Morgan Stanley

ERISA Litigation Update

2026 Q1

The Morgan Stanley ERISA Litigation Update seeks to provide an overview of recent, relevant cases which may impact your responsibilities as a plan sponsor and/or plan fiduciary.

I. New Wave of 401(k) ERISA Litigation

More than a dozen class actions were filed in Q1 2026 alone that challenged the selection and retention of TDFs as a plan's default investment option despite persistent underperformance relative to benchmarks and comparable funds. These lawsuits allege that persistent underperformance of a fund constitutes a standalone fiduciary breach under ERISA, marking a shift from similar litigation that focused on a fiduciary's procedural prudence when making an investment decision.

Plaintiff-side firm Milberg PLLC filed more than a dozen class actions in the first quarter of 2026 ("Q1 2026") challenging the selection and retention of target date funds ("TDFs") managed by American Century Investments. Plaintiffs allege that plan fiduciaries breached their duties by designating American Century TDFs as the plans' default investment option despite persistent underperformance relative to benchmarks and comparable funds. These lawsuits reflect less of a focus on fiduciary procedural processes and instead allege that persistent underperformance of a fund constitutes a standalone fiduciary breach under ERISA. The suits include: *Benotti v. Lockton, Inc.*; *Boyd v. OneOncology, LLC*; *Browning v. Station Casinos LLC*; *Carter v. Sig Sauer, Inc.*; *Fritts v. Lockton, Inc.*; *Macey v. J.E. Dunn Constr. Co.*; *McCullough-Adams v. Johns Hopkins Health Sys. Corp.*; *Noetling v. Ivanti, Inc.*; *Rawles v. Med. Fac. Assocs., Inc.*; *Scholin v. Digi-Key Corp.*; *Vitek v. Boyd Gaming Corp.*; *Wakefield v. Insulet Corp.*; and *Wolfe v. FJ Mgmt. Inc*. Given the volume and uniformity of the complaints, Milberg is likely to file additional similar suits.

Sanford Heisler filed two similar suits in Q1 2026. In January, the firm filed *Rajappan v. Bloomberg L.P.*, alleging that plan fiduciaries retained two underperforming funds—the Harbor Capital Appreciation Fund and the Parnassus Core Equity Fund—for more than a decade despite persistent underperformance relative to benchmarks and comparable large-cap funds. In February, the firm filed *Striplin v. Stifel Financial Corp.*, alleging that plan fiduciaries failed to remove the American Century Large Cap Growth Fund and the Artisan Mid-Cap Growth Fund despite decade-long underperformance. These suits follow two of the most significant ERISA settlements in recent years: a record $69 million settlement against UnitedHealth Group in 2025 and a $61 million settlement against General Electric in 2024.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Consider implementing more frequent reviews of a plan's investment menu, particularly with respect to default investment options to ensure such selected investment options remain prudent. Such reviews may include periodic benchmarking exercises.
- In light of the importance court rulings place on maintaining rigorous processes related to a fiduciary's selection and monitoring of investment options available to participants as well as appointments of plan providers (also known as "procedural prudence," which focuses on the process utilized by a fiduciary rather than the ultimate performance or outcome of such decisions), consider establishing, maintaining and periodically reviewing formal, clearly documented processes utilized by plan fiduciaries when making investment-related and/or service provider decisions for the plan.

II. Key Procedural Developments in ERISA Litigation

A. The Burden of Proof and Loss Causation

A key issue in ERISA litigation pertains to disputes over who must prove loss causation in ERISA fiduciary breach claims – plaintiffs or the defendants and the Supreme Court's ruling* Cunningham v. Cornell University *holding that plaintiffs need only allege a prohibited transaction occurred, not that an exemption was unavailable with respect to the challenged transaction firmly places the burden on defendants to identify a statutory or regulatory exemption as an affirmation defense to plaintiffs' claims. Recognizing that the practical effect of the decision is that it will likely result in a barrage of new ERISA litigation targeting plan sponsors and fiduciaries surviving motion to dismiss, moving to the costly discovery stage, the Supreme Court identified certain tools that district courts have at their disposal to manage such claims. District courts have begun to apply such tools, including, court-ordered replies, attorneys' fees, and standing doctrine.

A key issue in ERISA litigation is which party has the burden of proving that a fiduciary breach resulted in a loss to a plan. Shifting the burden of proof to defendants to disprove loss causation encourages plaintiffs (and plaintiffs' firms) to pursue cases in which there is little to no loss caused by a fiduciary breach, resulting in the defense of these ERISA cases becoming more time-consuming and expensive for defendants.

The Supreme Court decided in *Cunningham v. Cornell University* that plaintiffs need only allege a prohibited transaction occurred, not that an exemption was unavailable with respect to the challenged transaction. One of the most important consequences and practical effect of the Supreme Court's decision in *Cunningham v. Cornell University* is that it makes it considerably easier for prohibited transaction claims to proceed as the ruling lowered the bar for plaintiffs to survive motions to dismiss in these cases, resulting in expensive and time-consuming discovery. The Supreme Court acknowledged that this ruling could lead to increased litigation and identified tools available to district courts to manage such claims, including court-ordered replies, attorneys' fees, and standing doctrine.

Lower courts have begun to use these tools. In *Dalton v. Freeman*, the Eastern District of California ordered plaintiffs to file a reply addressing a statutory prohibited transaction exemption raised in the defendant's answer. In their reply, plaintiffs argued that the defendant's answers demonstrated that the defendant could not have satisfied its statutory duties under ERISA with respect to the challenged transaction. Although the impact of the reply remains unclear, court-ordered replies may become more common in ERISA cases post-*Cunningham*.

