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First Quarter 2026 ERISA Litigation Update

Gibson Dunn's ERISA litigation update summarizes key legal opinions and developments during the past quarter to assist plan sponsors and administrators navigating the rapidly changing ERISA litigation landscape.

Introduction

A dedicated plaintiffs' bar continues to test the boundaries of ERISA liability, while courts increasingly confront how far fiduciary-duty and remedial theories can extend beyond plan terms and traditional doctrines. Recent developments reflect both the continued evolution of specific liability theories—such as actuarial equivalence claims—and important efforts by appellate courts to define the procedural and substantive limits of ERISA litigation.

This quarterly update highlights key developments from the first quarter of 2026, focusing on areas where courts are actively shaping the trajectory of ERISA claims. It addresses recent litigation activity, including developments in actuarial equivalence and post-*Cunningham* prohibited transaction claims, as well as significant appellate decisions concerning arbitration and class certification. It also reviews a proposed regulatory framework that may influence fiduciary decision-making and related litigation risk in the investment-selection context.

I. Recent Litigation Activity

A. Actuarial Equivalence Litigation

This quarter saw continued development in cases alleging that defined benefit plans fail to provide qualified and optional forms of benefits required or permitted under ERISA—such as joint and survivor annuities (JSAs)—that are the "actuarial equivalent" of single life annuities (SLAs). These claims typically assert that fiduciaries use outdated or unreasonable mortality tables or interest rates when converting SLAs into JSAs.

Aside from alleging that the use of such mortality tables violates ERISA Section 205's substantive requirement of actuarial equivalence, plaintiffs have also deployed this theory to support fiduciary breach and non-forfeiture theories. *See, e.g.*, *Berkeley v. Intel Corporation*, No. 5:23-CV-00343-EJD, 2026 WL 948725, at *2 (N.D. Cal. Apr. 8, 2026).

Operating largely without guidance from the courts of appeals, the district courts have given this theory a mixed reception. While earlier cases survived the pleading stage, defendants have seen greater success this year, with courts granting dismissal or summary judgment in several cases. *See Berkeley*, 2026 WL 948725, at *1; *Adams v. U.S. Bancorp*, No. 22-CV-509 (NEB/LIB), 2026 WL 151825, at *1 (D. Minn. Jan. 16, 2026); and *Landel v. Olin Corp.*, No. 4:25-CV-00096-CMS, 2026 WL 785044, at *5–6 (E.D. Mo. Mar. 20, 2026). These courts rejected the argument that Section 205 implicitly requires actuarial assumptions to be "reasonable," instead treating actuarial equivalence as a mathematical concept applied under the plan's specified assumptions. *See Berkeley*, 2026 WL 948725, at *4; *Adams*, 2026 WL 151825, at *7; and *Landel*, 2026 WL 785044, at *5.

Despite that trend, plaintiffs saw some success—at least at the pleading stage—at the appellate level, where the first court of appeals to address this theory permitted the case to proceed. In *Reichert v. Kellogg Company*, 170 F.4th 473, 475 (6th Cir. 2026), the Sixth Circuit reversed two district courts' dismissals of plaintiffs' claims alleging that fiduciaries violated Section 205 and breached their fiduciary duties by relying on dated mortality assumptions in converting SLAs into JSAs. *Id.* at 475. The district courts had rejected these claims on the ground that Section 205 does not expressly require actuarial assumptions to be "reasonable," and that imposing such a requirement would improperly read additional language into the statute. *See Reichert v. Bakery, Confectionary, Tobacco Workers & Grain Millers Pension Comm.*, No. 2:23-CV-12343, 2024 WL 5410419, at *2 (E.D. Mich. Apr. 17, 2024) and *Covic v. FedEx Corp.*, 774 F. Supp. 3d 954, 958 (W.D. Tenn. 2024).

The Sixth Circuit disagreed, explaining that recognizing a reasonableness constraint does not add atextual language, but instead reflects the meaning of "actuarial equivalence" itself. The court reasoned that actuarial equivalence "cannot be attained if the mortality assumptions used to calculate such benefits fail to align with the life expectancy of the benefit recipients." *Reichert*, 170 F.4th at 482. Perhaps foreshadowing more disagreements to come, however, Judge Nalbandian vigorously dissented, arguing that the statute's text does not impose a reasonableness requirement and that such a constraint should not be inferred absent express

language. *Id.* at 488–490.

Further appellate guidance is expected. *Drummond v. Southern Company Services, Inc.*, No. 24-12773 (11th Cir.), currently pending, will address the dismissal of similar actuarial equivalence claims by the Northern District of Georgia. No. 2:23-CV-00174-SCJ, 2024 WL 4005945, at *7 (N.D. Ga. July 30, 2024). In *Drummond*, the district court dismissed the plaintiffs' claims on the grounds that no reasonableness requirement inheres in the text's requirement of actuarial equivalence. *Drummond*, 2024 WL 4005945, at *5–6. The Eleventh Circuit is thus likely to resolve the same core issue addressed by the Sixth Circuit in *Reichert.* The Eleventh Circuit heard argument on September 17, 2025, and a decision could come at any time—potentially aligning with the Sixth Circuit's majority, adopting Judge Nalbandian's dissenting stance, or taking a different approach.

