

Appeals Court Ruling Upends Path for ERISA Class Actions

After the 4th Circuit ruled that losses in 401(k) plans are individualized, lawyers must weigh the ripple effects on large fiduciary-breach complaints.

Reported by [JAMES VAN BRAMER](#)

A federal appeals [court ruling last week](#) that rejected the class certification in a proposed lawsuit against Genworth Financial is already reshaping the landscape of retirement plan litigation, prompting courts and lawyers to reconsider how to make claims related to investment performance in 401(k) plans.

In its March 10 decision in *Trauernicht v. Genworth Financial Inc.*, the U.S. 4th Circuit Court of Appeals held that fiduciary breach claims involving defined contribution plans under the Employee Retirement Income Security Act involve individualized monetary losses, not a single shared injury. As a result, the 4th Circuit ruled that those claims cannot proceed as mandatory class actions under Rule 23(b)(1)—a procedural route long relied upon by plaintiffs' lawyers in retirement plan litigation.

[For more stories like this, sign up for the PLANSPONSOR NEWSDash daily newsletter. →](#)

The 4th Circuit's decision overturned a district court order that had certified a class of more than 4,000 participants in Genworth's 401(k) plan who had invested in BlackRock target-date funds during the time period identified in the case. The plaintiffs alleged the funds underperformed competing options and that the company breached its fiduciary duties by retaining them.

But the appeals court concluded that the structure of defined contribution plans—in which each participant holds an individual account, the value of which rises and falls independently—means losses must be evaluated participant by participant. Because damages depend on factors like how much each person invested and when they bought or sold a holding, the court ruled the claims amount to “individualized monetary claims” that cannot be bundled into a mandatory class action.

The ruling also stated that the district court failed to conduct the “rigorous analysis” required to determine whether proposed class members suffered the same injury—noting that some investors in the funds may have performed as well as or better than the funds the plaintiffs offered as comparisons.

Immediate Impact

The decision's impact was immediate. Just three days later, a federal judge in Virginia—a state under the 4th Circuit's jurisdiction—vacated a class certification order in a separate ERISA lawsuit against the National Rural Electric Cooperative Association, citing *Trauernicht* as precedent.

The order in *Mullins et al. v. National Rural Electric Cooperative Association et al.* effectively erased the previously certified class while the district court reevaluates the claims under the 4th Circuit's new framework.

Case Consequences

A district court citing the 4th Circuit's ruling signals its potential influence. To some ERISA attorneys, it could even impact case filings as a whole.

Andrew Oringer, head of the Wagner Law Group's New York office and an ERISA attorney, says the ruling focuses on procedure but could have outsized effects on whether such cases are filed at all.

“Whether claims can go forward as a class action is a procedural point that, as a practical matter, can be more important than whether the claims are substantively valid,” he says. If lawyers must pursue claims individually, he adds, the logistical and financial hurdles become significant.

In many ERISA fiduciary breach claims, plaintiffs’ lawyers rely on class actions to aggregate relatively small losses across thousands of retirement accounts. Without that mechanism, Oringer says, some claims may simply never be brought.

“There has been some trending away from permitting class certification, generally,” Oringer says. If the 4th Circuit’s reasoning spreads to other courts, “you may really start to see fewer cases of this type being brought.”

A Major Shift

Kent Mason, a partner in Davis & Harman LLP who defends employers in ERISA disputes, describes the opinion as potentially transformative for a wave of investment performance lawsuits targeting target-date funds.

He notes that the 4th Circuit rejected the district court’s assumption that ERISA fiduciary breach claims automatically satisfy the requirement that class members share a common injury. Instead, *Trauernicht* means judges must examine whether investors experienced the same harm—something that may vary widely, depending on when and for how long they held a specific investment.

Participants who invested during different periods could have very different outcomes, Mason says, meaning they may not share the “same injury” required for class treatment.

If courts adopt that reasoning broadly, he says, the analysis could dramatically shrink the size of potential classes in investment performance cases—or eliminate classes altogether.

The 4th Circuit’s decision does not end the case against Genworth. The litigation returns to the district court, where the plaintiffs may attempt to certify a class under a different rule—one that would require notice to class members and allow them to opt out.

Tags

[ERISA](#)

Reported by

[James Van Bramer](#)