Courts have also emphasized that plaintiffs must have adequate standing at the pleading stage in order to bring the lawsuit. In *Peeler v. Bayada Home Health Care*, the Western District of North Carolina dismissed a prohibited transaction claim for plaintiff's failure to allege a concrete, non-speculative injury resulting from

the transaction. While standing doctrine remains uneven across jurisdictions, challenges are likely to arise earlier and more frequently.

However, the Supreme Court's suggestion tool for lower courts to issue fee awards favoring defendants remain rare. *Whipple v. Southeastern Freight Lines, Inc.*, in which a motion for attorneys' fees has been pending since late December 2025, may provide early insight into how courts approach fee requests post-*Cunningham*.

B. Pleading "Meaningful Benchmarks"

During its next term, the Supreme Court will consider whether plaintiffs must plead a meaningful benchmark to survive a motion to dismiss in* Anderson v. Intel Corp. Investment Policy Committee*, and the decision will influence how lower courts evaluate these claims moving forward. Courts are already using the meaningful benchmark standard in fee litigation, resulting in many lawsuit dismissals at the pleading stage of litigation.

One of the most important defenses in fee litigation is that the plaintiffs have not plead facts about the reasonableness of fees sufficient for a court to infer that there was a breach of fiduciary duty. In the context of challenges to plan investment options, the Seventh, Eighth, Ninth, and Tenth Circuits have held that a plaintiff must allege a "meaningful benchmark" that a challenged investment the plaintiff's claim underperformed. Under this standard, a plaintiff must plead facts showing that "benchmark" funds share similar strategies, risk profiles, and objectives as the challenged investment. This standard is often described as an "apples-to-apples" comparison. Many courts have also applied a "meaningful benchmark" requirement for challenges to plan recordkeeping fees.

Courts are increasingly using the meaningful benchmark standard in these lawsuits, resulting in many dismissals of fee and performance claims at the pleading stage of litigation. In *Batt v. 3M Company*, plaintiffs alleged that the plan's custom TDFs underperformed comparable investments over a ten-year period. The complaint relied on S&P Target Date Indices and the TDF series offered by T. Rowe Price, Fidelity, Vanguard, and American Funds as benchmarks to the custom TDF. The District of Minnesota held that plaintiffs failed to plausibly allege that such TDFs were meaningful comparators to the plan's custom TDF and dismissed the complaint without prejudice. Plaintiffs subsequently filed an amended complaint replacing the indices with peer TDFs and adding detailed portfolio composition data to support comparability.

The Supreme Court's pending decision in *Anderson v. Intel Corp. Investment Policy Committee* is expected to influence how courts evaluate these claims. The Supreme Court will consider whether plaintiffs must plead a meaningful benchmark to survive a motion to dismiss. Although briefing has been extended and oral arguments pushed to the high court's next term, a reaction is already apparent in. A Texas federal court stayed proceedings in *Del Bosque v. Coca-Cola Southwest Beverages LL*C pending the Supreme Court's decision in *Intel*.

C. Class Certification

Class certification in ERISA litigation is generally a large hurdle for plaintiffs and requires a determination that class issues predominate in the allegations of the complaint. Plan sponsor defendants generally oppose class certification due to the larger damages that may be awarded in such class action cases. The Fourth Circuit recently denied class certification in* Trauernicht v. Genworth Financial, Inc.*holding that DC plans are inherently individualized as any recovery granted in such lawsuits would be allocated to each participant's plan account, further emphasizing the need to analyze the commonality requirement for class certification on an individual participant level.

Q1 2026 produced several significant developments in class certification, most notably the Fourth Circuit's decision in *Trauernicht v. Genworth Financial, Inc.*, which raises the bar for plaintiff's seeking class

certification in 401(k) plan fee cases. The court held that ERISA claims pertaining to defined contribution plans are inherently individualized because any recovery a court may issue is allocated to each participants' accounts rather than the plan as a whole. It also rejected the assumption that fiduciary breach claims automatically satisfy the commonality condition required by the applicable class action rule, emphasizing the need for participant-specific analysis, particularly where some participants may not have suffered injury (and therefore don't have standing to bring such claims). The decision had immediate effect: a Virginia district court vacated a recently issued class certification order covering approximately 70,000 participants in *Mullins v. National Rural Electric Cooperative Association* shortly thereafter.

Similarly, in *Carfora v. TIAA*, the Southern District of New York limited claims to the plans in which the named plaintiffs participated, rejecting efforts to pursue claims on behalf of participants in thousands of unrelated plans. Together, the decisions in *Trauernicht* and *Carfora* provide defendants with stronger tools to limit the scope of ERISA class actions.

Best Practices for Plan Sponsors & Plan Fiduciaries to Consider:

- In light of the importance court rulings place on maintaining rigorous processes related to a fiduciary's selection and monitoring of investment options available to participants as well as appointments of plan providers (also known as "procedural prudence," which focuses on the process utilized by a fiduciary rather than the ultimate performance or outcome of such decisions), consider establishing, maintaining and periodically reviewing formal, clearly documented processes utilized by plan fiduciaries when making investment-related and/or service provider decisions for the plan, including, but not limited to, any metrics or benchmarks used by plan fiduciaries to determine the reasonableness of any such service provider's fees.
- Consider, in such processes, documenting a plan fiduciary's reasonable actions in its investment decisions and selection of service providers, as applicable, under the circumstances facing the fiduciary at such time, to demonstrate both procedural prudence and the fiduciary's basis for such decisions.
- Consult your ERISA and litigation counsel to discuss whether plaintiff's allegations are supported by questions of law or fact that are common to the entire class and whether plaintiff satisfies all relevant class certification requirements under federal law to determine whether there are grounds to oppose a plaintiff's efforts to obtain class action certification.
- Consider the merits of any defense used to oppose class certification and the likelihood of such defense succeeding and whether agreeing or stipulating to class certification would save time and resources, or as leverage to narrow the scope of plaintiff's claims with your ERISA counsel.

