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