COMPLIANCE | November 12, 2024

Supreme Court Declines to Review Petition on ERISA Arbitration

This is the fifth time since 2019 that the Supreme Court has refused to consider the issue.

Reported by REMY SAMUELS

The U.S. Supreme Court once again declined to consider whether complaints under the Employee Retirement Income Security Act may be addressed by arbitration.

Argent Trust Co. filed a petition on October 7, *Argent Trust Co. v. Ramon Cedeno et al.,* asking the Supreme Court to review and provide guidance on the arbitration issue. On November 4, the Supreme Court declined to review the petition.

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This is the fifth time since 2019 that the Supreme Court has declined to review the dispute that impacts 401(k) plans, 403(b) plans and employee stock ownership plans. Last year, the high court declined petitions requesting review decisions from the U.S. 3rd and 10th Circuit Courts of Appeal which held arbitration provisions unenforceable.

Lee Polk, a partner in Wagner Law Group, says, "for an issue with thoughtful parties and positions on both sides—an issue relating to a federal law backed by a strong preemption clause that channels most big issues to the federal courts—and with a clear circuit split, one might think the Supreme Court would have considered *Argent* a compelling candidate for certiorari."

Polk believes other cases in the Supreme Court's docket pushed the arbitration issue in *Argent* off the court's list of priorities, at least for now.

Argent Trust had argued in its petition that two circuits—the 9th and 7th—concluded there is "nothing in ERISA that would preclude individual arbitration of ERISA claims." Meanwhile, the 2nd, 3rd 6th and 10th Circuits have previously reached the opposite conclusion in invalidating ERISA plan arbitration provisions.

In its filing, Argent Trust asked the Supreme Court to consider "the important federal questions presented here as follows: ERISA dos not require participants to bring claims on behalf of their entire benefit plans, and nothing in ERISA precludes individual arbitration."

In an August filing, Argent Trust had asked the Supreme Court to reverse a May decision from the 2nd Circuit in which a three-judge panel denied, with one judge dissenting, Argent's appeal 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.

Ramon Cedeno, an employee at Strategic and a participant in the ESOP, alleged that the plan's arbitration provision was unenforceable. The 2nd 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 the arbitration agreement [sought] to prevent Cedeno from doing so," the agreement was unenforceable.

However, Argent argued that the decision was problematic because it concluded that ERISA does not allow individual arbitration of statutory claims.

In another recent case, the 6th Circuit of Appeals granted an appeal to overturn a district court decision that would have forced into arbitration a lawsuit against the Kellogg Co. over excessive 401(k) plan fees.

Meanwhile a bill was introduced in September in both the U.S. House of Representatives and the Senate— the Employee and Retiree Access to Justice Act—that would make mandatory arbitration clauses unenforceable in 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 law firm Morgan Lewis & Bockius LLP and the U.S. Chamber of Conference had voiced opposition to the bill, arguing it could encourage costly litigation and more frivolous lawsuits, since many weaker cases are filtered out by the more expedited arbitration process.

“Even with early movement to fix it legislatively, the arbitration issue is not going away soon,” Polk says.

Tags	arbitration, Supreme Court
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