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*295 F. Supp. 2d 604, *; 2003 U.S. Dist. LEXIS 22623, ***

Brenda **Abercrombie**, Plaintiffs, vs. **Continental Casualty Company**, Defendant.

C.A. No. 6:03-3382-20

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA, SPARTANBURG
DIVISION

295 F. Supp. 2d 604; 2003 U.S. Dist. LEXIS 22623

December 16, 2003, Decided
December 16, 2003, Date Filed

DISPOSITION: **[**1]** Defendant's motion to dismiss denied. Defendant's alternative request to transfer venue denied.

CASE SUMMARY

PROCEDURAL POSTURE: Defendant insurance company filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1), (2), and (3) as well as 29 U.S.C.S. § 1132(e)(2). This was an Employee Retirement Income Security Act (ERISA) benefits case in which plaintiff sought long- term disability benefits pursuant to an ERISA plan and 29 U.S.C.S. § 1132(a)(1)(B).

OVERVIEW: Although the parties spent a great deal of time disputing the facts related to plaintiff's contacts with South Carolina, the court found that even if she had no contacts with South Carolina, the exercise of personal jurisdiction over the insurance company was proper. There was no question that the insurance company had sufficient contacts with the United States to satisfy the minimum contacts test. In addition, the court's exercise of personal jurisdiction over the insurance company would not create "unfair burden or inconvenience." Moreover, the court found the insurance company's alternative argument that venue was improper without merit. Admittedly, the insurance company insured plans for other employers in South Carolina. The court found this sufficient to establish minimum contacts under the standard set forth in *International Shoe* and as such the insurance company could "be found" in South Carolina for purposes of the ERISA venue statute. Because the insurance company was subject to personal jurisdiction in South Carolina, the court found that the insurance company resided in South Carolina for purposes of the ERISA venue statute.

OUTCOME: The motion to dismiss was denied.

CORE TERMS: personal jurisdiction, venue, reside, motion to dismiss, exercise of personal jurisdiction, venue statute, administered, subject matter jurisdiction, service of process, judicial district, nationwide, persuasive, concedes, insures

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[Pensions & Benefits Law](#) > [Employee Retirement Income Security Act \(ERISA\)](#)

HN1 See [29 U.S.C.S. § 1132\(e\)\(2\)](#).

[Civil Procedure](#) > [Jurisdiction](#) > [Personal Jurisdiction & In Rem Actions](#) > [Personal Jurisdiction](#)

[Civil Procedure](#) > [Pleading & Practice](#) > [Defenses, Objections & Demurrers](#) > [Motions to Dismiss](#)

HN2 When personal jurisdiction is challenged by the defendant, a plaintiff has the burden of showing that jurisdiction exists. When a district court decides a pretrial personal jurisdiction dismissal motion without an evidentiary hearing, plaintiffs need only prove a prima facie case of personal jurisdiction. In making this determination, the court looks to the complaint and any supporting affidavits. Furthermore, the court will construe factual allegations in favor of the plaintiff. [More Like This Headnote](#)

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HN3 [29 U.S.C.S. § 1132\(e\)\(2\)](#) which provides for nationwide service of process, has been interpreted for purposes of personal jurisdiction as a national contacts test. Therefore, when a federal court asserts personal jurisdiction over a defendant in a suit based on a statute that includes a provision for nationwide service of process, the relevant inquiry is not whether the defendant has sufficient minimum contacts with the forum state, but rather, whether the defendant has sufficient contacts with the United States as a whole. [More Like This Headnote](#)

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HN4 Pursuant to [§ 502\(e\)\(2\)](#) of the Employee Retirement Income Security Act (ERISA), [29 U.S.C.S. § 1132\(e\)\(2\)](#), venue is proper in any district where the plan is administered, where the alleged breach took place, or where a defendant resides or may be found. Assuming the latter two to be true, the third venue inquiry is where the defendant resides or may be found, not the plaintiff. [More Like This Headnote](#)

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HN5 A fund can be found in a judicial district if it has the sort of minimum contacts with that district that would support the exercise of personal jurisdiction under the rule of International Shoe. [More Like This Headnote](#)

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HN6 See [28 U.S.C.S. § 1391\(c\)](#).

COUNSEL: For Plaintiff: Robert E. Hoskins, Esquire.

For Defendant: Christine M. Gantt, Esquire.

JUDGES: Henry M. Herlong, Jr., United States District Judge.

OPINIONBY: Henry M. Herlong, Jr.

OPINION: [*606] This matter is before the court on **Continental Casualty Company's** ("Continental") motion to dismiss pursuant to [Rule 12\(b\)\(1\), \(2\), and \(3\)](#) of the Federal Rules of Civil Procedure as well as [29 U.S.C. § 1132\(e\)\(2\)](#). For the reasons set forth below, the court denies Continental's motion to dismiss.

This is an ERISA benefits case in which Brenda **Abercrombie ("Abercrombie")** seeks long-term disability benefits pursuant to an ERISA plan ("the Plan") and [29 U.S.C. § 1132\(a\)\(1\)\(B\)](#). Pursuant to [29 U.S.C. § 1132\(e\)\(2\)](#), Continental asserts the case should either be

dismissed for lack of personal jurisdiction or transferred to a more appropriate venue. n1 ERISA § 502(e)(2) states:

HN1 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 **[**2]** 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). There is no dispute that ERISA applies in this case.