B. Prohibited Transaction Claims Post-*Cunningham*

As reported in our February 2026 update, the Supreme Court in *Cunningham v. Cornell University* held that a prohibited transaction claim under 29 U.S.C. § 1106(a)(1)(C) survives a motion to dismiss so long as the complaint plausibly alleges the statutory elements, without pleading the inapplicability of exemptions, which are treated as affirmative defenses. 604 U.S. 693, 696, 700–702 (2025).

Given ERISA's capacious definition of a prohibited transaction and its reliance on exemptions to render even routine transactions between plans and service providers lawful, the rule announced in *Cunningham* left open how lower courts would screen meritless claims early in litigation.

Several post-*Cunningham* decisions suggest that courts are using Article III standing as a limiting principle. In *Peeler v. Bayada Home Health Care, Inc.*, the Western District of North Carolina dismissed prohibited transaction claims, emphasizing that the Supreme Court in *Cunningham* had "exhorted district courts" to dismiss claims that identified no injury. No. 1:24-CV-00231-MR, 2026 WL 208630, at *10, *13–14 (W.D.N.C. Jan. 27, 2026). The court emphasized that the "presumptive unlawfulness of a transaction . . . does not relieve a plaintiff of the burden to establish standing." *Id*. at *13. The court noted that the plaintiffs had not pled facts that drew a "meaningful comparison" between the fees incurred by the plan in which they participated and those "incurred by the alleged comparator plans." *Id.* Because the complaint "provide[d] no more than a speculative basis for inferring that plaintiffs themselves suffered an actual loss" due to the prohibited transaction, the court found that the plaintiffs had not established "a constitutionally cognizable injury." *Id.*

Likewise, the Southern District of New York dismissed prohibited transaction claims on standing grounds in *Dempsey v. Verizon Communications, Inc.*, where the plaintiffs challenged a pension risk transfer.[1] No. 24 CIV. 10004 (AKH), 2026 WL 72197, at *4–5 (S.D.N.Y. Jan. 8, 2026). In *Dempsey*, the court held that the plaintiffs' allegations of a substantial risk of future harm were implausible in part because the annuity providers to whom pension risk had been transferred possessed "adequate assets and strong credit ratings." *Id.* at *8. The court also held that neither the fact that the plaintiffs had pled "the equitable remedy for disgorgement of profits" nor the plaintiffs' asserted diminution of the present value of the plan could on their own create standing absent a demonstration of a concrete injury to the plaintiffs themselves. *Id.* at *9. *See also Taylor*

v. BDO USA, P.C., No. CV 25-10128, 2025 WL 2420941, at *3 (D. Mass. Aug. 21, 2025) (dismissing a prohibited transaction claim because the complaint identified "no instance in which a tangible loss of value was actually incurred" as a result of the transaction).

What to watch: Article III standing is one of several tools the Supreme Court identified for screening "barebones" prohibited transaction claims. *Cunningham*, 604 U.S. at 708. How—and how consistently—courts will deploy these tools, including mechanisms such as Federal Rule of Civil Procedure 7 replies addressing asserted exemptions, remains to be seen.

II. Significant Appellate Developments

Recent appellate decisions continue to define both the procedural and remedial boundaries of ERISA litigation, particularly in the contexts of arbitration and class certification.

A. The Effective Vindication Doctrine and ERISA Section 502(a)(2) Claims

Since early 2023, several federal appellate courts have addressed the enforceability of arbitration agreements that purport to waive the right of any individual plan participant to bring a representative claim under Section 502(a)(2) of ERISA. Most recently, the Fifth Circuit joined the Second, Third, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits in holding that because ERISA Section 502(a) grants participants and beneficiaries the right to bring representative actions on behalf of a plan, arbitration agreements cannot constrain plaintiffs pressing claims under that section to seek only individual relief.

In *Parrott v. International Bancshares Corp.*, the plaintiff sought relief for alleged fiduciary breaches both on behalf of the plan itself under Section 502(a)(2) and in his individual capacity under Section 502(a)(3). 167 F.4th 728, 734 (5th Cir. 2026). Defendants moved to compel individual arbitration of Parrott's claims pursuant to plan language stating that 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." *Id.* at 734. After the district court denied a motion to compel arbitration, Defendants appealed, arguing that, at least as to Parrott's Section 502(a)(2) claim, consent by the plan to the challenged arbitration provision rendered it enforceable.

The Fifth Circuit held that Parrott could not be compelled to arbitrate his 502(a)(2) claim on an individual basis. *Id.* at 739. It relied on the judicially created "effective vindication" doctrine. That doctrine stems from Supreme Court dictum that expressed a "willingness to invalidate" arbitration agreements that prevent a prospective litigant from effectively vindicating a statutory cause of action. *American Express Co. v. Italian Colors Restaurant*, 570 U.S. 228, 235 (2013). As several other Circuits had done previously, the Fifth Circuit in *Parrott* reasoned that, as written, the arbitration agreement ran afoul of the effective vindication doctrine because Section 502(a)(2) grants participants and beneficiaries a right to bring representative actions, and the arbitration provision precluded such actions. For a more detailed discussion which includes information about other noteworthy aspects of the decision, see our recent article about it in Law360.

