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ERISA Litigation Update March 30, 2026

DOL Urges Eleventh Circuit to Reconsider ERISA Exhaustion Rule for Fiduciary-Breach Claims

This is a development worth watching closely for sponsors and fiduciaries that view administrative exhaustion as an important first-line defense to ERISA claims.

A new filing by the U.S. Department of Labor (DOL) could materially affect ERISA litigation in the Eleventh Circuit. On March 25, 2026, the DOL asked the Eleventh Circuit for leave to file an amicus brief in *Bolton v. Inland Fresh Seafood Corp. of America, Inc.*, in connection with the court's grant of rehearing *en banc*, arguing that the circuit's rule requiring participants to exhaust plan administrative remedies before bringing ERISA fiduciary-breach claims should be abandoned.[1] The DOL argued the rule "cannot be squared with ERISA, logic, or notions of fairness to the American worker."[2]

If the Eleventh Circuit revisits that rule, plaintiffs in Alabama, Florida, and Georgia could face an easier path to fiduciary-breach suits at the pleadings stage, without having to first satisfy their plans' internal claims and appeals procedures. That would be especially significant for ERISA stock-drop, excessive-fee, prohibited-transaction, and other plan-mismanagement claims that plaintiffs increasingly try to frame as statutory fiduciary-breach claims rather than simple benefit claims. This is therefore a development worth watching closely for sponsors and fiduciaries that view administrative exhaustion as an important first-line defense to ERISA claims.

The Current Rule in the Eleventh Circuit & Next Steps

In *Bolton*, a panel of the Eleventh Circuit reaffirmed that, in that circuit, "plaintiffs in ERISA actions must exhaust available administrative remedies before suing in federal court."[3] The rule stems from a forty-year-old decision in *Mason v. Continental Group*, where the court found "compelling policy considerations" for pre-suit exhaustion and explained that the "requirement is consistent with Congressional intent."[4] The Eleventh Circuit applied this rule in *Bolton*, reaffirming that the rule applies "with equal force to contractual claims arising under a plan and claims"—like plaintiffs' in *Bolton*—"for violations of ERISA itself."[5] The court affirmed the district court's decision dismissing plaintiffs' claims for failure to plead exhaustion.[6]

The panel lacked authority to overrule *Mason* itself. But the opinion contained an important concurrence. Judge Jordan, joined by Judge Pryor, urged the court to rehear the case *en banc* and overrule *Mason*, describing the exhaustion requirement for fiduciary-breach and statutory ERISA claims as "judicially-created and atextual."[7] The concurrence emphasized that ERISA itself does not impose such an exhaustion requirement and observed that the Eleventh Circuit stands alone in requiring mandatory exhaustion for fiduciary-breach and statutory claims, while seven other circuits do not require exhaustion for those claims.[8]

The Eleventh Circuit followed the concurrence and granted rehearing *en banc* in *Bolton*. The Court specifically directed the parties to address whether *Mason* should be overruled to the extent it requires exhaustion of administrative remedies for fiduciary-breach and other statutory ERISA claims before suit. The DOL's new filing puts the government squarely on the side of overruling *Mason*. In its brief, the DOL suggests that the Eleventh Circuit "erred badly" in *Mason* and urges the court to take the opportunity in *Bolton* to "correct course" and "and affirm that ERISA does not mandate administrative exhaustion for statutory claims before proceeding to federal court."[9]

The DOL's input underscores the significance of the issue and the possibility that the Eleventh Circuit may soon reconsider one of its longstanding threshold defenses in ERISA litigation.

Why This Matters for Plan Sponsors and Fiduciaries

For sponsors and fiduciaries, administrative exhaustion can provide meaningful strategic benefits: it can create a fuller record and allow plan fiduciaries to narrow or even eliminate litigation by addressing participant complaints before suit. If the Eleventh Circuit narrows or abandons its current rule for fiduciary-breach and other statutory ERISA claims, plaintiffs may have greater flexibility to proceed directly to federal court. That could increase defense costs earlier in a case and reduce opportunities to resolve disputes through plan procedures first.

