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Fourth Circuit Overturns Class Certification of 401(k) Plan Investment Loss Case

Compensation & Benefits on **March 30, 2026**

In a ruling that upends conventional thinking on the standards for class certification of claims brought under ERISA section 502(a)(2), the Fourth Circuit overturned class certification of a lawsuit challenging the selection of 401(k) defined contribution plan investment funds. *Trauernicht v. Genworth Fin. Inc.*, 2026 WL 667917 (4th Cir. Mar. 10, 2026). Drawing a distinction between defined contribution plans and defined benefit plans, the court rejected certification of the claims under Federal Rule 23(b)(1). It also reversed and remanded for further consideration whether the commonality standard under Federal Rule 23(a)(2) is satisfied where not all of the challenged investment funds appeared to generate losses, thus calling into question whether the class, as defined, can be certified at all. If adopted elsewhere, the ruling could lead to a substantial "rethink" by, on the one hand, the plaintiffs' bar in choosing which cases to prosecute and, on the other hand, the defense bar in choosing defense strategies and the time to implement them.

Background

The underlying lawsuit was one of several parallel suits challenging the offering of BlackRock LifePath Index Target Date Funds ("TDFs") as 401(k) plan investment options. As reported in our previous blogs, most of these cases were dismissed at the pleading stage, but the district court in *Genworth Financial* allowed the case to proceed. *Trauernicht v. Genworth Fin. Inc.*, 2023 WL 5961651 (E.D. Va. Sept. 13, 2023). The sole basis for the allegation of imprudence was that the TDFs allegedly underperformed other target dates funds. Plaintiffs sought monetary damages under ERISA sections 502(a) and 409.

In granting plaintiffs' motion for class certification, the district court found that all four criteria set forth in Rule 23(a)—numerosity, commonality, typicality, and adequacy of presentation—were satisfied, as well as the requirements of Rule 23(b)(1)(A) and (B). Certification under Rule 23(b)(1)(A) is appropriate in cases where the party is obliged by law to treat the members of the class alike, while Rule 23(b)(1)(B) covers "limited fund" cases where numerous persons make claims against a fund insufficient to satisfy all claims. Certification under (b)(1) is typically sought by plaintiffs in ERISA cases, because it removes the need to demonstrate that common issues predominate, as well as notice and opt-out requirements. In finding that Rule 23(a)'s commonality requirement was satisfied, the district court stated that ERISA section 502(a)(2) claims "inherently present issues common to a class," since liability depends on the defendant's conduct toward the plan, not individual participants. And in finding that certification was appropriate under Rule 23(b)(1)(A), the court cited the "derivative nature" of claims brought under ERISA section 502(a)(2). In so ruling, the district court acknowledged that individualized damages claims normally cannot proceed under Rule 23(b)(1) due to the lack of notice and opt-out rights, but it distinguished ERISA section 502(a)(2) claims because "damages flow to the class in bulk rather than to individual claimants." The court concluded, therefore, that "[t]his is not a case for individualized monetary damages." The court also found Rule 23(b)(1)(B)'s criteria were satisfied because a single adjudication would effectively resolve all participants' claims.

The Fourth Circuit's Opinion

The Fourth Circuit disagreed and concluded that the Rule 23(b) calculus is different for defined benefit and defined contribution plans. In a defined benefit plan, where assets are pooled collectively to pay fixed benefits, a participant harmed by a fiduciary breach must seek recovery on behalf of the plan as a whole. But defined contribution plans work differently: assets sit in individual accounts, and benefits depend entirely on what is in each participant's account. The Court stated that, although plaintiffs' claims properly arise under ERISA section 502(a)(2) because the alleged losses are to plan assets, Supreme Court precedent makes clear that in defined contribution plans those plan-level losses are tied to individual accounts and recovery flows to individual accounts based on individual losses. The court concluded, therefore, that these claims cannot proceed as a mandatory class under Rule 23(b)(1). The Fourth Circuit also observed that the Supreme Court instructed that "individualized monetary claims belong in Rule 23(b)(3)" because of the greater procedural protections, including notice and opt-out rights. Without those protections, the court concluded, aggregating individualized damages claims in a mandatory class raises due process concerns.

The Fourth Circuit independently ruled that the district court erred insofar as it concluded that claims brought under ERISA section 502(a)(2) "inherently" satisfy Rule 23(a)(2)'s commonality requirement. In this case, Genworth Financial argued that because the funds are passively managed, they should be compared only to other passive funds—and under that comparison, two passive comparators actually underperformed the challenged funds for three vintages, accounting for up to 42% of plan assets. In other words, many class members suffered no injury at all. The Fourth Circuit concluded that the district court "postponed the necessary rigorous analysis" of whether the Rule 23 criteria have been satisfied, as the law requires.

Proskauer's Perspective

If adopted by other circuits, the Fourth Circuit's ruling may serve as a powerful deterrent to the plaintiffs' bar from bringing 401(k) plan cases seeking individualized monetary damages. Plaintiffs' counsel may be forced to reconsider whether such cases remain economically viable when the prospect of class-wide relief becomes uncertain.

Whether or not other circuit courts adopt the Fourth Circuit's rationale to deny class certification altogether, the Fourth Circuit's questioning of whether a class can be properly certified if it encompasses several related funds when only some of them generated losses to participants may at least create opportunities for defense counsel to limit the size of the class. Previously defendants have questioned, on standing grounds, whether participants can seek relief arising from losses in funds in which they have not themselves invested or in which they did not appear to lose money. With the benefit of this ruling, defendants may be able to mount a similar challenge at the class certification stage. Plan sponsors and fiduciaries defending such lawsuits may wish to consider, therefore, raising early challenges to class certification. And even if raised at a later stage of the case, the strategy could prove to be more effective than standing challenges at the motion to dismiss stage since, as the Fourth Circuit's ruling demonstrates, a court may be more inclined to investigate the factual support for plaintiffs' claims of investment losses at the class certification stage.

Related Professionals

- **Russell L. Hirschhorn**
  Partner