

# District Court Enforces Arbitration Clause in ERISA Plan Document

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A federal district court judge in the Eastern District of Kentucky has enforced an ESOP's arbitration clause, sending P.L. Marketing Inc. employees' breach of fiduciary duty claims on behalf of a putative class to individual arbitration. The case is *Merrow et al. v. Horizon Bank et al.*, No. 2:22-cv-123, 2023 WL 7003231, at \*1 (E.D. Ky. Oct. 24, 2023).

Plaintiffs, participants in P.L. Marketing, Inc.'s ESOP, sued the plan's trustee, Horizon Bank, alleging that Horizon violated ERISA's fiduciary duties and prohibited transaction rules by causing the ESOP to overpay for company stock. The ESOP plan document included a mandatory arbitration clause as well as a waiver of class arbitration. Defendants moved to dismiss the complaint, arguing in part that the district court lacked jurisdiction to hear the claims because they fell within the scope of the ESOP's arbitration clause.

The court held that the claims fell within the scope of the arbitration clause and compelled individual arbitration of plaintiffs' claims. In so ruling, the court rejected plaintiffs' argument that the arbitration clause was unenforceable because it prospectively waived statutory remedies and found that argument to be based on a misinterpretation of the relevant cases, none of which involved ERISA. While plaintiffs also cited to the Sixth Circuit's decision in *Hawkins v. Cintas Corp.* (previously discussed [here](#)) as precluding arbitration of ERISA fiduciary breach claims, the court found the arbitration clauses at issue in *Hawkins* to be in the "completely different" context of individual employment agreements. Here, by contrast, the clause was contained in the ESOP plan document itself. Having found that plaintiffs alleged no other facts that would render the arbitration provision unenforceable, the court compelled individual arbitration of plaintiffs' claims and stayed the case in the interim.

**Proskauer's Perspective**

As discussed in our previous blog post about the *Hawkins* decision, the Sixth Circuit explicitly limited that decision to arbitration clauses contained in employment agreements, leaving open the question of whether an arbitration clause contained in a plan document would lead to a different result. However, there have been several recent decisions in the Third, Seventh, and Tenth Circuits that refused to compel individual arbitration of ERISA breach of fiduciary duty claims based on the “prospective waiver” doctrine because arbitration would preclude plaintiffs from recovering relief afforded by ERISA. The ruling in *Merrow* thus signals an emerging conflict among courts in different circuits on this important issue.

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