III. Stable Value Fund Litigation

Stable value funds remain one of the most active areas of ERISA litigation. In 2025, more than 30 lawsuits were filed, and continue to be filed in 2026, alleging that plan fiduciaries breached their duties under ERISA by offering or retaining stable value funds in a plan's investment line-up that had lower credit ratings or produced lower returns than other investment options. Courts continue to emphasize the importance of procedural prudence at the time of a fiduciary's investment decision.

Stable value funds are commonly offered as capital-preservation options in defined contribution plans. When interest rates rise sharply, crediting rates may lag behind comparable fixed income alternatives, prompting claims that fiduciaries acted imprudently in retaining the stable value fund. Stable value funds periodically credit accounts with interest, and the interest rate is adjusted from time to time based on market conditions. Stable value rates often lag market rates or are smoothed over time to reduce rate volatility. Consequently, stable value funds may appear to underperform money market funds where interest rates rise as has happened recently, creating fodder for litigation.

These cases generally allege that plan fiduciaries acted imprudently, violating their fiduciary duties under ERISA by retaining stable value options within a retirement plan's investment menu that allegedly produced

lower returns or less favorable crediting rates than other available capital-preservation or fixed-income investments, or that involved unreasonable fees or insurer compensation.

Two significant developments emerged in Q1 of 2026. In February, the Southern District of Ohio ordered a bench trial in *Sweeney v. Nationwide Mutual Insurance Co.*, a long-running putative class action involving Nationwide's 401(k) plan. Participants alleged that the plan's guaranteed investment fund, which held approximately $1.75 billion in plan assets, paid a materially lower crediting rate than comparable products because Nationwide embedded excessive fees in the guaranteed investment fund's spread and failed to negotiate terms comparable to those available to its defined benefit plan. The court rejected Nationwide's argument that a statutory safe harbor barred the plaintiff's claims, finding genuine factual disputes at issue in the suit as to whether the plan paid no more than fair market value. The Court noted that Nationwide's decision to retain an independent consultant while withholding key fee and spread information from that consultant created a "palpable tension" requiring further exploration. The Court allowed fiduciary duty breach, prohibited transaction, and self-dealing claims survive, but dismissed others.

Separately, in January, the Eastern District of Virginia denied summary judgment in *Carter v. Sentara Healthcare Fiduciary Committee*, a case alleging imprudent retention of a guaranteed interest balance contract. The court found that while the fiduciary's overall monitoring process appeared prudent, plaintiffs presented sufficient expert evidence indicating that the stable value fund itself received inadequate attention to preclude summary judgment and accordingly, the case should proceed.

New stable value filings in Q1 2026 include: *Hopper v. Encompass Health Corporation*; *Jervay v. BFSG, LLC; Jones v. Ramboll Limited*; *Jones v. Comfort Systems USA, Inc.*; *Mullins v. Prisma Health*; *Paone v. Waste Connections Inc.*; *Sanchez v. Childrens Hospital Los Angeles*; *Ventura v. Lithia Motors, Inc.*; and *Wallace v. Pilgrim's Pride Corporation*.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Consider documenting a plan fiduciary's reasonable actions in its selection of an investment option under the circumstances facing the fiduciary at the time of such investment decision in such processes to demonstrate both procedural prudence and the basis for each investment decision.

IV. Plan Forfeiture Litigation

Over the last two years, plaintiffs have filed nearly 100 lawsuits alleging that plan sponsors and fiduciaries violated ERISA by using plan forfeitures to offset employer contributions to the relevant plan rather than using such forfeitures to reduce plan expenses. The Department of Labor (the "DOL") has evidenced its support of defendants in these suits through an amicus brief citing that both long-standing IRS guidance and ERISA permit the use of plan forfeitures to offset employer contributions to a plan. Defendants have generally prevailed in most early court rulings, although two recent district courts allowed claims alleging breaches of fiduciary duty proceed.

A plan forfeiture occurs when a participant's plan balance is forfeited due to events set forth in the plan document. Most commonly, plan forfeitures occur when participants separate from employment before becoming fully vested in employer contributions. Longstanding IRS and Treasury Department guidance indicates that such use of forfeitures is permitted and forfeitures may be used to either pay plan administrative expenses or be used to satisfy the employer's matching contribution obligations under the plan; provided the plan document permits such uses of forfeitures. Plaintiffs have recently targeted this practice and alleged that fiduciaries violated ERISA by exercising discretion to use forfeitures to offset the employer's matching contributions to the relevant plans, which plaintiffs argue are an impermissibly use of such forfeitures for the employer's benefit.

District courts have generally rejected a per se rule against the practice of using forfeitures to offset employer contribution obligations, a conclusion that aligns with the DOL's position in its amicus brief filed in *Barragan v. Honeywell International*, stating that ERISA does not prohibit fiduciaries from allocating forfeitures to offset employer contributions to the plan. In *Beroset v. Duke University*, the Middle District of North Carolina dismissed a challenge to Duke's use of forfeitures, emphasizing that the plan expressly permitted the use of forfeitures for offsetting Duke's contributions to the plan. In *Jacob v. RTX Corporation*, the Eastern District of Virginia rejected similar claims, holding that the plan's terms permitted the allocation of forfeitures to reduce employer contributions, highlighting that ERISA does not require fiduciaries to prioritize administrative expenses, and intra-plan reallocations of forfeitures do not constitute prohibited transactions or impermissible inurement in violation of ERISA.

