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Gibson Dunn Wins Motion to Transfer Venue in ERISA Tobacco Surcharge Lawsuit Against United Surgical Partners International

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Gibson Dunn secured an important procedural win for United Surgical Partners International Inc. (USPI) on October 29, 2025, as the court granted its motion to transfer venue under 28 U.S.C. § 1406(a), or in the alternative, 28 U.S.C. § 1404(a), from the Eastern District of Kentucky to the Northern District of Texas, where USPI is headquartered.

Plaintiff Dara Janosky filed this action in the Eastern District of Kentucky against her former employer USPI alleging that USPI imposed an unlawful tobacco surcharge as part of its health benefit plan. Plaintiff alleges that the plan's tobacco surcharge resulted in a breach of fiduciary duty under 29 U.S.C. § 1104 and a violation of ERISA's anti-discrimination provision under 29 § U.S.C. 1182. This action is part of a growing trend of lawsuits filed by health plan participants challenging tobacco surcharges included in their health benefit plans.

USPI maintains no operations in Kentucky, and the action's only connection to the Eastern District of Kentucky is that Plaintiff resides there. Notwithstanding ERISA's generally broad venue provisions, USPI successfully argued that the action should be transferred to the Northern District of Texas, where USPI's principal place of business is and where the plan is administered. In granting USPI's motion, the Court adopted nearly all of Gibson Dunn's arguments. Importantly, the court agreed with Gibson Dunn that because Plaintiff does not allege her contract rights under the plan were breached, but rather, that the plan itself violates the law, the breach occurred not where Plaintiff resides, but where relevant plan decisions were made. The court found that transfer was warranted under both 28 U.S.C. § 1406(a) and 28 U.S.C. § 1404(a).

The Gibson Dunn team representing USPI includes partners Karl Nelson and Ashley Johnson and associates Jennafer Tryck, Ellen Smith Yost, and Hannah Wilkens.

Related People

Karl G. Nelson

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Related Capabilities

Employee Retirement Income Security Act (ERISA) Litigation

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