UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

AETNA LIFE & CASUALTY, :

Plaintiff, :

vs. : No. 3:04CV817(WWE)

WILLIAM L. OWEN, :

Defendant. :
_____/

Ruling on Defendant's Motion to Dismiss [Doc. # 10]

This action is brought under the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1101-1461 ("ERISA"). Plaintiff, Aetna Life & Casualty, seeks to collect overpayments in benefits paid to defendant, William Owen, under a long-term disability plan provided by Aetna to employees of Coca-Cola Enterprises, Inc., where defendant was formerly employed. Plaintiff alleges that the benefits paid to defendant were subject to reimbursement or adjustment based upon workers' compensation payments defendant received as a result of his disability.

Defendant, who is a resident of Georgia and who at all times was employed by Coca-Cola in Georgia, now moves to dismiss this action on the basis of lack of personal jurisdiction and improper venue, pursuant to Rule 12(b)(2)

and 12(b)(3), Fed. R. Civ. P. Alternatively, he seeks a transfer of venue to the United States District Court for the Northern District of Georgia. For the reasons set forth below, defendant's motion will be granted in part and denied in part.

Discussion

I. Personal Jurisdiction

Plaintiff bears the burden of establishing this Court's jurisdiction over defendant. Metropolitan Life Ins. Co. v. Robertson-Ceco Corp., 84 F.3d 560, 566 (2d Cir. 1996). Prior to discovery, a motion to dismiss made pursuant to Rule 12(b)(2) may be defeated if plaintiff's complaint and affidavits contain sufficient allegations to establish a prima facie showing of jurisdiction. The Court is required to assume the truth of plaintiff's factual allegations and to draw all reasonable inferences in plaintiff's favor. PDK Labs., Inc. v. Friedlander, 103 F.3d 1105, 1108 (2d Cir. 1997).

Defendant argues that this Court lacks personal jurisdiction because he is not subject to jurisdiction under Connecticut's long-arm statute, Conn. Gen. Stat. § 52-59b(a)(1), and because he lacks the requisite minimum contacts with the state of Connecticut to satisfy

constitutional due process requirements.

While defendant's argument might have been persuasive had this Court's jurisdiction been invoked on the basis of diversity of citizenship of the parties, see Metropolitan Life Ins., 84 F.3d at 567, it misses the mark in this federal question case brought under ERISA.

ERISA contains a nationwide service of process provision, which states in relevant part that process "may be served in any [] district where a defendant resides or may be found." 29 U.S.C. § 1132(e)(2); see Medical Mutual of Ohio v. DeSoto, 245 F.3d 561, 566 (6th Cir. 2001) (upholding Congress' power to confer nationwide personal jurisdiction under § 1132(e)(2)). Service is to be accomplished in accordance with Rule 4(e), Fed. R. Civ. P.

The courts have construed section 1132(e)(2) to confer personal jurisdiction over a defendant without regard to the forum state's long-arm statutes, so long as the defendant has sufficient minimum contacts with the United States. See, e.g., Medical Mutual of Ohio, 245 F.3d at 566; Dittman v. Dyno Nobel, Inc., No. 97-CV-1724, 1998 WL 865603 (N.D.N.Y. Nov. 24, 1998); American Medical Ass'n v. United Healthcare Corp., No. 00CIV.2800(LMM), 2001 WL 863561 (S.D.N.Y. July 31, 2001); see also Mariash v. Morrill, 496

F.2d 1138, 1140-41 (2d Cir. 1974) (discussing nationwide service of process in the context of an action under the Securities Exchange Act of 1934); see generally 60A Am. Jur. 2d, Pension and Retirement Funds §§ 813, 825 (2004); 4 Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure - Civil § 1068.1 (3d ed. 2004).

The traditional "minimum contacts" analysis of International Shoe Co. v. Washington, 326 U.S. 310 (1945), which examines the contacts between a defendant and the forum state does not apply when Congress has provided for nationwide service of process, as it has done under ERISA. Instead, the due process requirements of the Fifth Amendment control. See Medical Mutual of Ohio, 245 F.3d at 566-67. Whereas the Fourteenth Amendment dictates that a defendant have sufficient minimum contacts with the forum state, the Fifth Amendment only requires that a defendant have sufficient aggregate minimum contacts with the United States as a whole.[1] In In re Michaelesco, 288 B.R. 646 (D. Conn.

