IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

WELLMARK, INC., Plaintiff, vs. CHRISTOPHER DEGUARA, Defendant.	**No. 4:02-cv-40534** **ORDER DENYING DEFENDANT'S 12(b)(3) MOTION TO DISMISS AND MOTION TO TRANSFER**

This matter comes before the Court on Defendant's Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(3) ("Rule" 12(b)(3)) or, in the alternative, Motion to Transfer pursuant to 28 U.S.C. §§ 1404, 1406.[1] Wellmark is represented by Dave Swinton; Deguara is represented by Jeffrey Pop.

I. FACTUAL AND PROCEDURAL BACKGROUND

Defendant Christopher Deguara resides in Cameron Park, California. Plaintiff Wellmark, Inc., is an Iowa corporation with its principal place of business in Des Moines, Iowa.

On February 22, 2001, Deguara was injured in an automobile accident in El Dorado County, California. As a result of the accident, Deguara incurred approximately $668,498 in medical expenses. Deguara's medical expenses were covered

[1] Deguara also filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted, which Motion was denied in a separate order on April 7, 2003.

under two employee welfare benefit plans ("the Plans").[2] The medical insurance coverage for both Plans was provided by Wellmark.[3]

The Plans have identical subrogation clauses which entitled the Plans to the insured's legal rights to collect damages against any responsible third party. The Plans also contain identical forum selection clauses which designate Iowa courts, state or federal, as the location for any action brought under provisions of the plan.[4]

Deguara, along with two other injured passengers, brought a personal injury lawsuit in California state court ("tort action") against the driver of the vehicle, Tanner Hicks. A settlement was reached dividing the insurance policy limit of $500,000 equally among the three plaintiffs so each one received $166,666.

During the pendency of the tort action, Wellmark brought the present action in federal court pursuant to 29 U.S.C. § 1132(e)(2), ERISA's civil enforcement provision.

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[2] Deguara had an employer-funded plan, AllianceSelect, through his employer Bloodgood, Sharp, Buster Architects & Planners. He was also a beneficiary on a self-funded group plan, Classic Blue Traditions, through his mother's employer, Act, Inc.

[3] Wellmark provided administrative services to Deguara's self-funded plan and both administrative and insurance services to the employer-funded plan.

[4] The clause is titled "Governing Law" and reads:

> To the extent not superseded by the laws of the United States, this certificate will be construed in accordance with and governed by the laws of the state of Iowa. Any action brought because of a claim under this certificate will be litigated in the state or federal courts located in the state of Iowa and in no other.

Wellmark requests declaratory judgment over the proceeds of the tort action, arguing it is entitled to those proceeds under the terms of the Plans.

Contemporaneous to filing the present motion, Defendant filed a motion to dismiss pursuant to Rule 12(b)(6) for failure to state a claim under ERISA; that motion was denied.[5] In the present motion, Deguara alleges venue is improper and the action should be dismissed pursuant to Rule 12(b)(3). Alternatively, Defendant moves the Court, in the interest of justice and the convenience of the parties, to transfer this case to the Eastern District of California, Sacramento Division, pursuant to 28 U.S.C. §§ 1404, 1406.

Wellmark resists Deguara's motion to dismiss, arguing venue is proper because it is undisputed that the Plans are administered in Iowa and the valid forum selection clause dictates that any claim will be litigated in Iowa. Wellmark resists the motion to transfer, arguing that by transferring the case to the Eastern District of California, Deguara can, at most, present a showing of *relative* inconvenience which merely *shifts* the inconvenience of litigating the matter from Deguara to Wellmark and does not defeat a valid forum selection clause.

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[5] In that motion, Deguara argued that in light of the Supreme Court's decision in Great-West Life & Annuity Insurance Company v. Knudson, 534 U.S. 204 (2002), Wellmark could not bring a subrogation/reimbursement action under ERISA. The Court found Wellmark's claim over the funds was a request for equitable, rather than legal, relief and was properly brought under ERISA's civil enforcement provision, 29 U.S.C. § 1132.

II. DISCUSSION

A. MOTION TO DISMISS UNDER 12 (b)(3) FOR IMPROPER VENUE

Deguara argues that venue in the Southern District of Iowa is improper because the Court lacks personal jurisdiction, the Plan forum selection clauses are unenforceable adhesion contracts, and California public policy favors giving its residents access to California courts.

