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Where 5th Circ. Ruling Fits In ERISA Arbitration Landscape

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On Feb. 10, the U.S. Court of Appeals for the Fifth Circuit issued an important decision addressing the enforceability of arbitration provisions in plans under the Employee Retirement Income Security Act and, in particular, whether such provisions may bar representative relief in fiduciary-breach litigation.

In Parrott v. International Bancshares Corp., the Fifth Circuit held that an ERISA plan may consent to arbitration of claims under ERISA Section 502(a)(2) through a unilateral amendment adopted by the plan sponsor, but that an arbitration clause prohibiting representative proceedings and limiting relief to "individual relief" violates the effective-vindication doctrine because it prospectively waives statutory remedies available under ERISA.[1]

The decision adds the Fifth Circuit to a growing group of courts of appeals that have scrutinized the interaction between the Federal Arbitration Act and ERISA's remedial structure.

Although multiple federal appellate courts agree that ERISA fiduciary-breach claims are arbitrable in principle, doctrinal tension exists as to whether arbitration provisions in ERISA-governed plans may preclude ERISA claims brought in a representative capacity or otherwise restrict recovery to individualized relief. The Fifth Circuit's decision adds another voice to that discussion.

The Fifth Circuit's Analysis

In Parrott, the plaintiff, a former participant in a defined contribution plan, brought fiduciary-breach claims under ERISA Sections 502(a)(2) and (a)(3).[2]

After the plaintiff's employment ended in 2021, and he received a distribution of his accrued benefits from his plan, the plan sponsor amended the plan to add a mandatory arbitration provision, which was retroactive to January 2024.[3] The arbitration provision included a class and representative-action waiver and limited claims to purely individual relief.[4]

Defendant International Bancshares Corp. moved to compel individual arbitration of the plaintiff's claims, which the U.S. District Court for the Western District of Texas denied, finding there was no consideration for the amended arbitration agreement.[5]

The Fifth Circuit first addressed whether an arbitration clause added to a plan after a plaintiff left employment could bind him as to his Section 502(a)(2) claim.

Referencing the Supreme Court's 1985 decision in Massachusetts Mutual Life Insurance Co. v. Russell[6] and its 2008 holding in LaRue v. DeWolff, Boberg & Associates Inc.,[7] the Fifth Circuit held that ERISA Section 502(a)(2) claims seek relief under Section 409(a)[8] for losses to the plan and are brought on behalf of the plan, even when the alleged injury affects an individual account.[9]

Because such claims are representative in nature and assert plan-level injuries, the court concluded that the relevant contracting party for purposes of arbitration is the plan itself. The court further held that the plan in the Parrott case validly consented to arbitration through the sponsor's exercise of its amendment authority under the governing plan documents.[10]

The court therefore reversed the district court's denial of arbitration with respect to the Section 502(a)(2) claim. It affirmed, however, that the plaintiff's individual claims — those brought under ERISA Section 502(a)(3) — could not be compelled to arbitration because International Bancshares had not briefed the issue and, regardless, the plaintiff had not personally consented to arbitrate those individual claims.[11]

The Fifth Circuit then considered whether the arbitration clause's prohibition on representative proceedings and its limitation to "individual relief" were enforceable. The clause required that "[a]ll Covered Claims must be brought solely in the Arbitration Claimant's individual capacity and not in a representative capacity or on a class, collective, or group basis."[12]

Referencing dicta from the Supreme Court's 2013 decision in American Express Co. v. Italian Colors Restaurant, the Fifth Circuit held that this restriction violated the "effective-vindication doctrine" — a judicially created exception to the FAA under which courts have invalidated arbitration agreements that "[operate] ... as a prospective waiver of a party's right to pursue statutory remedies."[13]

ERISA Section 409(a) makes a breaching fiduciary liable to the plan for "any losses to the plan," and Section 502(a)(2) authorizes participants to bring actions on behalf of the plan to recover that full measure of relief.[14] The Fifth Circuit in Parrott concluded that, by foreclosing representative relief and limiting recovery to individual damages, the arbitration clause operated as a prospective waiver of substantive statutory remedies.[15]

