

Argent Trust Co. Petitions for Supreme Court to Provide Guidance on ERISA Arbitration

The Supreme Court has previously declined to review appeals courts' decisions that held arbitration provisions unenforceable.

Reported by [REMY SAMUELS](#)

As district courts have been split over the enforceability of arbitration clauses in ERISA plans, the U.S. Supreme Court is once again being asked to weigh in on the issue.

Argent Trust Company filed a [petition](#), *Argent Trust Co. vs. Ramon Cedeno et al.*, on October 7 in the Second Circuit Court of Appeals asking the Supreme Court to provide guidance on whether complaints under the Employee Retirement Income Security Act should be addressed by arbitration or by trial.

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The Supreme Court last year declined petitions requesting review of Third and Tenth Circuit Court decisions in which the appeals courts held arbitration provisions unenforceable.

Argent Trust argued in its petition that two circuits—the Ninth Circuit and Seventh Circuit—have concluded that there is “nothing in ERISA that would preclude individual arbitration of ERISA claims.” However, the Third, Sixth, Tenth and Second Circuits have previously reached the opposite conclusion in invalidating ERISA plan arbitration provisions.

Argent Trust also asked the Supreme Court to review and reverse a decision made by the Second Circuit in May in which the company lost an appeal seeking to force arbitration in a dispute over a \$242 million stock ownership plan transaction with Strategic Financial Solutions LLC. Argent served as the trustee for Strategic's ESOP through October 31, 2019, after which it was replaced.

As trustee, Argent had “exclusive authority to manage and control the assets of the plan and had sole and exclusive discretion to authorize and negotiate the transaction on the plan's behalf.”

In the 2020 case *Dejesus Cedeno v. Argent Trust Company et al.*, Ramon Dejesus Cedeno, an employee of Strategic Financial Solutions LLC and a participant in its Strategic Employee Stock Ownership Plan, alleged that the plan's arbitration provision was unenforceable. The plaintiff relied on a judge-made “effective vindication exception” to argue that ERISA overrides both the plan language (requiring arbitration) and the mandate of the Federal Arbitration Act (requiring the enforcement of valid arbitration provisions).

The Second Circuit agreed, holding that because Cedeno's only avenue for relief under ERISA was to seek a plan-wide remedy, and the “specific terms of arbitration agreement [sought] to prevent Cedeno from doing so,” the agreement is unenforceable.

While the appeals court was still considering the case, the Department of Labor released an amicus brief supporting Cedeno, while the U.S. Chamber of Commerce, American Benefits Council and The ESOP Association showed support for Argent.

Argent argued that the Second Circuit's decision is problematic because it concludes that ERISA does not allow individual arbitration of statutory claims, which Argent wrote is a "decision that will have far-reaching unintended effects, even beyond arbitration matters."

Lee Polk, a partner in Wagner Law Group, says the issue of arbitration in ERISA plans is a "high-stakes issue" and that a lot of people are hanging on pins and needles about whether they have to go to an arbitrator, as appealing an arbitrator's decision is "extremely difficult."

"It's very difficult to overturn an arbitrator's decision if you're on the losing end," Polk says. "Also, the courts have a track record in the last few years of being inconsistent in rulings, and that's a product of the effective vindication doctrine."

That doctrine empowers courts to void arbitration agreements that prevent a party from effectively vindicating their legal rights. Polk says this doctrine remains viable in some circuits but is not so strong in other circuits.

Meanwhile, two bills were recently introduced in the House of Representatives and the Senate that would make mandatory arbitration clauses unenforceable in all ERISA-covered plans. If passed, it would mean that all retirement plans covered by ERISA would be banned from requiring pre-dispute arbitration as a condition of joining the plan.

The bills would also eliminate discretionary authority for plan administrators in providing benefits.

The Supreme Court considers the thousands of petitions it receives on a rolling basis to decide what it will add to the docket.

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