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The Enforceability of Plan Arbitration Provisions under ERISA

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Are mandatory arbitration provisions with class action waivers a viable strategy for plan sponsors to address the onslaught of class action litigation involving 401(k) plans in recent years? A 2019 decision by the Ninth Circuit court of appeals enforcing an arbitration and class action waiver provision suggested that arbitration provisions may be an effective way to stave off fiduciary litigation under the Employee Retirement Income Security Act of 1974, as amended (ERISA). However, subsequent federal circuit court of appeals decisions have found that arbitration provisions barring plan-wide relief for fiduciary breaches are not enforceable under the "effective vindication" doctrine because they limit the availability of statutory remedies.

As a result, arbitration provisions may still be enforceable when applied in the contexts of benefit claims under a plan, but they do not appear to be a solution to class actions involving fiduciary breach claims. Plan sponsors who wish to apply an arbitration provision to claims for benefits under ERISA covered retirement or health & welfare plans should ensure that participants are properly notified of the arbitration provision, such as through a summary plan description (SPD) or summary of material modifications (SMM), and that participants and beneficiaries will be deemed to have consented to the arbitration provision through their continued participation in the plan.

A. ERISA Causes of Action and Arbitration Selection Provisions

Section 502 of ERISA permits participants to bring civil actions involving an ERISA-governed plan. The claims that may be brought under Section 502 include, among others, the following:

- Section 502(a)(1)(B): Claims by participants or beneficiaries to recover benefits due, enforce rights, or clarify their right to future benefits under a plan.
- Section 502(a)(2): Claims by participants, beneficiaries, other fiduciaries, or the Department of Labor for appropriate relief under Section 409A of ERISA. Section 409A of ERISA, in turn, subjects plan fiduciaries to liability for restoring losses to a plan from a breach of fiduciary responsibility, or to provide for other equitable relief as a court finds appropriate, such as removing a fiduciary.
- Section 502(a)(3): Claims by a participant, beneficiary, or fiduciary to obtain equitable relief to enforce the terms of a plan or the provisions of ERISA.

Section 502(e)(2) of ERISA provides for civil actions to be brought in a federal district court where the plan is administered, where the breach took place, or where the defendant resides or may be found. However, courts have generally enforced reasonable venue selection provisions in plan documents under

ERISA. *See, e.g., Smith v. Aegon Cos. Pension Plan*, 769 F.3d 922, 930–31 (6th Cir. 2014).

This raises the question as to whether an ERISA plan can similarly specify an arbitral forum to avoid class action fiduciary litigation. In 2019, the Ninth Circuit found that in connection with a fiduciary breach claim an arbitration and class action waiver provision in a plan was enforceable under the Federal Arbitration Act (FAA), which generally requires enforcement of arbitration agreements subject to "generally applicable contract defenses, such as fraud, duress, or unconscionability." *Dorman v. Charles Schwab Corp.*, 780 F. App'x 510, 513 (9th Cir. 2019).

The Ninth Circuit recognized that "no party can be compelled under the FAA to arbitration on a class-wide or collective basis unless it agrees to do so by contract." *Id.* at 514. However, the Court found that because claims for fiduciary breach under Section 502(a)(2) of ERISA are brought on behalf of the plan, and the plan had consented to the arbitration provision, the arbitration provision was enforceable.

Finally, the Ninth Circuit found that the arbitration agreement's limitation to individual claims was not inconsistent with the requirement that fiduciary breach claims be brought on behalf of a plan because the Supreme Court recognized that fiduciary breach claims in a defined contribution plan may be "inherently individualized." *Id.* (*citing LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248 (2008) (holding that a participant could bring a fiduciary breach claim relating to the plan's failure to implement an investment election, even though the harm was limited to the participant's individual account and not the plan as a whole)). The Ninth Circuit's reasoning was adopted by several federal district courts that found that plan arbitration provisions were enforceable for fiduciary breach claims, and, in a recent non-arbitration case, by the Fourth Circuit. *See Trauernicht v. Genworth Fin. Inc.*, No. 24-1880, 2026 WL 667917 (4th Cir. Mar. 10, 2026); *Best v. James*, No. 3:20-CV-299-RGJ, 2023 WL 145007 (W.D. Ky. Jan. 10, 2023); *Robertson v. Argent Tr. Co.*, No. CV-21-01711-PHX-DWL, 2022 WL 2967710 (D. Ariz. July 27, 2022); *Holmes v. Baptist Health S. Fla., Inc.*, No. 21-22986-CIV, 2022 WL 180638 (S.D. Fla. Jan. 20, 2022).