Recent decisions in *Russell v. Illinois Tool Works, Inc.* and *Heet v. National Medical Care Inc.* represent departures from this trend. In both cases, courts allowed fiduciary breach claims to proceed, reasoning that compliance with plan terms is not necessarily determinative that a breach of the duty of loyalty had not occurred.

The Eighth Circuit heard oral argument in *Matula v. Wells Fargo & Co.* in March, marking the first appellate consideration of forfeiture claims. During such arguments, the Circuit Court appeared skeptical that the plaintiff had stated a viable claim. Additional appeals are pending in the Third, Fourth, Sixth, and Ninth Circuits.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Identify and review any forfeiture provisions set forth in plan documents with ERISA counsel and discuss whether any modifications are necessary regarding the exercise of discretion related to the use of forfeitures to reduce or eliminate the type of discretion over the assets that could form the basis for an ERISA fiduciary breach claim.
- Plan sponsors should review their plan forfeiture language to determine if the plan authorizes the use of forfeitures for employer contributions and to ensure that any ordering rules set forth in the plan document are followed (e.g., some plans require plan expenses be paid prior to offsetting employer contributions).
- If the clear intent of the plan document is for plan sponsors to use plan forfeitures primarily to offset employer contributions, plan sponsors should consider whether any modifications are needed to the plan document to remove discretion and optionality related to forfeiture use. Consider incorporating ordering rules into the plan document that clearly prioritize and/or define the circumstances in which plan sponsors may use forfeitures to offset employer contributions in lieu of using such forfeitures to pay plan administrative expenses, so that the plan sponsor does not have any discretion or optionality as to how such forfeitures are used (including, if desired, so that offsetting employer contributions is the first or only permitted use).

V. Proxy Voting

***The United States District Court for the Northern District of Texas awarded plaintiffs $4.6 million in attorneys' fees in* Spence v. American Airlines *as incentive for the defendant and other companies to prioritize ERISA compliance. The Court previously denied monetary damages, and instead required the defendant to comply with new procedural and transparency rules regarding proxy voting – a practice of imposing process-based remedies on defendants mirrored as a settlement condition in* Texas et al. v. Blackrock et al.**

Late last year, the Northern District of Texas issued its final judgment in *Spence v. American Airlines* – the first decision to find a fiduciary breach related to proxy voting. The court found that American Airlines breached its fiduciary duties by failing to monitor its investment managers' proxy voting practice, allowing environmental, social, and governance investment ("ESG") considerations to influence proxy voting. The Court declined to award plaintiff monetary damages, instead imposing process-based remedies on the defendant, namely

requiring the plan fiduciaries to comply with new procedural and transparency rules with respect to proxy voting. In February 2026, the court awarded $4.6 million in attorneys' fees, noting that the fee award may incentivize American and other companies to prioritize ERISA compliance.

Along similar lines, Vanguard recently settled *Texas et al. v. BlackRock et al.*, an antitrust case brought by Texas and 12 other states alleging that BlackRock and State Street took coordinated action against the coal industry. In addition to a $29.5 million payment, Vanguard agreed to reform its proxy voting practices and withdraw from certain ESG-related organizations.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Review the proxy voting policies of any investment managers hired to provide services to a plan to ensure that the voting decisions are made in the best interest of the plan.
- Plan fiduciaries should carefully review the documentation they receive from managers about how proxy votes are determined to conclude whether third-party service agreements accurately reflect participant interests.
- Establish, maintain, and periodically review formal, documented procedures regarding the plan fiduciary's prudent selection and monitoring of plan service providers, including, but not limited to, any metrics or benchmarks used by plan fiduciaries to determine the reasonableness of any such service provider's fees.

VI. Pension Risk Transfers

Litigation challenging pension risk transfers ("PRTs") transactions continue to produce mixed results focused on whether the plaintiffs suffered an injury giving them standing to sue. The DOL weighed in on a PRT-related lawsuit when it filed an amicus brief in support of the defendant in* Konya v. Lockheed Martin Corporation, *emphasizing the permissibility of PRTs under ERISA. However, the DOL's position has received criticism from former agency officials, including Phyllis Borzi and Ali Khawar, who filed their own amicus brief in* Lockheed *arguing that the DOL's position undermines ERISA's enforcement framework.

It is common for plan sponsors to "de-risk" their defined benefit plans by purchasing annuities to satisfy the benefits for some or all of the plan participants. The annuity is purchased in what is commonly referred to as a PRT that results in the transfer of the benefit obligation from the plan sponsor to one or more insurance companies, which become responsible for paying out the monthly pension benefits.

In *Dempsey v. Verizon Communications, Inc.*, the Southern District of New York dismissed claims challenging a $5.7 billion PRT, finding plaintiffs' allegations of insurer insolvency risk too speculative to confer standing. The court also held that seeking disgorgement of profits from the defendant employer does not itself create standing absent a concrete injury resulting from the PRT at issue, rejecting the plaintiff's argument that a diminution of value theory as being incompatible with defined benefit plans. Plaintiffs filed a notice of appeal to the Second Circuit in February.

Similarly, in *Camire v. Alcoa USA Corp.*, the District Court for the District of Columbia declined to reconsider its prior dismissal of claims challenging Alcoa's PRT of approximately $2.79 billion in pension liabilities to Athene.

