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11th Circ. ERISA Exhaustion Shift Furthers Textualist Trend

By **Kellie Mejdrich**

Law360 (October 16, 2026, 2:57 PM EDT) -- An Eleventh Circuit decision overruling decades-old precedent that took a strict view of when federal benefits law claims could be brought in court continues a trend of courts excising judicially imposed rules not contained in statutory text, attorneys say.

In a **unanimous decision** published Tuesday, the full Eleventh Circuit repealed its administrative exhaustion rule for Employee Retirement Income Security Act cases, set in the 1985 case Mason v. Continental Group Inc. , by overruling that decision. Administrative exhaustion refers to going through all available in-house means of hashing out a dispute before a plaintiff can bring a case in court.

In Mason, an Eleventh Circuit panel held that while ERISA itself didn't contain language that required mandatory exhaustion for all statutory claims, the court would impose such a rule for policy reasons, including reducing frivolous suits.

Attorneys from both sides of the ERISA bar agreed that Tuesday's decision was a fairly straightforward one in which the circuit court clearly identified a problem with its reading of ERISA and decided to make a fix.

Peter Sessions, a plaintiff-side partner at Kantor & Kantor LLP, took note of how en banc cases repealing precedent can result in lengthy opinions in which courts elaborate on why they are changing course. That was not so with this 18-page decision.

"This one is pretty short as far as these en banc decisions go. I mean, it's basically [saying], 'Hey, we made a mistake. It's a very clear mistake. Nobody else does it like us, so we have to change.' And I think it's the right thing to do," Sessions said.

Here's a rundown of the decision and its implications.

11th Circ. Joins Sister Circuits

Tuesday's ruling was spurred by former seafood workers' appeal of a Georgia federal court's 2023 decision **dismissing their proposed class action** alleging mismanagement of an employee stock ownership plan, which the judge had based on the Mason precedent.

The group of ex-workers for Tucker, Georgia-based Inland Fresh Seafood Corp. of America Inc. filed suit in November 2022, alleging the company and other caretakers of their benefit plan breached fiduciary duties under ERISA. The ex-workers alleged the defendants structured a deal allowing Inland shares to be sold to the ESOP at an inflated price in a $92 million sale in 2016.

The Eleventh Circuit **granted en banc review** in January after a three-judge **panel affirmed dismissal** of the case in October 2025. Two judges on the panel had penned a concurrence that called for the en banc court to overturn Mason as wrongly decided. The full court **expressed support for the move** during en banc oral arguments in June.

In its decision Tuesday, the full court explained how ruling against requiring exhaustion of statutory claims aligned with holdings of the Third, Fourth, Fifth, Sixth, Ninth, Tenth and D.C. circuits. The only

other appeals court to align with the Mason precedent was the Seventh Circuit, which held in 1996 in Lindemann v. Mobil Oil Corp. that exhaustion can be required at a judge's discretion, the Eleventh Circuit said.

The court said its holding also aligned with the U.S. Supreme Court's instruction, in its 2007 decision Jones v. Bock, for lower courts to avoid exhaustion rules not required by the text of a federal statute. In that case, the justices rejected a judicially created Sixth Circuit rule requiring plaintiffs to plead exhaustion in suits covered by the Prison Litigation Reform Act.

Andrew Oringer, partner and general counsel at the Wagner Law Group and an employer-side benefits attorney, said that how the Eleventh Circuit repealed its precedent was notable.

"It's interesting, especially where there's no intervening event. Like in some of the arbitration cases, you see that the courts overrule themselves because of other things that Congress did that indicate what Congress intended as a bigger picture. That didn't happen here," Oringer said.

"All that happened here is that the court looked at what it had done, looked at what other circuits had done, and decided it was wrong. So that in itself is significant," he said. Oringer was cited in the opinion as one of numerous secondary authorities supporting the majority circuit position that exhaustion wasn't required for ERISA statutory claims.