The timing also matters. ERISA fiduciary litigation has continued to evolve rapidly, and procedural defenses have become increasingly important in determining whether cases survive the motion-to-dismiss stage. The *Bolton* concurrence itself noted the recurrence and significance of the issue, pointing to the "increase[]" in fiduciary-breach litigation "following the Supreme Court's decision in *Hughes v. Northwestern University*."[10]

Practical Considerations

Pending further developments, plan sponsors and fiduciaries may wish to consider:

- reviewing plan claims and appeals procedures to assess whether they clearly address fiduciary-breach or other statutory claims to the extent permitted by plan design and applicable law;
- evaluating whether summary plan descriptions and related participant communications align with plan terms and accurately describe available review procedures; and
- reassessing litigation strategy in cases where an exhaustion defense has historically been viewed as a threshold argument.

Takeaway

The DOL's March 2026 filing in *Bolton* is a notable development for ERISA plan sponsors and fiduciaries. If the Eleventh Circuit revisits its longstanding exhaustion rule for fiduciary-breach claims, sponsors may lose an important procedural defense in one of the country's largest circuits. Gibson Dunn will continue to monitor this case. For now, sponsors whose plans are administered in Alabama, Florida, and Georgia—or who have significant populations of plan participants there—should consider whether their current plan procedures and communications are well positioned for a world in which statutory and fiduciary-breach claims may reach federal court more quickly.

[1] *See Bolton v. Inland Fresh Seafood Corp. of Am.*, No. 24-10084 (11th Cir.), Dkt. 64-1 (Proposed Amici of U.S. Sec. of Lab.'s Mot. for Leave to File Amicus Brief Out of Time); *Bolton*, No. 24-10084 (11th Cir.), at Dkt. 62-2 (Amicus Brief of U.S. Sec. of Lab. Supporting Plaintiffs-Appellants and Reversal).

[2] *Bolton*, No. 24-10084 (11th Cir.), Dkt. 62-2 at 2.

[3] *Bolton*, No. 24-10084 (11th Cir.), Dkt. 50-1 (Opinion) at 6 (quoting *Bickley v. Caremark RX, Inc.*, 461 F.3d 1325, 1328 (11th Cir. 2006)).

[4] *Id.* (citing *Mason v. Continental Grp., Inc.*, 763 F.2d 1219, 1227 (11th Cir. 1985)).

[5] *Id.* at 7.

[6] *Id.* at 10.

[7] *Bolton*, No. 24-10084 (11th Cir.), Dkt. 50-1 (Concurrence) at 1.

[8] *Id.* at 2–3.

[9] *Bolton*, No. 24-10084 (11th Cir.), Dkt. 64-2 at 3, 8.

[10] *Bolton*, No. 24-10084 (11th Cir.), Dkt. 50-1 at 5.

The following Gibson Dunn lawyers prepared this update: Ashley Johnson and Jennafer Tryck.

Gibson Dunn lawyers are available to assist in addressing any questions you may have about these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's ERISA Litigation, Labor & Employment, or Executive Compensation & Employee Benefits practice groups:

ERISA Litigation:

Karl G. Nelson – Dallas (+1 214.698.3203, knelson@gibsondunn.com)

Ashley E. Johnson – Dallas (+1 214.698.3111, ajohnson@gibsondunn.com)

Jennafer M. Tryck – Orange County (+1 949.451.4089, jtryck@gibsondunn.com)

Labor & Employment:

Jason C. Schwartz – Washington, D.C. (+1 202.955.8242, jschwartz@gibsondunn.com)

Katherine V.A. Smith – Los Angeles (+1 213.229.7107, ksmith@gibsondunn.com)

Executive Compensation & Employee Benefits:

Sean C. Feller – Los Angeles (+1 310.551.8746, sfeller@gibsondunn.com)

Krista Hanvey – Dallas (+1 214.698.3425, khanvey@gibsondunn.com)