The DOL's posture in recent PRT litigation has drawn pushback from former agency officials. In January, the DOL filed an amicus brief in *Lockheed Martin Corp. v. Konya*, arguing the Lockheed retiree plaintiffs lack standing to challenge the company's decision to effectuate the PRT. Two former high-ranking Democratic DOL officials—Phyllis Borzi, Assistant Secretary of Labor during Obama's term, and Ali Khawar, former Deputy Assistant Secretary of Labor under President Biden—responded to the agency's brief by filing their own amicus brief, arguing that the DOL's position undermines ERISA's enforcement framework.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Plan sponsors and fiduciaries may want to separately review, consider, and document settlor versus fiduciary functions and decisions when de-risking a plan and/or executing a PRT, including when selecting an insurer. If/when selecting an insurer, plan sponsors must perform due diligence into the insurance market and the particular insurer options, and must select the "safest available annuity" provider per the DOL's Interpretive Bulletin 95-1, including after weighing six crucial factors identified by the DOL. Plan sponsors may wish to engage an independent fiduciary to carry out the insurer due diligence, analysis and selection.
- In all events, the process carried out by the plan sponsor and fiduciary, including if/when selecting an insurer, is key for defending ERISA fiduciary breach claims and so should be conducted in consultation with ERISA counsel and should be well-documented.

VII. Plan Asset Status

Recent litigation highlights the importance of determining "plan asset" status under ERISA, particularly for service providers that may be subject to claims of fiduciary breach under ERISA where certain investments constitute "plan assets" subject to ERISA. The fiduciary status of these service providers remains a critical question in these cases.

The Second Circuit's decision in *Powell v. Ocwen Financial Corporation* highlights the importance of the ERISA "plan assets" analysis for service providers. The court considered whether the mortgages underlying an ERISA plan's investments in residential mortgage-backed securities constituted plan assets such that Ocwen, as mortgage servicer, could be liable for fiduciary breach under ERISA. The court held that certain note-based investments did not trigger the plan asset look-through rule, while trust-based investments did, potentially exposing Ocwen to ERISA fiduciary liability. The case was remanded to allow the district court to consider whether Ocwen acted in a fiduciary capacity with respect to the mortgages.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Establish, maintain, and periodically review formal, documented procedures regarding the plan fiduciary's prudent selection and monitoring of plan service providers, including, but not limited to, any metrics or benchmarks used by plan fiduciaries to determine the reasonableness of any such service provider's fees.
- Consider including additional information regarding the fiduciary status of the service provider, where appropriate and applicable, and the service provider's process related to plan investment decisions to provide transparency as to the decision-making process and fiduciary status of the service provider as a potential mitigant to claims alleging a service provider breached its fiduciary duties to the plan with respect to a particular investment decision.

VIII. Plan Arbitration Provisions

Plaintiffs continue to challenge the enforceability of plan arbitration provisions, and Courts continue to invalidate arbitration provisions that restrict participants' ability to bring representative claims or obtain plan-wide relief in these lawsuits. Recent court decisions evidence the growing trend of appellate authority applying the judicially created "effective vindication doctrine" to strike down plan arbitration provisions that precludes a participant from obtaining relief expressly granted under ERISA (i.e., plan-wide relief).

Many plan sponsors include in their plans and/or related agreements provisions requiring employees to arbitrate any disputes rather than bringing lawsuits. Most arbitration provisions in such agreements also include a waiver intended to prevent the employee from participating in class action lawsuits. Over the past several years, plaintiffs have challenged these provisions, and although these provisions have mostly been upheld, courts occasionally refuse to enforce them. For example, in Lloyd v. Argent, a district court in New York, refused to compel the parties to arbitrate, citing caselaw indicating that an arbitration clause may not be

enforced if it eliminates, or otherwise restricts, "a party's right to pursue statutory remedies" or "forbid[s] the assertion of certain statutory rights." The court in Lloyd v. Argent held that the arbitration provision at issue impermissibly limited the substantive rights afforded under ERISA by prohibiting the plaintiffs from asserting certain statutory rights and from seeking statutory remedies expressly provided under ERISA. Meanwhile, a district court in Arizona reached the opposite conclusion with respect to a similar provision in Robertson v. Argent Trust Company when the court granted the plan sponsor's motion to compel arbitration.

The Second Circuit's decision in *Duke v. Luxottica U.S. Holdings Corp.* and the Fifth Circuit's decision in *Parrott v. International Bancshares Corp.* are the latest additions to a growing body of appellate authority applying the judicially-created "effective vindication doctrine" to strike down such provisions. Under the effective vindication doctrine, an arbitration clause would be struck down where the provision precludes a participant from obtaining relief expressly granted under ERISA (i.e., plan-wide relief). In this context, the doctrine would create a substantive statutory right under ERISA to seek relief on behalf of the plan. A plan arbitration clause that restricts claims to individual participant relief only, and bars representative or plan-wide relief would violate this principle as such clause would effectively eliminate participants' statutory rights under ERISA. the arbitration provision at issue impermissibly limited the substantive rights afforded under ERISA by prohibiting the plaintiffs from asserting certain statutory rights and from seeking statutory remedies expressly provided under ERISA. Eight federal appellate courts have now ruled this way, with decisions from the Third, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits preceding the Second and Fifth Circuit's respective February rulings.