Wellmark resists, arguing it is undisputed that the Plans are administered out of this district, and, therefore, under ERISA, venue is proper. Alternatively, Wellmark argues that, as a resident of California, Deguara has the necessary minimum contacts with the *United States* under ERISA for this Court to assert jurisdiction over him, and, furthermore, the forum selection clause is enforceable.

When venue is challenged, "[a] court is not obliged to determine the 'best' venue for a cause of action pending before it, but rather must determine only whether or not its venue is proper." Seariver Mar. Fin. Holdings, Inc. v. Pena, 952 F. Supp. 455, 459 (S.D. Tex. 1996). It is undisputed that the Plans are administered in Des Moines, Iowa, which is in the Southern District of Iowa. It was previously decided that this claim falls under ERISA's civil enforcement provision; therefore, ERISA's venue provision also applies. It states in pertinent part:

> 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)(3) (2000) (emphasis added).

1. Personal Jurisdiction.

Deguara offers the conclusory argument that this Court lacks personal jurisdiction and nationwide service of process violates his due process rights under the Fifth and Fourteenth Amendments. The extent of Deguara's argument is that personal jurisdiction should be determined by traditional minimum contacts as established in International Shoe Co. v. Washington, 325 U.S. 310 (1945). Wellmark argues ERISA provides nationwide service of process and the minimum contacts analysis is unnecessary.

Although the Eighth Circuit has not addressed the minimum contacts issue in ERISA cases, it has reasoned in the bankruptcy context, when Congress statutorily provided for nationwide service of process, the minimum contacts analysis was unnecessary. See In re Fed. Fountain, Inc., 165 F.3d 600, 601 (8th Cir. 1999) (aligning itself with "virtually every other court" holding that when Congress has statutorily furnished the "federal district courts with the power to exert personal jurisdiction nationwide", due process is satisfied if the defendant "'has sufficient contacts with the United States to support the fairness of the exercise of jurisdiction over him by a United States court'") (quoting Fitzsimmons v. Barton, 589 F.2d 330, 333 (7th Cir. 1979)). Other district courts in the Eighth Circuit have extended this reasoning to other federal statutes which provide for nationwide service of process including ERISA.

In Administrative Committee of Wal-Mart Stores, Inc. v. Soles, an insurer sought to enforce subrogation terms of an ERISA plan and filed suit against the plan beneficiary in the United States District Court, Western District of Arkansas, where the plan was administered. Admin. Comm. of Wal-Mart Stores, Inc. Assocs. Health & Welfare Plan v. Soles, 204 F. Supp. 2d 1184, 1185-86 (W.D. Ark. 2002). The court found the Eighth Circuit's application of the nationwide service of process provided for in the bankruptcy statute in In re Fed. Fountain, Inc., was analogous to the ERISA statute and held: "Due process of law relates to the fairness of the exercise of power by the sovereign over an individual, and individual liberty interests are not threatened when a federal district court sitting pursuant to federal question jurisdiction exercises personal jurisdiction over an individual with minimum contacts with the United States." Id. (citing In re Fed. Fountain, Inc., 165 F.3d at 601-02). See Dakotas and W. Minn. Elec. Workers Health and Welfare Fund v. All County Electrical Co., 2002 WL 389141 *1 (D.N.D. Feb 25, 2002) (finding the Eighth Circuit's reasoning in In re Fed. Fountain, Inc. conferring personal jurisdiction when a statute provides for nationwide service of process also applies to ERISA's nationwide service of process provision); Stumpf v. Med. Benefits Adm'rs, 2001 WL 1397326 *2 (D. Neb. Mar 14, 2001) (finding the Eighth Circuit's reasoning in In re Fed. Fountain, Inc. conferring personal jurisdiction when a statute provides for nationwide service of process also applies to ERISA's nationwide service of process provision); see also United States v. St.

Joseph's Reg'l Health Ctr., 240 F. Supp. 2d 882, 886 (W.D. Ark. 2002) (applying the Eighth Circuit's reasoning in In re Fed. Fountain, Inc., reasoning the nationwide service of process provision in the False Claims Act, 31 U.S.C. § 3732(a), similarly confers personal jurisdiction).