B. Limitations of Arbitration Provisions under the Effective Vindication Doctrine

Although not questioning that arbitration provisions in ERISA plans may be enforceable in principle, several federal circuit courts, including the Ninth Circuit, have recently declined to enforce arbitration provisions that are limited to individual claims for relief. *See Platt v. Sodexo, S.A.*, 148 F.4th 709, 715 (9th Cir. 2025); *Williams v. Shapiro*, 161 F.4th 1313, 1321 (11th Cir. 2025); *Cedeno v. Sasson*, 100 F.4th 386, 396 (2d Cir. 2024), cert. denied sub nom. *Argent Tr. Co. v. Cedeno*, 145 S. Ct. 447 (2024); *Parker v. Tenneco, Inc.*, 114 F.4th 786, 793 (6th Cir. 2024), cert. denied, 145 S. Ct. 1060 (2025); *Henry on behalf of BSC Ventures Holdings, Inc. Emp. Stock Ownership Plan v. Wilmington Tr., N.A.*, 72 F.4th 499, 506 (3d Cir. 2023); *Harrison v. Envision Mgmt. Holding, Inc. Bd. of Dirs.*, 59 F.4th 1090, 1097–100, 1107 (10th Cir. 2023); *Smith v. Bd. of Dirs. of Triad Mfg., Inc.*, 13 F.4th 613, 620–23 (7th Cir. 2021). These courts applied an "effective vindication" exception to the enforceability of arbitration requirements. The Supreme Court has repeatedly recognized the possibility of an "effective vindication" exception but has never directly applied it to invalidate an arbitration provision.

The "effective vindication" doctrine holds that arbitration provisions can only specify the procedure for resolving claims but cannot limit the statutory remedies that are available to participants and

beneficiaries under ERISA. In particular, arbitration provisions that allow for only individual relief (such as only allowing monetary relief due to the individual participant) may not be enforceable if they preclude plan-wide relief otherwise available under ERISA (such as monetary relief on behalf of the plan as a whole or an injunction to remove a breaching fiduciary). Because each of the arbitration provisions at issue in these cases provided that if any portion of the arbitration provision was invalid, the entire arbitration provision would not apply, the courts struck them in their entirety.

In 2024, the Second Circuit, in applying the "effective vindication" doctrine to invalidate an arbitration provision, expressly disagreed with the Ninth Circuit's 2019 holding that an arbitration provision that restricted fiduciary breach claims to individual relief could be enforced. *See Cedeno*, 100 F.4th at 396. In particular, the Second Circuit found: "Nothing in Section 409(a) or 502(a)(2) allows a court or arbitral forum to slice and dice individual plan participants' and beneficiaries' injuries resulting from mismanagement by fiduciaries . . ." *Id*. at 405[RM1]. The Second Circuit said that a prior Supreme Court decision, *LaRue*[PD2], 552 U.S. 248, did not mean that individual relief was authorized to an individual participant in the event of plan-wide injuries. *Id*. at 398-400, 404-05. Rather, *LaRue* merely stood for the principle that relief for a breach of fiduciary duty is available to an individual when the injury is suffered only by that individual. *Id.* As a result, an arbitration provision that seeks to subdivide relief under Sections 502(a)(2) and 409 of ERISA is not authorized by ERISA. *Id*. at 405. In order to be enforceable under the "effective vindication" doctrine, plan-wide remedies must be available for plan-wide injuries. *Id*. In 2025, the Eleventh Circuit endorsed the Second Circuit's reasoning in finding that arbitration provisions that prevent individuals from pursing plan-wide relief for a breach of fiduciary duty are unenforceable under the effective vindication doctrine. *See Williams*, 161 F.4th at 1321.

