

GIBSON DUNN



ERISA Litigation Update

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Eleventh Circuit Overrules Longstanding ERISA Exhaustion Rule for Fiduciary-Breach Claims

The en banc decision removes a significant threshold defense to statutory ERISA suits in Alabama, Florida, and Georgia—but leaves exhaustion before bringing benefit claims intact and an important plan-document question unresolved.

In a significant change to ERISA litigation in the Eleventh Circuit, the court this week held *en banc* that participants bringing statutory ERISA claims—including claims for breach of fiduciary duty—need not exhaust a plan’s internal claims procedures before filing suit. In *Bolton v. Inland Fresh Seafood Corp. of America, Inc.*, the court overruled its forty-year-old decision in *Mason v. Continental Group, Inc.* Under *Mason*, the Eleventh Circuit was the only circuit to extend the administrative exhaustion requirement beyond claims for benefits due under an ERISA plan, where courts consistently require exhaustion, to an across-the-board requirement for all statutory ERISA claims.^[1]

As we explained in our [March 30, 2026 alert](#), the Department of Labor had urged the court to abandon the rule set forth in *Mason*. The court has now done so, bringing the Eleventh Circuit into line with the majority of federal appeals courts and making it easier for plan participants in Alabama, Florida, and Georgia to bring fiduciary-breach and other statutory claims directly in federal court.^[2]

What the Eleventh Circuit Decided

The *Bolton* case arose from an employee stock ownership plan's purchase of company shares in a \$92 million transaction. Plan participants alleged that the plan paid an inflated price and that its fiduciaries failed to conduct adequate due diligence. The district court dismissed their claims under ERISA § 502(a)(2) and (a)(3) for failure to exhaust administrative remedies, and a panel affirmed under *Mason*. Two concurring judges opined that *Mason* was wrongly decided and should be overruled.^[3] The court then took the case *en banc*.^[4]

The full court rejected *Mason*'s exhaustion rule as an "atextual product of judicial creation based solely on policy reasons." ERISA contains no exhaustion requirement for statutory claims, the court explained, and the perceived advantages of internal review cannot justify adding a prerequisite Congress did not impose. The court also noted that seven other circuits reject mandatory exhaustion for statutory claims and that requiring alleged fiduciary wrongdoers to review complaints against themselves can present an inherent conflict.^[5]

Importantly, the court limited its holding in two respects. First, it expressly did not disturb its precedent generally requiring participants to exhaust administrative remedies when challenging a denial of benefits under a plan's terms. Second, it left open whether a plan can independently impose an enforceable exhaustion requirement for statutory claims. The court held that the particular plan in *Bolton* did not do so: its claims provisions said participants "may" submit claims, rather than requiring them to. The court also declined to treat an exhaustion reference in the plan's arbitration clause as controlling, because no party had moved to compel arbitration.^[6]

The court reversed the dismissal and remanded to the panel. It also declined the defendants' request to apply the new rule only prospectively, concluding that the usual approach to retroactivity supported applying its holding in this case.^[7]

Why This Matters for Plan Sponsors and Fiduciaries

For employers and fiduciaries, the immediate consequence is the loss of a defense that historically could dispose of statutory ERISA claims in district courts within the Eleventh Circuit before the merits were reached. Plan participants asserting excessive-fee, imprudent-investment, prohibited-transaction, ESOP-valuation, or similar fiduciary claims may now proceed directly to court without first exercising a plan's administrative appeal process. That may accelerate litigation, increase early defense costs, and reduce opportunities to address complaints internally before suit.

Sponsors also should not assume that simply adding mandatory exhaustion language to a plan will restore the exhaustion defense for statutory claims. The court expressly reserved whether such a provision would be enforceable, and the DOL argued against allowing plan language to restrict statutory access to court.^[8]

The *Bolton* decision does not, however, eliminate claims administration as a meaningful safeguard for defendants for many claims involving ERISA plans. Benefits disputes remain subject to the circuit's established exhaustion framework.

Practical Considerations

Plan sponsors and fiduciaries with connections to the Eleventh Circuit may wish to consider:

- reviewing claims and appeals provisions, and related summary plan description language, to determine what procedures actually apply and whether the documents describe those procedures consistently;
- reassessing any pending or anticipated statutory ERISA litigation in which exhaustion was expected to be a threshold defense, while preserving exhaustion arguments in traditional benefit-denial cases; and
- maintaining effective voluntary channels for identifying and resolving participant concerns, even for those disputes where administrative review is no longer a prerequisite to litigation.

Takeaway

Bolton marks a consequential shift for ERISA litigation in the Eleventh Circuit. Sponsors and fiduciaries operating plans in Alabama, Georgia, and Florida can no longer rely on *Mason* to require pre-suit exhaustion of statutory fiduciary-breach claims. Although plan-based exhaustion provisions present an unresolved question, the better immediate focus is on adjusting litigation strategy, preserving robust benefit-claims procedures, and ensuring that internal processes remain useful for resolving plan participant concerns before they become lawsuits.

[1] *Bolton v. Inland Fresh Seafood Corp. of Am., Inc.*, No. 24-10084, slip op. at 2, 12 (11th Cir. Oct. 13, 2026) (en banc) (Dkt. 95-1) (*Bolton II*).

[2] *Id.* at 7–9; see Gibson Dunn, DOL Urges Eleventh Circuit to Reconsider ERISA Exhaustion Rule for Fiduciary-Breach Claims (Mar. 30, 2026), available at <https://www.gibsondunn.com/dol-urges-eleventh-circuit-to-reconsider-erisa-exhaustion-rule-for-fiduciary-breach-claims/>.

[3] *Bolton v. Inland Fresh Seafood Corp. of Am., Inc.*, 155 F.4th 1272, 1289 (11th Cir. 2025) (Jordan, J., concurring).

[4] *Bolton II*, slip op. at 2–4.

[5] *Id.* at 4–9, 12.

[6] *Id.* at 5 n.1, 14–17.

[7] *Id.* at 12–14, 17–18.

[8] *Id.* at 14–17.

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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:

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