----- Footnotes -----

n1 Continental also moves to dismiss for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure. However, as Continental points out in its motion, "Plaintiff concedes in her Complaint that this matter is a benefit claim under an employee welfare benefit plan and, therefore, is governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq." (Mot. Dismiss at 1.) Therefore, to the extent Continental moves to dismiss for lack of subject matter jurisdiction, that motion is denied. See 28 U.S.C. §§ 1331, 1132(e)(1).

----- End Footnotes-----

HN2 When personal jurisdiction is challenged by the defendant, a plaintiff has the burden of showing that jurisdiction exists. **[**3]** See In re Celotex Corp., 124 F.3d 619, 628 (4th Cir. 1997). "When a district court decides a pretrial personal jurisdiction dismissal motion without an evidentiary hearing, plaintiffs need only prove a *prima facie* case of personal jurisdiction." Sadighi v. Daghighefkr, 36 F. Supp. 2d 267, 270 (D.S.C. 1999). In making this determination, the court looks to the complaint and any supporting affidavits. See In re Celotex Corp., 124 F.3d at 628. Furthermore, the court will construe factual allegations in favor of the plaintiff. See *id.*

First, Continental argues that the court lacks personal jurisdiction. In support of this argument, Continental asserts **Abercrombie** is a citizen of North Carolina, works exclusively in North Carolina, the **[*607]** administration of the Plan is in Pennsylvania, and the alleged breach took place in North Carolina. While Continental concedes it insures other employee welfare benefit plans for South Carolina employers, it argues this is not enough to warrant the court's exercise of personal jurisdiction in this case.

Although the parties spend a great deal of time disputing the facts related to **Abercrombie's [**4]** contacts with South Carolina, the court finds that even if she has *no* contacts with South Carolina, the exercise of personal jurisdiction over Continental is proper. Section 502(e)(2), *HN3* "which provides for nationwide service of process, has been interpreted for purposes of personal jurisdiction as a national contacts test." Schrader v. Trucking Employees of N. Jersey Welfare Fund, Inc., 232 F. Supp. 2d 560, 571 (M.D.N.C. 2002) (internal quotation omitted). "Therefore, when a federal court asserts personal jurisdiction over a defendant in a suit based on a statute that includes a provision for nationwide service of process, the relevant inquiry is not whether the defendant has sufficient minimum contacts with the forum state, but rather, whether the defendant has sufficient contacts with the United States as a whole." *Id.* There is no question that Continental has sufficient contacts with the United States to satisfy this test. In addition, the court's exercise

of personal jurisdiction over Continental will not create "unfair burden or inconvenience." *Id.* at 572.

Moreover, the court finds Continental's alternative argument that venue is improper **[**5]** without merit. ⁿ² ^{HN4} Pursuant to § 502(e)(2), "venue is proper in any district where the plan is administered, where the alleged breach took place, or where a defendant resides or may be found." *Id.* at 573. In its motion, Continental asserts the Plan is administered in Pennsylvania, the breach took place in North Carolina, and **Abercrombie** is located in North Carolina. Assuming the latter two to be true, the third venue inquiry is where the *defendant* resides or may be found, not the plaintiff.

----- Footnotes -----

ⁿ² The court notes that Continental does not move to transfer venue pursuant to 28 U.S.C. § 1404(a) for the convenience of the parties and witnesses. Rather, Continental argues venue is improper pursuant to § 502(e)(2). As such, the court's discussion is limited to that issue.

----- End Footnotes-----

The meaning of "may be found" has not been addressed by the United States Court of Appeals for the Fourth Circuit. However, the court finds the United States Court of Appeals for the Seventh Circuit's decision **[**6]** in *Waeltz v. Delta Pilots Retirement Plan*, 301 F.3d 804, 810 (7th Cir. 2002) persuasive. In *Waeltz*, the court held, ^{HN5} "A fund can be found in a judicial district if it has the sort of minimum contacts with that district that would support the exercise of personal jurisdiction under the rule of *International Shoe Co. v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L. Ed. 95 (1945)." 301 F.3d 804 at 810; see also *Ballinger v. Perkins*, 515 F. Supp. 673 (W.D. Va. 1981). Admittedly, Continental insures Plans for other employers in South Carolina. The court finds this sufficient to establish minimum contacts under the standard set forth in *International Shoe* and as such Continental can "be found" in South Carolina for purposes of the ERISA venue statute.

In the alternative, the court also finds persuasive the District of Kansas' decision in *McCracken v. Auto. Club of S. Cal., Inc.*, 891 F. Supp. 559 (D. Kan. 1995). In *McCracken*, the court looked to the general venue statute, 28 U.S.C. § 1391, in determining where a corporation resides for purposes of § 502(e)(2). Section 1391(c) **[**7]** states, ^{HN6} "For purposes of venue ..., a defendant that is a corporation shall be **[*608]** deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced." 28 U.S.C. § 1391(c). Because Continental is subject to personal jurisdiction in South Carolina as stated above, the court finds that Continental resides in South Carolina for purposes of the ERISA venue statute. For these reasons, Continental's alternative request to transfer venue is denied.

Therefore, it is

ORDERED that Continental's motion to dismiss is denied. ⁿ³

----- Footnotes -----

ⁿ³ The court declines to address **Abercrombie's** alternative ground for the denial of Continental's motion to dismiss.

----- End Footnotes-----

IT IS SO ORDERED.

Henry M. Herlong, Jr.

United States District Judge

Greenville, South Carolina

December 16, 2003







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