

4th Circ. Genworth Ruling Raises Bar For ERISA Class Actions

By Kellie Mejdrich

Law360 (March 13, 2026, 7:35 PM EDT) -- A recent Fourth Circuit decision in a suit challenging Genworth Financial Inc.'s inclusion of target-date fund investments as employee retirement plan options will make it tougher to certify similar class actions and could have a ripple effect in a broader range of cases, experts told Law360.

Tuesday's **published opinion** knocked out a certified class of more than 4,000 current and former 401(k) plan participants who alleged Genworth violated the Employee Retirement Income Security Act by offering and retaining a suite of underperforming BlackRock Inc. target-date fund investments. BlackRock isn't named as a defendant in the suit, which ex-workers filed in 2022.

The three-judge panel held that the certification of a mandatory, no-opt-out class under Rule 23(b)(1) of the Federal Rules of Civil Procedure was inappropriate because of the varying experience of investors in the BlackRock funds, which adjust risk based on proximity to retirement.

The panel said target-date fund investors' differing experiences undermined commonality needed for certification under Subsection b(1) and that the plaintiffs would need to pursue certification under Rule 23(b)(3), which is designed to preserve the due process concerns of absent class members by giving them notice and allowing them to opt out.

The panel also found that target-date fund investors' individual circumstances meant they didn't all suffer the same injury, as some fund investors fare better than comparison funds in the ex-workers' complaint.

Certifying an opt-out class requires a more rigorous analysis from the court on whether common questions outweigh the issues of individual class members.

"It's big, and it's significant, because I think it alters the playing field in terms of the way in which fiduciary breach claims can be litigated under ERISA, but it's also based on fundamental notions of what Rule 23 and class action litigation is all about," Gerald Maatman, chair of Duane Morris LLP's class action defense practice, said of the Genworth decision.

Maatman, an adjunct professor at Northwestern University Pritzker School of Law, said he's planning to add the case to his curriculum for the next semester.

"I think it's a great read, and if one takes a look at it, you learn a lot about the way in which ERISA class action litigation should be ordered and thought about. So it's going to have a significant impact on future litigation patterns," Maatman said.

Attorneys highlighted the Fourth Circuit's holding that the lower court erred in concluding individuals' claims on behalf of the plan were inherently common. The panel found that in the context of a defined contribution plan, individualized monetary claims against an ERISA fiduciary were with respect to workers' individual accounts.

"The most important part of the ruling, from a defense perspective, is that it's a rejection of an effort by a plaintiff class to use 23(b)(1)(b) to certify a class," said James Morsch, chair of the class action litigation practice at Saul Ewing LLP. "And that's a provision that plaintiffs lawyers want to use, because they don't have to sweat the predominance inquiry in b(3)."

Morsch, who is also an adjunct professor who teaches about class actions at Loyola University Chicago School of Law, said the Fourth Circuit's ruling rejected "an effort to obscure what was a damages class action that should have been dealt with under 23(b)(3) by stuffing it into b(1)."

Morsch also said the panel's decision underscored how on certification of a fiduciary breach claim involving the target-date fund, "it's not just a question of damages. It's a question of, were they actually injured?"

Charles Field, a plaintiff-side partner at Sanford Heisler Sharp McKnight LLP and co-chair of the firm's financial management and ERISA litigation practice group, said he thought the Fourth Circuit misinterpreted U.S. Supreme Court precedent regarding the representative nature of ERISA claims.

The Genworth ruling also conflicted with the Second Circuit's May 2024 decision in [Dejesus Cedeno v. Argent Trust](#) , Field said. In that case, the appeals court **refused to force arbitration** of a federal benefits proposed class action based on a holding that doing so would prevent a plan participant from seeking remedies on behalf of his employee stock ownership plan. The Supreme Court later **denied an employer-side petition** for review of that decision.

"I think they got it wrong," Field said of the Fourth Circuit. Field pointed to how the Supreme Court described different kinds of representative claims in its **2022 decision** [Viking River Cruises v. Moriana](#) , which the Fourth Circuit did not cite. In that decision, the justices outlined how in non-class representative actions, a single agent litigates on behalf of a single principal.

"It's a single agent authorized by statute — ERISA — to represent a single principal — the plan. It's a recovery on behalf of the plan, all losses incurred by the plan, and class certification does not magically transform this case from a single agent, single principal [representative action] into a multiparty class action," Field said. "It just doesn't."

Defense-side attorneys expect the decision to hamper class certification efforts in the Fourth Circuit and potentially beyond, though it's not clear if or how courts might apply this decision outside the context of challenges to target-date fund investments.

The Genworth decision has already prompted a federal judge in Virginia to consider reexamining a March 6 decision to **certify a class of participants** in a 401(k) plan for employees of the National Rural Electric Cooperative Association, an electric utility trade group, on claims that their retirement savings were dragged down by excessive administrative fees.

Andrew Oringer, employer-side partner and general counsel at The Wagner Law Group, said the application of the Fourth Circuit's decision to any one ERISA class action would depend on the specifics of the case.

"These cases are very, very fact sensitive, and any distinction between one type of claim and another could lead to very different results on class certification," Oringer said.

Erin Weber, an employer-side attorney and partner in Winston & Strawn LLP's employee benefits and executive compensation practice group, also said she expects the decision's application could vary depending on the specific claims involved.

But overall, she added, courts seem to be leaning toward picking up on differences between the situations of proposed class members in ERISA suits.

"You just see more and more courts trending towards an acknowledgment that these claims are much more individualized than the plaintiff's attorneys would like to portray them," Weber said.

Duane Morris' Maatman said the Genworth case would likely generate a petition for rehearing at the Fourth Circuit and could percolate up to the nation's highest court.

He said he also was watching for a push by the defense bar to expand the bar on mandatory class action certification in ERISA disputes beyond the context of target-date fund investments and potentially push the requirement for opt-out classes to other circuits.

"I think you're going to see defense lawyers push the envelope and say, let's apply this principle in this other context," Maatman said.

--Editing by Brian Baresch and Lakshna Mehta.