[1] Although the majority of circuits have held that national service of process provisions confer nationwide jurisdiction without regard to a defendant's minimum contacts with the forum state, a minority of circuits have held otherwise. See IUE AFL-CIO Pension Fund, 9 F.3d at 1056-57 (2d Cir. 1993)(upholding 29 U.S.C. § 1451(d)'s national service of process provision as conferring nationwide jurisdiction); Medical Mutual of Ohio, 245 F.3d at 566-67 (discussed above); Bellaire Gen. Hosp. v. Blue

2003), this Court held that where subject matter jurisdiction under 28 U.S.C. § 1334(b) was based on a federal question and nationwide service of process is authorized in such proceedings, under Mariash, whether there exists a connection between the defendant and the forum state in which the Bankruptcy Court sits is irrelevant. Instead the personal jurisdiction inquiry should focus on whether the defendant in the proceeding resides within the United States. This latter approach has been referred to as the "national contacts test." IUE AFL-CIO Pension Fund v. Herrmann, 9 F.3d 1049, 1056-57 (2d Cir. 1993), cert. denied, 513 U.S. 822 (1994) (construing an identical provision in 29 U.S.C. § 1451(d) involving multiemployer plans); Cryomedics, Inc. v. Spembly, Ltd., 397 F. Supp. 287 (D. Conn. 1975)

Cross Blue Shield, 97 F.3d 822, 825 (5th Cir. 1996) (holding that § 1132(e)(2) confers national jurisdiction over anyone having sufficient minimum contacts with the United States); Board of Trustees, Sheet Metal Workers' Nat'l Pension Fund v. Elite Erectors, Inc., 212 F.3d 1031, 1035 (7th Cir. 2000) (applying a national contacts test based on § 1132(e)(2)'s nationwide service of process provision); In re Federal Fountain, Inc., 165 F.3d 600, 601 (8th Cir. 1999)(upholding Fed. R. Bankr. P. 7004(d)'s national service of process provision); but see Peay v. Bellsouth Med. Assistance Plan, 205 F.3d 1206, 1210 (10th Cir. 2000)(holding that the Fifth Amendment requires a showing that plaintiff's choice of forum is fair and reasonable to the defendant); Republic of Panama v. BCCI Holdings, 119 F.3d 935, 943 (11th Cir. 1997) (same).

(involving nationwide service of process under federal patent laws).[2]

In a case such as this, where the defendant resides in

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[2] Defendant states in its reply brief that the cases cited by plaintiff are no longer controlling in light of the United States Supreme Court's decision in Insurance Corp. of Ireland v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 702 (1982), and a recent decision of this Court in Disability Management Alternatives, LLC v. Kafkas, No. 3:03CV1717(WWE), 2004 WL 813013 (D. Conn. April 5, 2004).

In Insurance Corp. of Ireland, the Supreme Court rejected the notion that personal jurisdiction is based on federalism concerns, stating the "personal jurisdiction . . . represents a restriction on judicial power not as a matter of sovereignty, but as a matter of individual liberty." 456 U.S. at 702. As the Sixth Circuit explained in Medical Mutual of Ohio, 245 F.3d at 567, when a federal court sitting pursuant to federal question jurisdiction exercises personal jurisdiction over a United States citizen based on a congressionally authorized nationwide service of process provision, that individual liberty interest is not threatened. In such cases, the individual is not being subjected to extra-territorial jurisdiction, because the individual is within the territory of the sovereign, i.e., the United States, which is exercising jurisdiction. "In other words, when a federal court exercises jurisdiction pursuant to a national service of process provision, it is exercising jurisdiction for the territory of the United States and the individual liberty concern is whether the individual over which the court is exercising jurisdiction has sufficient minimum contacts with the United States." Medical Mutual of Ohio, 245 F.3d at 568 (footnote omitted).

In Disability Management Alternatives, 2004 WL 813013, the defendant's motion to dismiss was unopposed. However, with the benefit of the legal arguments now presented by plaintiff's papers in the instant case, it appears that the legal rationale set forth in Disability Management Alternatives was not correct and the Court declines to adhere to the rationale of that earlier ruling.

the United States, works in the United States, and receives benefits from a disability plan administered in the United States, those minimum national contacts have been established.

Therefore, defendant's motion to dismiss for lack of personal jurisdiction is denied.

II. Improper Venue

Defendant next asks this Court to dismiss this action on the ground of improper venue, pursuant to Rule 12(b)(3). Again, the burden is on plaintiff to establish that venue is proper.

ERISA's venue provision, 29 U.S.C. § 1132(e)(2), authorizes an ERISA action to be brought in a federal judicial district where (a) the plan is administered; (b) the breach took place; (c) the defendant resides; or (d) a defendant may be found. Here, because the plan at issue was administered by plaintiff in Connecticut, venue is properly laid in the District of Connecticut. See generally 60 A Am. Jur. 2d, Pension and Retirement Funds § 823 (2004).