Courts reason that because claims under ERISA § 502(a)(2) – the primary vehicle under the statute for plan-level relief arising from breaches of fiduciary duties under ERISA – must be brought on behalf of the plan itself, plan arbitration provisions limiting participants to individual proceedings effectively eliminate the statutory claim. Such limitations may constitute a prospective waiver of substantive rights that the Federal Arbitration Act (FAA) will not enforce. Notably, *Parrott* held that a plan sponsor's unilateral plan amendment adding an arbitration clause may bind the plan, even without participant consent to such amendment.

Best Practices for Plan Sponsors & Plan Fiduciaries to Consider:

- Identify, review and discuss any arbitration provisions set forth in plan documents, contracts or other service provider arrangements with ERISA counsel to determine whether such clauses could be interpreted to eliminate, or otherwise restrict, a participant from asserting certain statutory rights, and seeking statutory remedies, afforded under ERISA.
- Consider whether changes may be necessary to maximize the chance that a court will ultimately enforce the arbitration provision.

IX. Voluntary Benefits Litigation

A new wave of litigation targets fiduciary conduct under ERISA with respect to employer-sponsored voluntary benefit programs. Plaintiffs allege that employers' involvement resulted in the plans' inability to meet the requirements of the DOL safe harbor that would otherwise exempt such plans from the fiduciary duties under ERISA. As a result, Plaintiffs claim such programs became subject to ERISA.

Schlichter Bogard – the law firm credited with starting the wave of ERISA litigation – recently filed four coordinated class action lawsuits targeting employer-sponsored voluntary benefit programs, the first plaintiffs firm to target fiduciary conduct related to accident, critical illness, cancer, and hospital indemnity insurance programs. Although voluntary benefit plans are typically subject to ERISA as employee welfare benefit plans, such plans may be exempt from the fiduciary requirements under ERISA if the program meets the requirements under a DOL safe harbor which requires, among other things, that the employer not endorse or administer the plan beyond permitting payroll deductions. Here, the complaints allege that employer involvement in such voluntary benefit programs caused the plans' failure to meet the conditions of the DOL safe harbor, causing the programs to become subject to ERISA. Plaintiffs further allege that the plans' fiduciaries failed to monitor premiums, broker commissions, and loss ratios, and that brokers acted as

fiduciaries under ERISA by steering plans toward higher-cost products while receiving embedded commissions.

The cases are *Brewer v. CHS/Community Health Systems, Inc.*; *Fellows v. Universal Services of America, LP*; *Braham v. Laboratory Corp. of America Holdings*; and *Pimm v. United Airlines, Inc*.

Best Practices for Plan Sponsors & Plan Fiduciaries to Consider:

- Consider reviewing the voluntary benefit program or plan document to determine whether the plan clearly outlines and limits, where applicable, the employer's permitted activities to ensure compliance with the DOL's safe harbor, where utilized by the plan to avoid being subject to ERISA.
- Review any existing controls and procedures to determine whether they sufficiently bar the employer from taking any additional actions related to the voluntary benefit program that are not set forth in the plan document to mitigate potential claims that the employer's activities caused the voluntary benefit program to become subject to ERISA due to its inability to meet the conditions of the applicable DOL safe harbor.

X. Actuarial Equivalence

Since 2018, over 30 lawsuits have been filed against defined benefit plan sponsors challenging the actuarial assumptions used to determine the "actuarial equivalent" of any retirement benefit that is not a single life annuity (ad that are used when a single life annuity is converted into another form of benefit). District court rulings have been mixed, and Circuit Courts have just recently started to weigh in on the meaning of "actuarial equivalent," although these rulings have similarly reflected varied decisions on this term.

Defined benefit plans generally provide benefits in the form of a single life annuity commencing at the participant's normal retirement age set forth in the plan (typically age 65). Under ERISA, any retirement benefit that is not a single life annuity must be the "actuarial equivalent" of a single life annuity. Further, when such a plan converts a single life annuity into another form of retirement benefit, it must use certain actuarial assumptions (interest rates and mortality tables) to ensure the participant receives the same total value as they would receive with a single life annuity. The results in these cases at the district court level have generally been mixed, with some lawsuits dismissed and others resulting in settlements.

Circuit courts of appeals only recently started to weigh in on the meaning of "actuarial equivalent" under ERISA. In March, the Sixth Circuit ruled on the meaning of "actuarial equivalent" in *Reichert v. Kellogg Co.* and *Watt v. FedEx Corporation*. In both cases, plaintiffs challenged the mortality tables used to convert their benefits to joint and survivor annuities, arguing that the plans' use of outdated mortality tables impermissibly reduced their benefits, violating ERISA. The District Courts granted the defendants' motions to dismiss, finding that ERISA does not impose a subjective "reasonableness" standard on actuarial assumptions, reasoning that when drafting the statute, Congress deliberately omitted a reasonableness requirement for purposes of "actuarial equivalent" determinations. The Sixth Circuit overturned the District Courts' dismissals in both lawsuits, ruling that ERISA implicitly imposes a reasonableness requirement on plans' actuarial assumptions, a conclusion the Circuit Court found necessary to fulfill the statute's purpose and Congressional intent.

Shortly after the Sixth Circuit's decisions in *Reichert* and *Watt,* the District Court for the Eastern District of Missouri came to the opposite conclusion. In *Landel v. Olin Corporation*, plaintiffs alleged that the plan's mortality tables and interest rates were outdated and therefore unreasonable, violating ERISA's "actuarial equivalent" requirement. The District Court granted defendants' motion to dismiss, agreeing with the defendants' arguments that "actuarial equivalence" does not inherently require that such actuarial assumptions be current or reasonable.

Another case challenging the use of outdated mortality tables, *Drummond v. Southern Company Services, Inc.*, is pending in the Eleventh Circuit.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Consider reviewing all aspects of the relevant defined benefit plan, including the actuarial assumptions being used, to ensure such assumptions are reasonable and up to date.