The court also addressed a provision of the arbitration agreement that purported to require arbitrators to "apply the same standards of review to [covered claims] as would apply if [those claims] had been filed in the United States District Court for the Western District of Texas," where the underlying suit was filed.[16]

The court held the provision void to the extent that its application extended "beyond the reach of denial-of-benefits claims," reasoning that broader application of the deferential standard in fiduciary-breach cases would functionally relieve plan fiduciaries of liability in a manner at odds with ERISA's prohibition on exculpatory provisions.[17]

An Evolving Appellate Landscape

The Fifth Circuit's Parrott decision must be understood against the backdrop of a developing body of appellate authority addressing ERISA arbitration.

On certain foundational questions, there is broad agreement. The courts of appeals that have addressed the issue have consistently concluded that ERISA fiduciary-breach claims are not categorically exempt from arbitration under the FAA. One such example was the Ninth Circuit's 2019 decision in Dorman v. Charles Schwab Corp.[18]

Additionally, decisions from several other circuits — including the Third Circuit's 2023 ruling in Berkelhammer v. ADP TotalSource Group,[19] the Sixth Circuit's 2022 holding in Hawkins v. Cintas Corp.,[20] and the Ninth Circuit's decision last year in Platt v. Sodexo SA[21] — have recognized that Section 502(a)(2) claims belong to the plan and that plan-level consent (including through amendments) may suffice to require arbitration of those claims. The Fifth Circuit in Parrott aligns with that approach.

However, the question of the scope of permissible remedial limitations on claims pursued in arbitration is more nuanced. In recent years, seven circuit courts — the U.S. Courts of Appeals for the Second, Third, Sixth, Seventh, Ninth, Tenth and Eleventh Circuits — have concluded that arbitration provisions barring representative claims or limiting recovery to individualized relief are inconsistent with ERISA's statutory scheme when applied to Section 502(a)(2) claims.[22]

These courts reason that because Section 502(a)(2) claims are inherently representative and seek planwide relief under Section 409, a contractual restriction that precludes asserting claims in a representative capacity or limits recovery to individual damages functions as a waiver of statutory remedies and is unenforceable under the effective-vindication doctrine.

By joining that line of authority, the Fifth Circuit adds further weight to the view that while arbitration is available in ERISA fiduciary litigation, it cannot be structured in a manner that strips participants of the ability to seek planwide relief in a representative capacity under Section 502(a)(2).

At the same time, this issue remains the subject of ongoing doctrinal tension.

Multiple judges have cautioned that an expansive application of the effective-vindication doctrine in the ERISA context may sit uneasily alongside Supreme Court precedent emphasizing the FAA's strong policy favoring enforcement of arbitration agreements according to their terms,[23] including cases such as the high court's 2013 decision in American Express Co. v. Italian Colors Restaurant and its 2018 decision in Epic Systems Corp. v. Lewis.[24]

This friction reflects an evolving appellate landscape and the potential for continued uncertainty absent Supreme Court review.

Implications for Plan Sponsors

The Fifth Circuit's decision in Parrott reinforces that arbitration remains a viable mechanism for resolving ERISA fiduciary-breach claims — including Section 502(a)(2) claims — in multiple circuits. Parrott also confirms that arbitration provisions must be consistent with ERISA's remedial framework.

Plan sponsors desiring to channel ERISA claims to arbitration may want to consider reviewing their plan documents to confirm that their arbitration provisions align with provisions the federal courts of appeals have found enforceable. Because courts continue to address these issues, periodic review of plan language may help ensure continued alignment as the case law evolves, particularly for sponsors who operate in multiple jurisdictions.