J.J. Conway, a plaintiff-side partner at J.J. Conway Law and another longtime ERISA attorney, said the decision was "part of a trend of textualist judges reevaluating early ERISA cases that kept litigants out of court."

Conway pointed to a Sixth Circuit panel's 2020 **published opinion on administrative exhaustion** in an ERISA denial-of-benefits case. The panel affirmed a district court's denial of an insurance company's motion to dismiss a single-plaintiff long-term disability dispute based on failure to exhaust administrative remedies. In a concurrence, U.S. Circuit Judge Amul Thapar challenged exhaustion doctrine set by courts under ERISA and urged courts to reconsider those holdings.

"Judge Thapar started the trend," Conway said. "He questioned a lot of the jurisprudence surrounding ERISA exhaustion, and other circuits started following his lead."

Denial-Of-Benefits Claims Not Covered

A critical aspect of the Eleventh Circuit's decision, attorneys said, was that the court specified that its holding was only relevant in disputes involving ERISA statutory claims including breach of fiduciary duty while not disturbing precedent requiring exhaustion for most denial-of-benefits claims under ERISA.

In a footnote, the court said its discussion and holding was limited "to whether ERISA requires administrative exhaustion for statutory claims."

"We do not address our cases requiring exhaustion in cases where a plaintiff is challenging the denial of benefits under the terms of a plan governed by ERISA," the court said, citing its 1990 decision on exhaustion in the denial-of-benefits context, Springer v. Wal-Mart Associates' Group Health Plan, and quoting part of that decision explaining that exhaustion is typically required for such claims.

But even with this limit on the decision's application, plaintiff- and employer-side attorneys predicted there would be debate on the issue. Some speculated that defense attorneys may point to the authority to argue that some statutory claims are instead dressed-up denial-of-benefits claims and are therefore subject to exhaustion.

"I think the next kind of dispute is, when plaintiffs are bringing these claims, there'll probably be some disagreement over, 'Well, is this really a claim for benefits that plaintiffs are trying to dress up as a breach of fiduciary duty claim? But at its heart, it's a claim for benefits that should go through the administrative claim process?'" said Andrew Salek-Raham, principal at Groom Law Group who specializes in ERISA class action defense.

Sessions of Kantor & Kantor took a different view, indicating some plaintiff-side attorneys would like

to extend the scaling back of exhaustion requirements to also apply to denial-of-benefits claims.

"The number one thing they say is, hey, exhaustion is not in ERISA, it's not a requirement, so we're not going to impose it," Sessions said of the Eleventh Circuit decision.

"Well, it's not in there for benefit claims either," Sessions said, pointing to Judge Thapar's concurrence. "He said the exact same thing in a benefits case. He said, this isn't the statute; we shouldn't be making people do this."

Court Holds Plan Doesn't Mandate Exhaustion

Another aspect of Tuesday's decision that attorneys highlighted was its holding that the Inland Fresh ESOP plan's language didn't require administrative exhaustion, beyond the dispute over the Eleventh Circuit's rule.

The holding overruled the three-judge panel and the lower court on whether exhaustion was mandatory under the terms of the ESOP's governing documents. In support of its reading of the plan, the full Eleventh Circuit pointed to multiple permissive statements, including in the summary plan description, that said individuals didn't need to file a formal claim to receive benefits.

Salek-Raham of Groom said this holding may drive some plan sponsors to change language to make clearer that administrative exhaustion is mandatory.

"You might see some plan sponsors looking at their plan documents and potentially amending them to make that a mandatory process, and then courts will have to sort out whether that's permissible or not," he said.

Conway said he believes the holding leaves the door open for appeals courts to possibly lift exhaustion requirements in the denial-of-benefits context.

"A unanimous en banc reversal of 40-year-old precedent is always big news. But perhaps the bigger news is the way the court interpreted the claims and review procedure" within the summary plan description, he said.

"Did it open the door to voluntary, not mandatory, exhaustion of ERISA benefit claims? It seems the answer to that may be yes, to which I say, 'Right on!'" Conway said.

--Editing by Aaron Pelc and Bruce Goldman.

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