III. Transfer of Venue

Last, in the alternative, defendant asks the Court to transfer this action to the Northern District of Georgia, pursuant to 28 U.S.C. § 1404 or §1406. Defendant's request

for change of venue will be granted.

Section 1406 permits a court without personal jurisdiction over the defendant or where venue is improper to transfer the case to a district where jurisdiction and venue properly lie. For the reasons discussed above, this section may not be relied upon by defendant to seek a change of venue in this case.

Defendant, however, may invoke section 1404 in seeking a transfer to a more convenient forum. Under section 1404(a), a court may transfer a case if the moving party shows that (1) venue was proper in the transferor district, (2) venue and jurisdiction would be proper in the transferee district, and (3) the transfer will serve the convenience of the parties and the witnesses as well as the interests of justice. Stewart Org., Inc. v. Ricoh, Inc., 487 U.S. 20, 29 (1988); Filmline (Cross-Country) Prod'ns, Inc. v. United Artists Corp., 865 F.2d 513, 521 (2d Cir. 1989). The Court is granted broad discretion in making this determination. In re Cuyahoga Equip. Corp., 980 F.2d 110, 117 (2d Cir. 1992). Here, there is no question that venue is proper in the transferor district and that jurisdiction and venue would be proper in the Northern District of Georgia, where defendant resides. See 29 U.S.C. § 1132(e)(2). Rather, the

critical inquiry is whether defendant has carried his burden of establishing that a transfer of venue is warranted for the convenience of the parties and in the interests of justice.

In U.S. Surgical Corp. v. Imagyn Medical Technologies, Inc., 25 F. Supp. 2d 40 (D. Conn. 1998), this Court set forth the factors that should be considered in making this assessment. These factors include: (1) the convenience of the witnesses; (2) the location of relevant documents and the relative ease of access of sources of proof; (3) the convenience of the parties; (4) the locus of the operative facts; (5) the availability of process to compel attendance of unwilling witnesses; (6) the relative means of the parties; (7) the forum's familiarity with governing law; (8) the weight accorded to plaintiff's choice of forum; and (9) trial efficiency and the interests of justice, based on the totality of the circumstances. Applying these factors to the facts of this case, the Court finds that a transfer of this case to the Northern District of Georgia is warranted.

Convenience of the witnesses is the paramount factor governing the decision to transfer a case. In this case, not only is defendant, who is totally disabled, a resident of Georgia, but his employer, Coca-Cola, is also located in

Georgia. All witnesses concerning defendant's disability, his receipt of workers' compensation benefits, and his employment would be located in Georgia. On the other hand, plaintiff's witnesses with knowledge of payments made to defendant would be located in Connecticut.

All records relating to defendant's receipt of workers' compensation benefits would be in Georgia, although records relating to plaintiff's payment of benefits would primarily be located in Connecticut.

As to the relative financial means of the parties, defendant, who is totally disabled, states by affidavit that to travel to Connecticut to litigate this case would impose a huge financial burden. By contrast, plaintiff is a large corporation that operates throughout the United States, including Georgia. Thus, it would appear that requiring plaintiff to travel to Georgia would impose substantially less of a financial burden than requiring defendant to travel to Connecticut.

As to where the operative facts occurred, defendant's employment and his disability took place in Georgia, the alleged overpayments were sent to defendant in Georgia, his receipt of workers' compensation benefits took place in Georgia. On the other hand, all actions by the plaintiff in

making these payments took place in Connecticut.

Obviously, plaintiff's choice of forum, Connecticut, is a factor entitled to significant weight.

As to which forum would be more familiar with the controlling law, that factor would appear to favor neither since this case is brought under ERISA, as to which federal law applies. The only slight advantage Georgia might have in this regard is to the extent that Georgia's workers' compensation laws come into play.

Lastly, as to the interests of justice, the Court finds that this factor tips in neither direction.

Having weighed all of the factors, the Court finds that, in the overall interest of justice and for the convenience of the parties, this matter should be transferred to the Northern District of Georgia.

Conclusion

Therefore, for the reasons set forth above, defendant's motion to dismiss on grounds of lack of personal jurisdiction and improper venue [Doc. # 10] is DENIED. Defendant's motion to transfer [Doc. # 10] this action to the Northern District of Georgia, pursuant to 28 U.S.C. § 1404, is GRANTED. The Clerk is directed to transfer this case to the Northern District of Georgia.

SO ORDERED, this 13th day of October, 2004, at Bridgeport, Connecticut.

_____/s/_____
WARREN W. EGINTON,
Senior United States District Judge