*Id.* at 619; see also *Hays v. Provident Life & Acc. Ins. Co.*, 623 F. Supp. 2d 840 (E.D. Ky. 2008) (recognizing that the scope of ERISA discovery was expanded by *MetLife v. Glenn*, 554 U.S. 105 (2008), but is still limited much as described in *Wilkins*).

<sup>11</sup>*Oakley v. Remy Int'l, Inc.*, 2010 WL 503125 at \*6 (concluding that Indiana or Michigan could be the center of gravity, because the Plan was administered and decisions were made to curtail benefits in Indiana, while the defendant and union negotiated in Michigan).

<sup>12</sup>*Id.*

<sup>13</sup>*Id.* at \*5.

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**NEED A SPEAKER?**

The attorneys at Eric Buchanan & Associates are available to speak to your organization regarding social security disability, ERISA long-term disability, group long-term disability, private disability insurance, ERISA benefits, denied health insurance claims and life insurance claims.

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**ERISA & DISABILITY BENEFITS NEWSLETTER**

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**ERIC BUCHANAN NAMED PRESIDENT OF THE TENNESSEE ASSOCIATION FOR JUSTICE*****New Board Members Selected from Across the State***

Nashville — The Tennessee Association for Justice recently elected Eric Buchanan as president for the 2015-16 term. Buchanan, a Chattanooga attorney, replaces Jon Peeler of Nashville who served as president from 2014-15. Peeler now assumes the role of immediate past president and Thomas Greer of Memphis advances to president-elect.

Eric graduated from the Washington and Lee University School of Law Magna Cum Laude in the top 10% of his class. Eric is also a graduate of the Virginia Military Institute and served as an officer in the U.S. Navy from 1989 to 1994 where he served as a naval aviator. As president and partner of Eric Buchanan and Associates, PLLC he is committed to representing disabled people and other policyholders across the United States in both ERISA and non-ERISA disputes, focusing primarily in the areas of disability, life, and health insurance. He is past-chair of the AAJ Social Security Disability Section and the AAJ ERISA Health and Disability Litigation Group. He has also been past-chair of the Tennessee Bar Association Disability Section, and past-president of the Chattanooga Trial Lawyers. Eric and his wife Meg reside in Chattanooga.

“Eric Buchanan has been an active member in TAJ for over 15 years. He will be a true asset to the Tennessee Association for Justice and the citizens of Tennessee,” stated TAJ immediate Past President Jon Peeler. “He has dedicated his life to helping others and will do a wonderful job leading the state’s top trial attorneys as president.”

Elections were held at the TAJ annual convention in Memphis on Friday, June 19, 2015.

Below is a complete list of the TAJ Board of Governors:

|                                       |   |
|---------------------------------------|---|
| <b>President:</b>                     | Eric Buchanan, Chattanooga  |
| <b>Immediate Past President:</b>      | Jon Peeler, Nashville   |
| <b>President Elect:</b>               | Thomas Greer, Memphis   |
| <b>Vice President, East:</b>          | Bruce Fox, Clinton  |
| <b>Vice President, West:</b>          | Cameron Jehl, Memphis   |
| <b>Vice President, Middle:</b>        | Rocky McElhaney, Nashville  |
| <b>Secretary:</b>                     | Megan England, Chattanooga  |
| <b>Treasurer:</b>                     | Matt Hardin, Nashville  |
| <b>Parliamentarian:</b>               | Tony Duncan, Nashville  |
| <b>At Large Executive Appointees:</b> | Mark Chalos, Nashville<br>Danny Ellis, Chattanooga<br>Miranda Rhoads, Memphis                   |
| <b>District #1:</b>                   | Olen Haynes, Jr., Johnson City<br>Bill Hotz, Knoxville<br>Tony Seaton, Johnson City             |
| <b>District #2:</b>                   | Marcos Garza, Knoxville<br>Stephen E. Marshall, Sevierville<br>William Holt Smith, Madisonville |
| <b>District #3:</b>                   | Joseph Crabtree, Sweetwater<br>Hudson Ellis, Chattanooga<br>Jim McKoon, Chattanooga             |

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## ERISA & DISABILITY BENEFITS NEWSLETTER

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| <b>District #4:</b>         | Michelle Benjamin, Winchester<br>Danny Ellis, Chattanooga<br>Jay Kennamer, Chattanooga  |
| <b>District #5:</b>         | Mark Beveridge, Nashville<br>Phil Elbert, Nashville<br>Jeff Roberts, Nashville  |
| <b>District #6:</b>         | Mark Chalos, Nashville<br>Jason Denton, Lebanon<br>Jonathan Williams, Nashville   |
| <b>District #7:</b>         | Russell Belk, Nashville<br>Peter Olson, Clarksville<br>Henry Queener, Nashville   |
| <b>District #8:</b>         | Deena Arnold, Memphis<br>Michael Pfrommer, Memphis<br>Miranda Rhoads, Memphis   |
| <b>District #9:</b>         | Danese Banks, Memphis<br>Mark Lambert, Memphis<br>Christina Vinson, Memphis   |
| <b>At Large:</b>            | Melissia Ball, Newport<br>Brandon Bass, Nashville<br>Robert Bates, Johnson City<br>Melanie Bean, Lebanon<br>Brad Burnette, Clinton<br>Stan Davis, Nashville<br>Chuck Flynn, Chattanooga<br>John Griffith, Nashville<br>Afsoon Hagh, Nashville<br>Jim Higgins, Nashville<br>Russell Lewis, Nashville<br>Holland Mathews, Columbia<br>Jenny Coques Rogers, Greenville<br>Gerard Stranch, IV, Nashville<br>David Weismann, Nashville |
| <b>President Appointed:</b> | Justin Hight, Nashville<br>Brandon Newman, Trenton<br>George Spanos, Nashville  |

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