VOLUME 76 ◆ NUMBER 6

Employee Benefit Plan Review

Florida Federal District Court Compels Individual Arbitration of ERISA Class Action

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The U.S. District Court for the Southern District of Florida enforced a mandatory arbitration and class action waiver provision ("Arbitration Provision") in a defined contribution plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA"), precluding a putative class of former and current plan participants from pursuing breach of fiduciary duty claims against plan fiduciaries in federal court.

Background

The plaintiffs in *Holmes v. Baptist Health South Florida, Inc.*,[1] argued that the plan's Arbitration Provision was unenforceable for two reasons.

First, plaintiffs asserted that the Arbitration Provision violated the "effective vindication" doctrine, which voids arbitration agreements that operate as a prospective waiver of a party's right to pursue statutory remedies. Plaintiffs claimed the Arbitration Provision prohibited participants from obtaining plan wide relief that was authorized under ERISA because the Provision prohibited relief that provided "additional benefits or monetary relief to any other person."

Second, plaintiffs contended that the Arbitration Provision was unenforceable because the participants did not knowingly agree to it. The court rejected both arguments.

The Decision

The court first concluded that the Arbitration Provision's prohibition on obtaining relief on behalf of others did not violate the "effective vindication" doctrine. It observed that courts generally have upheld class action arbitration waivers, even in the ERISA context, and reasoned that if "a waiver of the right to bring a class action in arbitration is permissible, the concomitant waiver of remedies associated with class actions is also permissible." In so holding, the court expressly declined to follow the reasoning of the U.S. Court of Appeals for the Seventh Circuit in *Smith v. Board of Directors of Triad Manufacturing, Inc.*,[2] in which the appellate court invalidated a similar arbitration provision as violating the "effective vindication" doctrine.

However, in *dicta*, the Florida district court also distinguished the Arbitration Provision from the one in *Smith*: It reasoned that the plan language in *Smith* was broader because it precluded plan participants from obtaining any relief on behalf of other individuals, such that it precluded participants from pursuing statutory remedies, such as removal of fiduciaries, that would inhere to the benefit of

all plan participants. The language before the Florida district court, however, precluded participants from obtaining only "additional benefits or monetary relief" for any other person, which the court interpreted as permitting participants to pursue statutory remedies like fiduciary removal.

The district court also dismissed plaintiffs' argument that the Arbitration Provision was unenforceable because they had not knowingly agreed to it. Following the U.S. Court of Appeals for the Ninth Circuit's reasoning in *Dorman v. Charles Schwab Corp.*,[3] the court reasoned that, because the plaintiffs were pursuing claims under ERISA §409(a), which belongs to the plan, the appropriate inquiry was not whether the plaintiffs had agreed to amending the plan with the Arbitration Provision, but whether the plan had. Finding that the plan had consented to the amendment, which the plan sponsor effected consistent with the plan's terms, the court held that the plaintiffs, who were seeking to enforce the plan's rights, were bound by the plan's agreement to the Arbitration Provision. For the same reason, the court also rejected the plaintiffs' arguments that only those plaintiffs who were still participants in the plan at the time of the amendment could be bound by it.

The court therefore granted the plan defendants' motion to compel arbitration and stayed the plaintiffs' lawsuit pending the outcome of those arbitrations. The plaintiffs are expected to appeal the district court's ruling.

Takeaways

Holmes adds to the flurry of recent decisions on the enforceability of mandatory arbitration and class action waiver provisions in defined-contribution plans, which have yielded inconsistent results and are still working their way through courts of appeals. However, plan sponsors following this line of cases can glean several takeaways from the *Holmes* decision:

- Federal courts continue to hold that ERISA claims may be subject to mandatory arbitration.
- *Holmes* is the first federal district court decision in the Eleventh Circuit enforcing arbitration and class action waiver provisions in defined-contribution plans against claimants bringing claims under ERISA § 502(a)(2).
- There is now at least one federal district court in the Eleventh Circuit that has followed the Ninth Circuit in holding that only the plan, and not the plan's participants, need to have consented to a mandatory arbitration and class action waiver provision for the provision to apply to the participants' claims under ERISA §§ 409(a) and 502(a)(2).
- There is a split arising among federal courts as to whether arbitration and class action waiver provisions may preclude plan participants from obtaining relief that ERISA makes available, such as the removal of fiduciaries. For now, at least one federal district court in the Eleventh Circuit has said that it may, while the Seventh Circuit recently held that it may not. We expect that *Holmes* will be appealed to the Eleventh Circuit, so this is an issue to watch.
- Given the disagreement among district courts as to the propriety of ERISA plans' relief-limiting provisions, plan sponsors that wish to maximize the enforcement potential of their arbitration provisions should ensure that the language does not preclude relief available under ERISA – and severability provisions should authorize courts to sever only those portions of a plan that are unenforceable or contrary to law.

Notes

1. *Holmes v. Baptist Health South Florida, Inc.*, Civil Action 21-22986-Civ-Scola, 2022 WL 180638 (S.D. Fla. Jan. 20, 2022).
2. *Smith v. Board of Directors of Triad Manufacturing, Inc.*, 13 F. 4th 613, 621 (7th Cir. 2021).
3. *Dorman v. Charles Schwab Corp.*, 780 F. App'x 510, 514 (9th Cir. 2019).

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