

# NEW YORK DISTRICT COURT ENFORCES FORUM SELECTION CLAUSE AFFECTING ERISA-GOVERNED SEVERANCE PLAN

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**Practices & Industries**

Employee Benefits

A former employee of Boston Scientific Corporation sued the company in a New York district court over a dispute regarding his benefits under a severance plan that was subject to the Employee Retirement Income Security Act of 1974 (“ERISA”). The company challenged the former employee’s choice of venue on the basis of a broad forum selection clause in his employment agreement, which limited jurisdiction for any employment-related claims to federal courts in Minnesota. While the forum selection clause was not part of the severance agreement, the New York district court found that it was applicable and enforceable with respect to the severance dispute because (1) it was clearly communicated to the former employee, (2) it was mandatory (*i.e.*, it required suit to be brought in Minnesota, rather than making Minnesota an option), (3) it clearly applied to the claims and parties involved, rendering it presumptively enforceable, and (4) the former employee did not make a “sufficiently strong showing” that enforcement of the forum selection clause would be unreasonable or unjust, and therefore, did not rebut the presumption of enforceability. While the Department of Labor opposes forum selection clauses with respect to ERISA plans, this case follows the majority of courts considering the issue and finding forum selection clauses can be enforced as to ERISA plans. Plan sponsors may want to consider adding forum selection clauses to ERISA plan documents and summary plan descriptions to have some control over where plan-related litigation may occur and to prevent, or at least mitigate against, litigation over venue. A forum selection clause should be drafted in line with ERISA’s permissive venue provision, which allows for venue where (1) the plan is administered, (2) the breach at issue took place, or (3) a defendant resides or may be found. *Tardio v. Boston Scientific Corp.* (S.D.N.Y. 2017)