While *Parrott* was the latest circuit to apply the effective vindication doctrine to ERISA Section 502(a)(2) claims, the Second Circuit reaffirmed its previous application of the doctrine just days before *Parrott* was issued. *See Duke v. Luxottica U.S. Holdings Corp.*, 167 F.4th 16 (2d Cir. 2026). In *Duke*, Defendants advanced several arguments to try to distinguish or avoid Second Circuit precedent applying the effective vindication doctrine to Section 502(a)(2) claims. The court rejected those arguments, holding that there is a "qualitative difference" between Section 502(a)(2) claims, in which a plaintiff "seeks relief for an 'absent principal,'" and typical class or collective actions. *Duke*, 167 F.4th at 31. In the former circumstance, the court held that a waiver of the right to bring a representative action is problematic.

Practical impact: While several federal courts of appeals have now applied the effective vindication doctrine to prevent bans on the assertion of Section 502(a)(2) claims on a representative basis, ERISA claims generally remain subject to mandatory arbitration agreements. As a result, plan sponsors who wish to successfully deploy such agreements as part of their risk-mitigation strategy will need to carefully check operative arbitrability provisions for conflicts with statutory rights and remedies.

B. Fourth Circuit Limits Mandatory Class Treatment for Defined Contribution Claims

Section 502(a)(2) claims also came under scrutiny, this time at the class-certification stage, in *Trauernicht v. Genworth Fin. Inc.*, 169 F.4th 459 (4th Cir. 2026). In *Trauernicht*, the Fourth Circuit reversed certification of a mandatory Rule 23(b)(1) class action covering claims for monetary relief based on allegedly imprudent investments in a defined contribution plan. *Id.* at 463.

The court emphasized that the alleged injury—and any potential recovery—went to participants' individual accounts, and that the specifics of the injury and recovery would vary based on how each individual participant had managed those accounts. *Id.* at 467–469. As a result, the plaintiffs were effectively pressing "individualized monetary claims" even though their individual recoveries would flow through "the Plan," and the court thus held both that they could not proceed under Rule 23(b)(1), *id.* at 470–471, and that Rule 23(a)(2) commonality was lacking, *id.* at 474.

Why this matters: Plaintiffs often assume that ERISA claims are necessarily suited for aggregate treatment. *Trauernicht* underscores that this is not necessarily so, especially in defined contribution cases involving individualized monetary relief.

III. Regulatory and Policy Context

As of this update, a Department of Labor (DOL) draft proposal addressing fiduciary duties in selecting certain investment options remains under review at the Office of Information and Regulatory Affairs (OIRA).

As we discussed in a recent client alert about the proposal, notice of the proposed rule was announced on March 31, 2026, with a comment period ending on June 1, 2026. Fiduciary Duties in Selecting Designated Investment Alternatives, 91 Fed. Reg. 16088 (proposed March 31, 2026) (to be codified at 29 C.F.R. pt. 2550).

Announcing as its goal the alleviation of regulatory and litigation-related impediments to workers' ability to access "competitive returns and asset diversification" through their retirement accounts, the proposal would create a safe harbor framework for fiduciaries selecting designated investment alternatives for participant-directed individual account plans. The preamble to the proposed rule indicates that the DOL intends its "explication of a prudent process to be entitled to *Skidmore* deference (*Skidmore v. Swift & Co.*, 323 U.S. 134 (1994)) as persuasive authority regarding what constitutes a prudent process." 91 Fed. Reg. 16092.

The proposed safe harbor framework has three primary components. First, it identifies a set of factors fiduciaries should consider when selecting investment alternatives—such as performance, fees, liquidity, and complexity—while emphasizing that the list is non-exhaustive and applies only where relevant. Second, it outlines a deliberative process for evaluating those factors, focusing on consideration of alternatives, risk-adjusted returns, and alignment with the plan's objectives and participant needs. It provides illustrative examples of how fiduciaries may apply that framework. Third, the proposal provides that fiduciaries who follow this process are presumed to satisfy ERISA's duty of prudence under Section 404(a)(1)(B), entitling their decisions to significant deference in subsequent litigation.

Although the proposal reflects particular attention to alternative assets and references President Trump's Executive Order 14330, its safe harbor framework applies more broadly to investment selection decisions and could influence prudence litigation across a wide range of plan offerings.

What to watch: The comment period ends on June 1, 2026. The final rule—and the extent to which it alters the proposed safe harbor—may likely influence how courts evaluate fiduciary decision making in investment-selection and monitoring cases.

Closing

We will continue to monitor these developments and provide updates as additional decisions are issued and new cases progress.

[1] A pension risk transfer generally occurs when a plan sponsor transfers plan assets to a third-party insurance company in exchange for annuity contracts on behalf of plan beneficiaries, thus shifting liability for non-performance from the benefit plan trust to the insurance company. *Id.* at 3.

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