Simpson Thacher

Securities Law Alert

KEY DEVELOPMENT IN ERISA LITIGATION

Fourth Circuit: ERISA § 502(a)(2) Claims in the Context of a Defined Contribution Plan Cannot Be Joined in a Rule 23(b)(1) Mandatory Class

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On March 10, 2026, the Fourth Circuit reversed and vacated a district court's class certification in a lawsuit brought under § 502(a)(2) and § 409(a) of ERISA alleging that plaintiffs' former employer had breached its fiduciary duties in selecting and retaining certain funds for their defined contribution plan[1] and seeking primarily the recovery of monetary losses. *Trauernicht v. Genworth Fin. Inc.*, 169 F.4th 459 (4th Cir. 2026) (Niemeyer, J.). The Fourth Circuit held that "[b]ecause we conclude plaintiffs' ERISA § 502(a)(2) claims brought in the context of a defined contribution plan are individualized monetary claims, we also conclude that they cannot be joined in a mandatory class certified under [Federal Rule of Civil Procedure] 23(b)(1), with its absence of required notice and the inability of class members to opt out." The Fourth Circuit further concluded that because the plaintiffs and purported class members "all did not suffer the same injury, their claims do not satisfy the class action prerequisite of commonality, as required by Rule 23(a)(2)." The court noted that the company "demonstrated that many persons included in the class suffered *no* injury, as they fared better for having made their investments in [these] Funds than they would have had they invested in an appropriate substitute fund."

Background and Procedural History

Plaintiffs commenced this action contending that the company violated ERISA by breaching its fiduciary duties to the plan by failing to appropriately monitor certain funds' performance, resulting in their imprudent retention and seeking declaratory and injunctive relief, as well as "remedial relief to return all losses to the Plan and/or for restitution and/or damages." After denying dismissal, the district court certified a class under FRCP 23(b)(1) consisting of all participants in and beneficiaries of the plan whose individual accounts included investments in the funds at issue. As to Rule 23(a)(2), the district court concluded that breach of fiduciary duty claims under ERISA § 502(a)(2) "*inherently* presented issues common to a class because liability arose out of the defendant's

[1] By way of background, a "defined contribution" plan promises retirement income based on the value of each individual participant's account, which is a function of their and the employer's contributions to the account and its investment performance. By contrast, a defined benefit plan pays a fixed retirement income that does not fluctuate with the value of the plan and is not dependent on the plan fiduciaries' investment decisions.

conduct with respect to the plan which did not vary depending on which participant brought the action." The district court further stated, "*This is not a case for individualized monetary damages*. It is a derivative lawsuit on behalf of the Plan for recovery to the Plan as a whole, which makes mandatory certification under Rule 23(b)(1) appropriate because individual adjudications would be impossible or unworkable." Pursuant to the company's motion under FRCP 23(f), the Fourth Circuit granted permission to appeal the district court's class certification order on an interlocutory basis.

ERISA § 502(a)(2) Defined Contribution Plan Claims Are Individualized Monetary Claims

On appeal the company asserted that the district court erred in certifying a mandatory class under Rule 23(b)(1) for claims seeking individualized monetary relief, noting that the Supreme Court made clear in *Wal-Mart Stores, Inc. v. Dukes,* 564 U.S. 338, 362 (2011) that, "individualized monetary claims belong in Rule 23(b)(3)" due to its greater procedural protections (the best notice practicable for class members and the ability to withdraw from the class). The company argued that the damages sought here are inherently individualized damages because plaintiffs seek "different (and in some cases, nonexistent) monetary relief" based on the performance of each class member's individual account. Plaintiffs argued that ERISA § 502(a)(2) and § 409(a) authorize them to bring a representative action on behalf of the plan to recover all losses the plan sustained and that seeking plan-wide relief ensures that there are not competing lawsuits.

Citing *Wal-Mart*, the Fourth Circuit concluded that "when ERISA § 502(a)(2) claims are brought in the context of a defined contribution plan, they are indeed '*individualized* monetary claims' and therefore cannot be joined . . . in a mandatory class certified under Rule 23(b)(1)." The Fourth Circuit pointed out that plaintiffs are seeking primarily monetary damages for the company's selection and retention of the funds at issue and that the plan was entitled to recover under ERISA § 502(a)(2) monetary losses for each participant's account. The Fourth Circuit noted that the scope of relief obtained by the plan varies considerably depending on whether the plan is a defined contribution plan or a defined benefit plan because in a defined contribution plan a participant's benefits are based solely on the amount held in his individual account. The Fourth Circuit explained that a defined contribution plan participant can bring an ERISA § 502(a)(2) claim to seek monetary relief for the losses sustained with respect to the plan assets in his individual account and the recovery would be paid to the participant's individual retirement account based on the losses that particular account sustained as a result of the fiduciary breach. The Fourth Circuit stated that "critically, based on the nature of the appropriate relief available under ERISA § 502(a)(2) in the context of a defined contribution plan, the choice would belong to each individual participant" noting that this is consistent with the historic tradition of allowing each person their own day in court.

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