The Eighth Circuit reasoned in In re Fed. Fountain, Inc., that Congress has exercised its authority to grant to the federal district court "'the power to bring before it all the parties necessary to its decision'" when a statute, "on its face, quite clearly allows national service of process". In re Fed. Fountain, Inc., 165 F.3d at 602 (quoting United States v. Union Pac. R.R. Co., 98 U.S. 569, 604 (1878)). The Court finds this reasoning also applies to ERISA's nationwide service of process provision. Therefore, since Deguara is a resident of the *United States*, this Court may properly exercise jurisdiction over him.

2. Forum Selection Clause.

Deguara's argument concerning the forum selection clause is completely beside the point on the motion before the Court. Venue is proper *regardless* of the forum selection clause. Wellmark, as Plaintiff in this proceeding, filed its lawsuit in the district in which it is headquartered and where the Plans at issue were administered. As stated, this accords with ERISA's jurisdictional provision and, therefore, venue is proper.

3. Violation of California Public Policy.

Similarly, Deguara's public policy arguments are unpersuasive. The Court has determined this action is in federal court pursuant to federal question jurisdiction, not diversity. Allegations that this lawsuit violates California Public Policy are not pertinent to the essential issue before the Court. For the foregoing reasons, Defendant's Motion to Dismiss for improper venue pursuant to Rule 12(b)(3) is denied.

B. MOTION TO TRANSFER

Deguara alternatively requests the Court transfer this case to the Eastern District of California, Sacramento Division, pursuant to 28 U.S.C. § 1404(a) ("§ 1404(a)") which states in pertinent part, "[f]or 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." 28 U.S.C. § 1404(a) (2000).

The congressional intent behind § 1404(a) is to provide "the district court discretion to adjudicate motions to transfer according to an individualized, case-by-case consideration of convenience and the interests of justice." TSE v. Ventana Med. Sys., Inc., 1997 WL 811566 *4 (D. Del. Nov 25, 1997) (citing Stewart Org., Inc. v. Ricoh Corp., 487 U.S. 22, 29 (1988)).

The moving party has the burden of proving a transfer is warranted. Jumara v. State Farm Ins. Co., 55 F.3d 873, 879 (3d Cir. 1995) (citing 1A James Wm. Moore et al., Moore's Federal Practice ¶ 0.345, at 4360 (2d ed. 1995)); Terra Int'l, Inc. v. Miss.

Chem. Corp., 119 F.3d 688, 695 (8th Cir. 1997). "In order to show that transfer is proper, the defendant must establish that (1) venue is proper in the transferor court; (2) venue is proper in the transferee court; and (3) the transfer is for the convenience of the parties and witnesses and promotes the interests of justice." Black & Decker Corp. v. Amirra, Inc., 909 F. Supp. 633, 635 (W.D. Ark. 1995) (citing Dugan v. M. & W. Dozing & Trucking, Inc., 727 F. Supp. 417, 418 (N.D. Ill. 1989)); see also Caleshu v. Wangelin, 549 F.2d 93, 96 n.4 (8th Cir. 1977) (reasoning that § 1404(a) does not dispense with the requirement that "venue must be proper in the transferee district").

As stated above, pursuant to ERISA, venue in this district is proper because the Plans were administered in Des Moines. Likewise, because Deguara resides in Cameron Park, California, venue is also proper in the Eastern District of California. See 29 U.S.C. § 1132 (e)(3) (2000) (designating that, under ERISA's civil enforcement provision, an action may be brought in the district "where a defendant resides or may be found").

With jurisdiction proper in both the transferee and transferor districts, the Court will look at three factors in deciding a motion to transfer pursuant to § 1404(a): "(1) the convenience of the parties; (2) the convenience of witnesses; and (3) the interest of justice." Terra Int'l, Inc., 119 F.3d at 691 (citing 28 U.S.C. § 1404(a)); Stewart, 487 U.S. at 29 ("A motion to transfer under § 1404(a) thus calls on the district court to weigh in the balance a number of case-specific factors."). The evaluation is

not limited to these factors; rather, the court should make "a case-by-case evaluation of the particular circumstances at hand and a consideration of all relevant factors". Terra Int'l, Inc., 119 F.3d at 691 (citing Stewart, 487 U.S. at 29).