Even the Ninth Circuit, which had previously enforced an arbitration provision in 2019 as described above, has recently applied the "effective vindication" doctrine to invalidate an arbitration provision that would have limited the availability of plan-wide relief. *See Platt*, 148 F.4th at 715. The *Platt* court adopted the reasoning of other circuits that disagreed with *Dorman*'s conclusion that relief for a breach of duty could be limited to an individual's account. *Id*. at 721-22.

However, *Platt* did not expressly overturn the Ninth Circuit's earlier *Dorman* decision (in which it had enforced an arbitration provision that provided only for individual relief). And, as noted above, the Fourth Circuit court of appeals in a non-arbitration case recently adopted *Dorman*'s conclusion that damages claims under Section 502(a)(2) are "individualized monetary claims." *See Trauernicht*, 2026 WL 667917, at *7. This suggests that the enforceability of a plan arbitration provision that is limited to individual remedies for fiduciary breach is not an entirely settled matter.

Nevertheless, the "effective vindication" doctrine has been applied to invalidate arbitration provisions that are limited to individual relief in at least seven circuit courts that have considered it and there does not currently appear to be a circuit split on this issue. *See Platt*, 148 F.4th at 715; *Williams*, 161 F.4th at 1321; *Parker*, 114 F.4th at 793; *Cedeno*, 100 F.4th at 396; *Henry*, 72 F.4th at 506; *Harrison*, 59 F.4th at 1097–1100, 1107; *Smith*, 13 F.4th at 620–23.

C. Arbitration Provisions for Benefit Claims

Unlike a claim for a breach of fiduciary duty under Sections 502(a)(2) and 409 of ERISA, a claim for benefits due under a plan under Section 502(a)(1)(B) is brought on behalf of an individual participant or beneficiary and not on behalf of the plan. Therefore, a provision that requires individual arbitration of benefit claims would not appear to conflict with the "effective vindication" doctrine.

However, arbitration provisions relating to claims for benefits may nevertheless be invalidated to the extent participants or beneficiaries did not consent to the arbitration provision. Where a claim relates to a fiduciary breach, the relevant question is whether the plan itself consented to the arbitration provision (which is generally satisfied if the plan was properly amended to add the provision).

However, with a claim for benefits due under Section 502(a)(1)(B) of ERISA, participants and beneficiaries bringing the claim are generally the relevant parties to consent because the claim is brought on their behalf rather than on behalf of the plan as a whole.

The Ninth Circuit found that when participants did not receive a summary of material modifications informing them that an arbitration provision had been added to a plan, and that they were not properly informed that by continuing to participate in the plan they would be deemed to have consented to the arbitration provision, the participants and beneficiaries had not effectively consented to the arbitration provision. *Platt*, 148 F.4th at 719.

Accordingly, while arbitration provisions may not be effective to limit class actions alleging breaches of fiduciary duties, they may still be enforceable if they relate to claims for benefits due under a plan. However, in order to establish that participants and beneficiaries have consented to the arbitration provisions, plan sponsors who wish to add an arbitration provision to a retirement plan or health & welfare plan should ensure that:

- The plan is properly amended to add the arbitration provision regarding a claim for benefits; and
- Participants and beneficiaries are properly notified of the existence of the arbitration provision (such as through a summary plan description or SMM), and that by continuing to participate in the plan they will be deemed to have consented to the arbitration provision.

As a result, while arbitration provisions may not be an effective barrier to judicial fiduciary breach class actions, plan sponsors may nevertheless still consider whether they are a helpful tool in managing potential claims for benefits under a plan.

[RM1]This quote is too short to set out as a block quote.
[PD2]Note that LaRue is cited in full above.