

Securities Law Alert

KEY DEVELOPMENT IN ERISA LITIGATION

Second Circuit: ERISA Plaintiffs Who Did Not Personally Invest in Allegedly Mismanaged Investment Options Lack Article III and Class Standing

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On August 18, 2025, the Second Circuit affirmed the dismissal of a putative ERISA class action alleging that the defendant fiduciaries of an employer-sponsored defined contribution retirement benefit plan had mismanaged the plan. *Collins v. Northeast Grocery, Inc.*, 2025 U.S. App. LEXIS 20982 (2d Cir. 2025) (Walker, J.). The Second Circuit held that plaintiffs “lack both Article III and class standing to assert several of their claims because they did not plead that they suffered any individual harm arising from Defendants’ allegedly imprudent and/or disloyal management of investment options in which they did not personally invest or any plan-wide harm affecting their individual accounts.” Notably, the Second Circuit stated that its decision was prompted by the district court’s observation that the “Second Circuit has not definitively resolved the issue of whether and to what extent participants of a defined contribution plan must demonstrate individual harm in order to bring claims concerning funds that they did not personally invest in.”

Background and Procedural History

Plaintiffs participated in their former employer’s 401(k) Savings Plan, which provided for individual accounts where each account’s value was determined by the market performance of employee and employer contributions, less expenses. Participants could choose where to invest their contributions from a menu of 28 investment options that were selected by the plan’s administrators. Plaintiffs brought this action on behalf of themselves, the plan, and a proposed class principally alleging that defendants failed to: (i) establish a prudent process to select and monitor the plan’s investments, performance, and fees by failing to investigate the availability of lower-cost, equally or better performing share classes and alternative funds; (ii) monitor the performance of fund managers; (iii) monitor and control the performance and related trust costs of the plan’s investment adviser; and (iv) monitor and control recordkeeper fees. Plaintiffs further asserted that defendants failed to act in the plan participants’ exclusive interest by compensating the plan’s recordkeeper via revenue sharing fees.

The district court dismissed holding that plaintiffs failed to establish that they had Article III standing to bring claims alleging fiduciary breaches arising from defendants’ share class selection, failure to investigate the

availability of alternative funds, and revenue sharing finding that plaintiffs had not alleged any constitutionally-cognizable injury in connection with the specific investment options criticized in the complaint in which plaintiffs did not invest.

Plaintiffs Did Not Plead That They Suffered Any Individual Harm Because They Did Not Personally Invest in the Allegedly Mismanaged Investment Options

The Second Circuit began by explaining that to establish that plaintiffs have Article III standing, participants in a defined contribution benefit plan must plausibly plead a constitutionally-cognizable individual injury arising from the breach of the statutorily imposed duty. The Second Circuit stated that plaintiffs lack Article III standing for several of their claims because they did not plead that they suffered any individual harm arising from defendants' allegedly imprudent and/or disloyal management of investment options in which they did not personally invest or any plan-wide harm affecting their individual accounts.

The Second Circuit explained that “precedent demonstrates that defined contribution plan participants seeking to obtain monetary relief for alleged ERISA violations must allege a non-speculative financial loss actually affecting, or imminently threatening to affect, their individual retirement accounts.” The Second Circuit stated that, for some of their claims, plaintiffs “failed to allege that their benefits were or would imminently be affected by the performance of, or by fees associated with, investment options in which they did not personally invest.” The Second Circuit continued that, further, plaintiffs “failed to allege individual harm from the allegedly flawed processes resulting in the retention of the criticized investment options or the retention of Committee members who retained the criticized funds.” The Second Circuit concluded that the district court correctly dismissed on Article III standing grounds the claims for: (i) breach of the duty of prudence based on a failure to investigate the availability of alternative share classes; (ii) breach of the duty of prudence based on the failure to investigate the availability of alternative funds; (iii) breach of the duty of prudence based on the failure to monitor indirect recordkeeper costs; and (iv) breach of the duty of loyalty regarding funds with revenue sharing.

Establishing Class Standing Also Requires a Showing of Individual Injury

The Second Circuit determined that plaintiffs also did not plausibly allege that they had class standing to proceed with the claims for which they lacked Article III standing because a showing of individual injury is also required to establish class standing. The Second Circuit stated that plaintiffs “may only challenge, on behalf of the class, Defendants' general practices which affect *all* participants, including Plaintiffs, or Defendants' practices that are sufficiently similar to the practices causing, or imminently threatening to cause, harm to Plaintiffs' individual retirement benefits.” Citing *NECA-IBEW Health & Welfare Fund v. Goldman Sachs & Co.*, 693 F.3d 145 (2d Cir. 2012), the Second Circuit explained that this is because its class standing test permits plaintiffs to assert claims on behalf of absent class members “only if they plausibly alleged (1) that they personally have suffered some actual injury as a result of the purportedly illegal conduct of the defendant, and (2) that such conduct implicates the same set of concerns as the conduct alleged to have caused injury to other members of the putative class by the same defendants.” The Second Circuit determined that plaintiffs failed the first step of the class standing test

because they did not plausibly plead that they suffered any individual injury in connection with the identified claims.

The Second Circuit rejected plaintiffs' suggestion to "sidestep" the failure to plead any actual injury by extending the Second Circuit's decision in *Long Island Head Start Child Development Services, Inc. v. Economic Opportunity Commission of Nassau County*, 710 F.3d 57 (2d Cir. 2013) to hold that a defined contribution plan participant has standing to obtain monetary relief when he alleges an injury to the plan as a whole, whether or not that participant has demonstrated an individual loss. Concluding that plaintiffs read *Head Start* "too broadly," the Second Circuit stated that its facts preclude such a reading because the plaintiffs in *Head Start* suffered a financial injury as defendants' misconduct rendered the plan unable to satisfy a more than \$700,000 judgment for the plaintiffs. The Second Circuit further rejected plaintiffs' argument because, from a logical standpoint, while a plan as a whole may lose value, an individual account may not.

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