In considering these factors, however, the "plaintiff's choice of forum will not be disturbed unless the movant for transfer demonstrates that the balance of convenience and justice weighs heavily in favor of transfer." Kovatch Corp. v. Rockwood Systems Corp., 666 F. Supp. 707, 708 (M.D. Pa. 1986) (citing Shutte v. Armco Steel Corp., 431 F.2d 22, 25 (3d Cir. 1970) (stating "[i]t is black letter law that a plaintiff's choice of a proper forum is a paramount consideration in any determination of a transfer request")). Therefore, "'[m]erely shifting the inconvenience from one side to the other, however, obviously is not a permissible justification for a change of venue.'" Terra Int'l, Inc., 119 F.3d at 696-97.

Deguara argues the action should be transferred to the Eastern District of California because he resides there and because it is the location of the accident which led up to the present litigation. Deguara also argues that the forum selection clause is unenforceable and should not be considered in determining whether to transfer the case. He further argues it would be extremely inconvenient for the witnesses and the Defendant to travel to Des Moines to defend this lawsuit. Deguara supplements his legal arguments with his own affidavit, the affidavit of his mother, Susan Deguara, and the affidavit of his attorney in the tort action, Robert Meissner.

Wellmark is the Plaintiff in this matter and brought this action in the Southern District of Iowa, Central Division, located in Des Moines. Wellmark's principal place of business is Des Moines, and the Plans at issue in this case were administered in Des Moines. Wellmark argues its chosen forum should not be disturbed because Deguara has not established a compelling showing of inconvenience to warrant transfer. In addition, Wellmark maintains the Plans' forum selection clauses are valid and should prevail over anything but the most compelling showing of inconvenience.

1. <u>Validity of the Forum Selection Clause</u>.

Deguara's argument regarding the forum selection clause is irrelevant on the issue of transfer under § 1404(a). The Court has already determined that venue is proper in this district; therefore, determining whether Wellmark properly brought the case in this district *pursuant to the forum selection clause* is unnecessary. Deguara postures as though he is *resisting* a motion to transfer *pursuant to* a forum selection clause. In the present case, the action is properly in this district independent of the forum selection clause and is not being maintained in this district *because of* a forum selection clause. Therefore, consideration of the clause has no bearing on Deguara's motion to transfer.[6]

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[6] Since enforcement of a forum selection clause in a *diversity action* is a procedural matter determined under federal law, <u>Stewart</u>, 487 U.S. at 32, there is no question that courts apply federal law, not state law, to determine the validity of a forum selection clause in a *federal question* case such as the one at bar. Therefore, if the Court found it was necessary to analyze the forum selection clause, the federal

2. **Convenience of the Parties.**

Deguara is the Defendant in the present action. In his affidavit, he states that he made a monthly payment of $12.00 for his health coverage plan but denies knowledge of the plan's forum selection clause. Deguara discusses the substantial medical procedures he endured and resulting medical bills. He also discusses the tort action and settlement. However, Deguara does not explain how litigation of this action in the Southern District of Iowa would create unusual inconvenience for him.

Robert Meissner, Deguara's attorney in the tort action, also submits an affidavit and suggests Deguara is inconvenienced because the voluminous documentary evidence will have to be shipped to Des Moines if the case is not transferred to the Eastern District of California. He also suggests Wellmark will need only one custodial witness, implying it would be *less inconvenient* to require the Plaintiff to travel than to require the Defendant to do so.

Wellmark is the Plaintiff in the present action and has selected the Southern District of Iowa as the forum in which to bring the action. Wellmark argues the narrow issue to be litigated in the present action is whether Wellmark is entitled to the proceeds of the tort action under the terms of the Plans' subrogation clauses. Wellmark avers

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law of this Circuit would apply. The Eighth Circuit has reasoned "[f]orum selection clauses are prima facie valid and are enforced unless they are unjust or unreasonable or invalid for reasons such as fraud or overreaching." M.B. Rests., Inc. v. CKE Rests., Inc., 183 F.3d 750, 752 (8th Cir. 1999).

this is not a relitigation of the merits of the underlying tort action. Most, if not all, witnesses called to testify in the tort action will not be anticipated in the present action. Wellmark points out the record presently before the Court contains most, if not all, evidence necessary to litigate the case. Furthermore, Deguara's argument of inconvenience caused by having to ship voluminous medical documentation is unfounded; Deguara's medical expenses are not in dispute.

