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Putative ESOP Class Action Dismissed for Failure to Exhaust Administrative Remedies

Employee Benefits & Executive Compensation on **December 26, 2023**

The decision in *Bolton v. Inland Fresh Seafood Corp. of America Inc.*, No. 22-cv-4602 (N.D. Ga. Dec. 5, 2023)should serve as a reminder to all ERISA practitioners that, if litigating in courts of the Eleventh Circuit, participants must exhaust a plan's claims procedures before commencing a lawsuit—regardless of the type of ERISA claim asserted.

In this case, several former employees and participants in Inland Fresh Seafood Corporation of America, Inc.'s Employee Stock Ownership Plan ("ESOP") sued the company, its ESOP fiduciary committee, and others, alleging that they breached their fiduciary duties under ERISA and violated ERISA's prohibited transaction rules by causing the ESOP to purchase 100,000 shares of company stock from company board members for more than fair market value.

The defendants moved to dismiss the complaint on the ground that the ESOP participants failed to exhaust the ESOP's administrative review requirements. The court granted the motion on the grounds that, in the Eleventh Circuit, plaintiffs must exhaust administrative remedies prior to filing a lawsuit seeking *any* claim for relief under ERISA. In so ruling, the court rejected plaintiffs' argument that exhaustion would be futile, and thus not required, given that the ESOP fiduciary committee was a self-interested entity whose interests were aligned with other defendants. The court explained, in relevant part, that the futility exception to the exhaustion requirement "protects participants who are denied meaningful access to administrative procedures, not those whose claims would be heard by an interested party." Furthermore, the court emphasized the role of the administrative process in reducing the number of frivolous ERISA disputes, minimizing the cost of resolving disputes, allowing fiduciaries to carry out their duties without premature judicial intervention, and allowing the fully considered outcome to aid a court should litigation follow.

Proskauer's Perspective

This decision reiterates the Eleventh Circuit's views on the role of the administrative process in weeding out frivolous claims and ensuring that a developed record can assist the court in subsequent litigation, including in more complex ERISA suits involving allegations of fiduciary breach and prohibited transactions. It also serves as a reminder that although ERISA is intended to create uniform rules governing employee benefits, there remain regional differences in how claims are litigated—differences that could very well influence a plaintiff's selection of a forum when commencing a lawsuit. Plan sponsors, fiduciaries and their counsel therefore should take care to evaluate laws of the particular jurisdiction in which a case is litigated, as they relate to any procedural (or other) defenses to litigation, including exhaustion.

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