

Second Circuit Rules ERISA Fiduciary-Breach Claims Are Outside the Scope of General Employment Arbitration Agreement

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In response to the deluge of ERISA class action breach of fiduciary duty claims, plan sponsors and fiduciaries have increasingly sought to compel individual arbitration of such claims pursuant to arbitration clauses in employment agreements or plan documents. As discussed in an [earlier blog post](#), the Ninth Circuit previously enforced such an arbitration provision when contained in the Plan document.

The Second Circuit recently concluded, however, that because a plaintiff's ERISA fiduciary-breach claims against a third-party investment manager did not "relate to" his employment, they were not subject to a general employment arbitration agreement. *Cooper v. Ruane Cunniff & Goldfarb Inc.*, No. 17-2805, 2021 WL 821390 (2d Cir. Mar. 4, 2021).

The plaintiff, a participant in his employer's 401(k) profit-sharing plan, alleged that the plan's third-party investment advisor mismanaged plan assets by over-investing in a failing stock. The plaintiff brought class claims on behalf of the plan under Section 502(a)(2) of ERISA, arguing that the plan fiduciary's investment decisions breached its fiduciary duties of prudence and loyalty. The third-party investment advisor sought to compel arbitration by invoking the employer's arbitration agreement, which mandated individual arbitration of "all legal claims arising out of or relating to employment" except for claims specifically excluded therein. At issue was whether the plaintiff's fiduciary-breach claims "related to" his employment, and if so, whether the third-party investment advisor could compel arbitration thereof despite not being a signatory to the agreement.

The district court answered both questions in the affirmative and granted the third-party investment advisor's motion to compel arbitration. The court first concluded that the plaintiff's claims fell within the arbitration agreement, in part because the plan assets that the third-party investment advisor allegedly mismanaged were part of the compensation that the plaintiff received in consideration for his employment. The court then held that the third-party investment advisor, though not a party to the agreement, could enforce the employer's arbitration rights given its relationship with the employer and the degree to which plaintiff's ERISA claims were intertwined with the subject matter of the agreement.

The Second Circuit reversed, holding, as a threshold matter, that the plaintiff's fiduciary-breach claims were not subject to the arbitration agreement because they did not "relate to" the plaintiff's employment. The Court held that a claim only "relates to" employment if its merits involve facts particular to the plaintiff's own employment, including his performance, amount of compensation, or workplace conditions. In so ruling, the Second Circuit held that while the plaintiff's stake in the plan comprised part of his compensation, and claims regarding his compensation might "relate to" his employment, the substance of his ERISA claims were disconnected from his individual employment experience. Instead, the claims hinged entirely on the third-party investment advisor's investment decisions and could have been brought by non-employees, including other plan beneficiaries, plan fiduciaries, or the Secretary of Labor. Having found the plaintiff's claims not subject to the arbitration agreement in the first place, the Court did not reach the question of whether the third-party investment advisor could enforce it as a non-signatory.

The Second Circuit went on to state, in dicta, that mandating individual arbitration of fiduciary-breach claims would likely contravene the Second Circuit's "adequacy" requirement for such actions. On this front, the Court cited its previous ruling that the representative nature of ERISA section 502(a)(2) requires plaintiffs to protect other participants' interests by invoking procedures, such as class certification or joinder of parties, that are necessarily unavailable in individual arbitration. While the Court suggested that employers could avoid this obstacle by including explicit language in their arbitration agreements to cover ERISA breach of fiduciary duty claims, it did not address whether such language would be enforceable.

Proskauer's Perspective

In terms of its holding, this decision is already notable because it rejects the application of general employment arbitration agreements to ERISA breach of fiduciary duty claims in the Second Circuit. However, the decision could have broader implications insofar as the Court expressed doubts about the enforceability of *any* class action waivers in fiduciary-breach claims, which arguably could lead to a split with the Ninth Circuit. Given defendants' increased resort to arbitration agreements governing ERISA claims, this issue could very well find its way to the Supreme Court in the relatively near future.

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