The Court agrees with Wellmark's position. It is likely that on the narrow issue before the Court the record is fundamentally complete. Although Deguara may desire to be present at trial, it is unlikely his testimony would be required.

Deguara has only demonstrated that trying this case in the Eastern District of California rather than the Southern District of Iowa merely shifts the inconvenience of the parties from himself to Wellmark, and, therefore, transfer is not warranted. Terra Int'l, Inc., 119 F.3d at 696-97.

3. Convenience of the Witnesses.

Deguara argues several witnesses would be inconvenienced if the matter is not transferred to the Eastern District of California. Susan Deguara is not a named party in this action, however, she is the policy holder of one of the Plans at issue in this action. In her affidavit, Susan Deguara states that she made monthly payments for health coverage to her plan but denies knowledge of the forum selection clause. However, she does not offer any reason why it would unusually inconvenience her if this matter

is litigated in the Southern District of Iowa. The Court does not anticipate Susan Deguara would be a necessary witness in the litigation of this matter.

In his affidavit, Robert Meissner states it would be inconvenient for several witnesses, including himself, who are located in or around El Dorado, California, to travel to the Southern District of Iowa to testify. Meissner's list of witnesses includes the driver of the vehicle involved in the accident, Tanner Hicks, the owner of the vehicle, Dareth Hicks, Christopher Deguara, Susan Deguara, "other" California residents, and personnel from Wellmark's Red Bluff, California, office where the medical bills were sent.

Wellmark argues the testimony of these witnesses is not necessary to litigate the matter before the Court. The manner, extent, and treatment of Deguara's injuries has already been litigated in the tort action and is not presently before the Court.

Deguara does not explain why these witnesses would be called to testify in the matter before the Court. Furthermore, the only witness that testifies he would be inconvenienced if the case is not transferred is Meissner. Since Deguara does not offer any valid reason why these witnesses would be called to testify, the Court is compelled to find that transfer of this action based on inconvenience of witnesses is not warranted. Id. at 696.

4. Interest of Justice.

In determining whether transfer would be in the interest of justice, Deguara urges the Court to consider (1) judicial economy, (2) the plaintiff's choice of forum, (3) the comparative cost of parties in litigating each forum, (4) each party's ability to enforce a judgment, (5) obstacles to a fair trial, (6) conflict of law issues, and (7) the advantage of having the local court to determine questions of local law. See Jumara, 55 F.3d 873, 879 (3d Cir. 1995); Terra Int'l, Inc., 119 F.3d at 696. However, Deguara does not distinguish which, if any, of these factors weigh in favor of transfer.

The Court finds none of the foregoing factors weigh in favor of the transfer; in fact, most of them weigh in favor of Wellmark:

(1) Judicial economy suggests this case will be resolved faster if it remains in the Southern District of Iowa where significant judicial resources have already been invested;

(2) The Southern District of Iowa is the Plaintiff's choice of forum;

(3) Deguara and his legal team may have to pay for travel costs, however, transfer would merely shift the cost to Wellmark. Furthermore, the delay caused by transferring the case may increase Deguara's overall legal costs more than the travel expenses;

(4) Enforcement of the judgment will not change whether or not the case is transferred because the funds at issue are held in a joint trust account;

(5) There are no apparent obstacles to a fair trial in either forum;

(6) Either forum would apply federal law to the question of ERISA subrogation rights; and

(7) This is not a diversity case, therefore, no issues of local law are present.

Deguara's argument for transfer rests heavily on the fact that if it is not transferred, this matter will be tried far from where the injury and medical treatment occurred. Although this would be relevant in a personal injury action based on those events, this is a subrogation action. No questions of state law are present; no witnesses from the tort action will be called. If the case is not resolved on motion and requires a trial, either Wellmark or Deguara will be required to travel. Since more than a mere shift of inconvenience is required to transfer under § 1404, Deguara's Motion to Transfer must be denied.

III. CONCLUSION

For the forgoing reasons, both Defendant's Motion to Dismiss and Motion to Transfer (Clerk's No. 17) are **denied**.

IT IS SO ORDERED.

Dated this 28th day of May, 2003.