As part of that review, sponsors may also wish to evaluate how ERISA plan arbitration fits within their broader dispute-resolution objectives, including efficiency, confidentiality, arbitrator experience with ERISA issues and coordination of related claims. Sponsors adopting or revising arbitration provisions should also confirm that any amendments are implemented in accordance with plan procedures and reflected accurately in governing documents.

Finally, arbitration affects forum, not fiduciary standards, and Parrott does not alter ERISA's substantive fiduciary standards. Core governance practices — including a documented process for periodic monitoring of investments and service providers — remain the most effective risk-mitigation tools in ERISA litigation, regardless of whether claims proceed in court or in arbitration.

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[1] Parrott v. Int'l Bancshares Corp., No. 25-50367, --- F.4th ----, 2026 WL 364324 (5th Cir. Feb. 10, 2026).

[2] ERISA sections 502(a)(2) and (a)(3) are codified at 29 U.S.C. §§ 1132(a)(2), and (a)(3), respectively.

[3] Parrott, --- F.4th ----, 2026 WL 364324, at *1.

[4] Id.

[5] Id. at *2.

[6] Massachusetts Mutual Life Insurance Company v. Russell, 473 U.S. 134, 142 n.9 (1985).

[7] LaRue v. DeWolff, Boberg & Associates, Inc., 552 U.S. 248, 253, 256 (2008).

[8] ERISA section 409 is codified at 29 U.S.C. § 1109(a).

[9] Parrott, --- F.4th ----, 2026 WL 364324, at *3.

[10] Id. at *4.

[11] Id.

[12] Id. at *6.

[13] Id. at *5. (alteration in original) (emphasis removed) (citing Am. Express Co. v. Italian Colors Rest., 570 U.S. 228, 235 (2013)).

[14] See 29 U.S.C. § 1109(a); 29 U.S.C. § 1132(a)(2).

[15] Parrott, --- F.4th ----, 2026 WL 364324, at *6.

[16] Id. at *8-*9.

[17] Id. at *9; see also 29 U.S.C. § 1110(a).

[18] See Dorman v. Charles Schwab Corp., 780 Fed. Appx. 510, 513 (9th Cir. Aug. 20, 2019).

[19] Berkelhammer v. ADP TotalSource Grp. Inc., 74 F.4th 115, 119 (3d Cir. 2023).

[20] Hawkins v. Cintas Corp., 32 F.4th 625, 631-35 (6th Cir. 2022).

[21] Platt v. Sodexo, S.A., 148 F.4th 709, 720 (9th Cir. 2025).

[22] See Cedeno v. Sasson, 100 F.4th 386, 400-01 (2d Cir. 2024); Henry ex rel. BSC Ventures Holdings, Inc. Emp. Stock Ownership Plan v. Wilmington Tr., N.A., 72 F.4th 499, 507 (3d Cir. 2023); Parker v. Tenneco, Inc., 114 F.4th 786, 793 (6th Cir. 2024); Smith v. Bd. of Dirs. of Triad Mfg., Inc., 13 F.4th 613, 615 (7th Cir. 2021); Platt v. Sodexo, S.A., 148 F.4th 709, 721 (9th Cir. 2025); Harrison v. Envision Mgmt. Holding, Inc. Bd. of Dirs., 59 F.4th 1090, 1106-07 (10th Cir. 2023); Williams v. Shapiro, 161 F.4th 1313, 1321 (11th Cir. 2025).

[23] See Parker, 114 F.4th at 802 (McKeague, J., concurring) (warning that the "effective vindication" doctrine conflicts with core FAA principles favoring enforcement of arbitration agreements and that it has "never been used by the Supreme Court to bar an arbitration provision under ERISA"); Cedeno, 100 F.4th at 409 (Menashi, J., dissenting) (arguing that the supposed ERISA conflict is "manufactured," and invoking Italian Colors to criticize the use of the effective-vindication doctrine to avoid individualized arbitration).

[24] See Am. Express Co., 570 U.S. at 235-36; Epic Sys. Corp. v. Lewis, 584 U.S. 497, 505-06 (2018).