XI. Notable Settlements

January

- Whole Foods received final court approval for a $2 million settlement in *Winkelman v. Whole Foods Market, Inc.*, resolving a class action alleging the company mismanaged its 401(k) plan by charging excessive fees.
- Duke University's $2.35 million class action settlement received final court approval. Plaintiffs in *Franklin v. Duke University* claimed that the university used outdated mortality tables to calculate retirement benefits.

February

- Cambridge Health Alliance obtained preliminary court approval for a $595,000 settlement. In *Hoye v. CHA General Services, Inc.*, employees filed suit alleging excessive fees and underperforming investments in the hospital system's 403(b) plan.
- Cedars-Sinai Medical Center Inc. finalized a $2.97 million class settlement in *Arevalo v. Cedars-Sinai Medical Center*. The settlement resolves employee claims challenging the hospital retirement plan's fee levels and fund options.
- Providence Health & Services signed a class settlement for over $42 million in *Halter v. Providence Health & Services*. The agreement settles claims that Providence wrongly used plan forfeitures to fund plan contributions.
- Ricoh USA Inc. agreed to pay $1.75 million to settle two proposed class action suits in *Kruchten v. Ricoh USA* and *Batten v. Ricoh USA*. Participants alleged that Ricoh mismanaged its 401(k) plan by selecting and maintaining underperforming investment options, failing to reduce plan expenses, and not using forfeited funds to benefit plan participants.

March

- Swinerton Inc. reached a settlement in principle in *Schuster v. Swinerton Inc.* Participants brought suit against Swinerton challenging its 401(k) plan's administrative fees.
- Northeast Grocery Inc. agreed to settle a proposed class action in *Collins v. Northeast Grocery Inc*. Former employees filed suit against the supermarket chain in January 2024 alleging excessive recordkeeping fees and underperforming investments.
- Liberty Mutual Inc. received court approval on a $13.4 million settlement in *Ahmed v. Liberty Mutual Group*, resolving claims that it failed to monitor certain fees and investments. In addition to the cash settlement, Liberty Mutual agreed to impose cross-selling restrictions on the plan's recordkeeper, conduct an independent review of outside consulting services, and provide transparency to class counsel with respect to how it meets those obligations.

XII. Table of Authorities

- *Ahmed v. Liberty Mut. Grp., Inc.*, No. 3:20-cv-30056 (D. Mass. Apr. 10, 2020)
- *Anderson v. Intel Corp. Inv. Pol'y Comm.*, No. 22-16268 (9th Cir.)
- *Arevalo v. Cedars-Sinai Med. Ctr.*, No. 5:23-cv-01124 (C.D. Cal. Jun. 13, 2023)
- *Barragan v. Honeywell Int'l Inc.*, No. 25-2609 (3d Cir. Aug. 22, 2025)
- *Batt v. 3M Co.*, No. 0:25-cv-03149 (D. Minn. Aug. 7, 2025)
- *Benotti v. Lockton, Inc.*, No. 4:26-cv-00188 (W.D. Mo. Mar. 6, 2026)
- *Beroset v. Duke Univ.*, No. 1:25-cv-00919 (M.D.N.C. Oct. 9, 2025)
- *Boyd v. OneOncology, LLC*, No. 3:26-cv-00326 (M.D. Tenn. Mar. 19, 2026)
- *Braham v. Lab'y Corp. of Am. Holdings*, No. 1:25-cv-15583 (N.D. Ill. Dec. 23, 2025)

- *Brewer v. CHS/Comm. Health Sys., Inc.*, No. 1:25-cv-15578 (N.D. Ill. Dec. 23, 2025)
- *Browning v. Station Casinos LLC*, No. 2:26-cv-00603 (D. Nev. Mar. 4, 2026)
- *Camire v. Alcoa USA Corp.*, No. 1:24-cv-01062 (D.D.C. Apr. 12, 2024)
- *Carfora v. TIAA*, No. 21-8384 (2d. Cir. Mar. 19, 2026)
- *Carter v. Sentara Healthcare Fiduciary Comm.*, No. 2:25-cv-00016 (E.D. Va. Jan. 8, 2025)
- *Carter v. Sig Sauer, Inc.*, No. 1:26-cv-00098 (D.N.H. Feb. 10, 2026)
- *Collins v. Ne. Grocery Inc.*, No. 5:24-cv-00080 (N.D.N.Y. Jan. 17, 2024)
- *Cunningham v. Cornell Univ.*, 145 S. Ct. 1020 (2025)
- *Dalton v. Freeman*, No. 2:22-cv-00847 (E.D. Cal. May 18, 2022)
- *Del Bosque v. Coca-Cola Sw. Beverages LLC*, No. 3:25-cv-01270 (N.D. Tex. May 20, 2025)
- *Dempsey v. Verizon Comms. Inc.*, No. 1:24-cv-10004 (S.D.N.Y. Dec. 30, 2024)
- *Drummond v. S. Co. Servs., Inc.*, No. 24-12773 (11th Cir. Aug. 28, 2024)
- *Duke v. Luxottica U.S. Holdings Corp.*, 167 F.4th 16 (2d Cir. 2026)
- *Fellows v. Univ. Servs. of Am., LP*, No. 1:25-cv-10659 (S.D.N.Y. Dec. 23, 2025)
- *Franklin v. Duke Univ.*, No. 1:23-cv-00833 (M.D.N.C. Sept. 29, 2023)
- *Fritts v. Lockton, Inc.*, No. 4:26-cv-00185 (W.D. Mo. Mar. 6, 2026)
- *Halter v. Providence Health & Servs.*, No. 2:25-cv-00210 (W.D. Wash. Jan. 29, 2025)
- *Heet v. Nat'l Med. Care Inc.*, No. 1:25-cv-11644 (D. Mass. Jun. 6, 2025)
- *Hopper v. Encompass Health Corp.*, No. 2:26-cv-00533 (N.D. Ala. Mar. 30, 2026)
- *Hoye v. CHA Gen. Servs., Inc.*, No. 1:23-cv-13238 (D. Mass. Dec. 29, 2023)
- *Jacob v. RTX Corp.*, No. 1:25-cv-01389 (E.D. Va. Aug. 22, 2025)
- *Jervay v. BFSG, LLC*, No. 2:26-cv-01905 (C.D. Cal. Feb. 23, 2026)
- *Jones v. Comfort Sys. USA, Inc.*, No. 4:26-cv-00849 (S.D. Tex. Feb. 3, 2026)
- *Jones v. Ramboll Ltd.*, No. 5:26-cv-00273 (N.D.N.Y. Feb. 20, 2026)
- *Konya v. Lockheed*, No. 25-02061 (4th Cir. Sep 9, 2025)
- *Landel v. Olin Corp.*, No. 4:25-cv-00096 (E.D. Mo. Jan. 24, 2025)
- *Macey v. J.E. Dunn Constr. Co.*, No. 4:26-cv-00173 (W.D. Mo. Feb. 26, 2026)
- *Matula v. Wells Fargo & Co.*, No. 25-2441 (8th Cir. Jul. 22, 2025)
- *McCullough-Adams v. Johns Hopkins Health Sys. Corp.*, No. 1:26-cv-00515 (D. Md. Feb. 6, 2026)
- *Mullins v. Nat'l Rural Elec. Coop. Ass'n*, No. 1:25-cv-00994 (E.D. Va. Jun. 11, 2025)
- *Mullins v. Prisma Health*, No. 6:26-cv-01092 (D.S.C. Mar 16, 2026)
- *Noetling v. Ivanti, Inc.*, No. 2:26-cv-00208 (D. Utah Mar. 11, 2026)
- *Paone v. Waste Connections Inc.*, No. 4:26-cv-02063 (S.D. Tex. Mar 13, 2026)
- *Parrott v. Int'l Bancshares Corp.*, 167 F.4th 728 (5th Cir. 2026)
- *Peeler v. Bayada Home Health Care, Inc.*, No. 1:24-cv-00231 (W.D.N.C. Sept. 9, 2024)
- *Pimm v. United Airlines, Inc.,* No. 1:25-cv-15581 (N.D. Ill. Dec. 23, 2025)
- *Powell v. Ocwen Fin. Corp.*, No. 23-999, 2026 BL 104699 (2d Cir. Mar. 26, 2026)
- *Rajappan v. Bloomberg L.P.*, No. 1:26-cv-00785 (S.D.N.Y. Jan. 29, 2026)
- *Rawles v. Med. Fac. Assocs.*, Inc., No. 1:26-cv-00929 (D.D.C. Mar. 17, 2026)
- *Reichert v. Kellogg Co.*, No. 24-1442 (6th Cir. May 17, 2024)
- *Russell v. Ill. Tool Works, Inc.*, No. 1:22-cv-02492 (N.D. Ill. May 11, 2022)
- *Sanchez v. Childrens Hosp. Los Angeles*, No. 2:26-cv-00894 (C.D. Cal. Jan 28, 2026)
- *Scholin v. Digi-Key Corp.*, No. 0:26-cv-01485 (D. Minn. Feb. 17, 2026)
- *Schuster v. Swinerton Inc.*, No. 3:24-cv-04970 (N.D. Cal. Aug. 9, 2024)
- *Spence v. Am. Airlines, Inc.*, No. 4:23-cv-00552 (N.D. Tex. Sept. 30, 2025)
- *Striplin v. Stifel Fin. Corp.*, No. 4:26-cv-00255 (E.D. Mo. Feb. 20, 2026)
- *Sweeney v. Nationwide Mut. Ins. Co.*, No. 2:20-cv-01569 (S.D. Ohio Mar. 26, 2020)
- *Texas et al. v. BlackRock et al.*, No. 6:24-CV-00437 (E.D. Tex. Nov. 27, 2024)
- *Trauernicht v. Genworth Fin., Inc.*, No. 24-1880 (4th Cir. Sept. 13, 2024)
- *Ventura v. Lithia Motors, Inc.*, No. 2:26-cv-01786 (C.D. Cal. Feb 19, 2026)
- *Vitek v. Boyd Gaming Corp.*, No. 2:26-cv-00404 (D. Nev. Feb. 17, 2026)
- *Wakefield v. Insulet Corp.*, No. 1:26-cv-10971 (D. Mass. Feb. 24, 2026)
- *Wallace v. Pilgrim's Pride Corp.*, No. 1:26-cv-00371 (D. Colo. Jan 30, 2026)
- *Watt v. FedEx Corp.,* No. 24-5945 (6th Cir. Oct. 17, 2024)

- *Whipple v. Se. Freight Lines, Inc.*, No. 3:23-cv-04583 (D.S.C. Sept. 11, 2023)
- *Winkelman v. Whole Foods Mkt., Inc.*, No. 1:23-cv-01352 (W.D. Tex. Nov. 6, 2023)
- *Wolfe v. FJ Mgmt. Inc.*, No. 1:26-cv-10954 (D. Mass. Feb. 23, 2026)