Genworth Decision Raises New Obstacles to Class Certification in ERISA 401(k) Fiduciary Breach Litigation

Lorraine Wong

The U.S. Court of Appeals for the Fourth Circuit recently declined to rehear its decision vacating certification of a mandatory class under Federal Rule of Civil Procedure 23(b)(1) in *Trauernicht v. Genworth Financial Inc.* The Court held that fiduciary-breach claims under the Employee Retirement Income Security Act of 1974 ("ERISA") involving a defined contribution plan sought individualized monetary relief and did not satisfy Rule 23's commonality requirement. In doing so, the Court narrowed the availability of mandatory class certification in ERISA fiduciary breach litigation involving defined contribution plans and may significantly affect class-certification strategy in future ERISA cases. If the Fourth Circuit's reasoning is adopted in other circuits, it would have a major impact on ERISA cases involving the manner in which plan assets are invested.

Class Certification under Rule 23

Federal Rule of Civil Procedure 23 governs the process of class certification and involves a two-step analysis. First, the party seeking certification must satisfy each element of Rule 23(a) and prove (1) that the class is sufficiently numerous that joining all members of the class is impracticable; (2) that there are questions of law or fact common to the class; (3) that the claims of the named plaintiffs are typical of the class, and (4) that the named plaintiffs and their attorneys will vigorously represent the interests of the absent class members. Then, the proposed class must satisfy one of Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3) in order to get certified by the court.

A class certified under (b)(1) and (b)(2) is mandatory and does not provide class members with an opportunity to opt out and does not require notice to absent class members. In contrast, Rule 23 (b)(3) "allows class certification in a much wider set of circumstances" and provides greater procedural protections to class members, including the right to receive "the best notice that is practicable under the circumstances" and the right to withdraw from the class. The Supreme Court has instructed that "individualized monetary claims belong in Rule 23(b)(3) because of its greater procedural protections, which are necessary when each class member has an "individualized claim for money."

Case Background

In August 2022, two former employees of Genworth Financial, Inc. ("Genworth") filed a putative class action against Genworth, alleging that Genworth breached its fiduciary duties by imprudently selecting and retaining the BlackRock LifePath Index Target Date Funds ("Black Rock TDFs") as investment options in Genworth's 401(k) plan ("Plan"). Plaintiffs alleged that the funds were imprudent investments and significantly underperformed alternative investment options available to the Plan at the beginning of the class period, which caused losses to their individual accounts.

After denying Genworth's motion to dismiss, the United States District Court for the Eastern District of Virginia certified a class of participants invested in the BlackRock TDFs during the class period under Rule 23(b)(1). The district court reasoned that ERISA §502(a)(2) fiduciary-breach claims are derivative in nature because they are brought on behalf of the plan and seek recovery for plan-wide losses. The district court concluded that the claims inherently presented common issues suitable for class treatment and that mandatory class certification was appropriate.

Fourth Circuit's Decision

The Fourth Circuit reversed, rejecting both of the District Court's conclusions. The Court held that ERISA § 502(a)(2) claims seeking recovery for losses to individual accounts are inherently individualized and cannot be joined in a mandatory class under Rule 23(b)(1), which does not provide class members with notice or opt-out rights. The Fourth Circuit also concluded that the plaintiffs' claims failed to satisfy the commonality prerequisite because many class members did not experience the same injury in their BlackRock TDFs investment.

In June 2026, the Fourth Circuit denied the plaintiffs' petition for rehearing *en banc*. The plaintiffs argued that the panel's decision conflicted with ERISA's text, U.S. Supreme Court precedent, and decisions from other circuits. With rehearing denied, the case returns to the district court, where the plaintiffs may seek class certification under a different provision of Rule 23(b).

Holding 1: Rule 23(b)(1) certification was improper

The Fourth Circuit held that ERISA § 502(a)(2) claims arising from a defined contribution plan are "individualized monetary claims" and therefore cannot automatically be certified as a mandatory class under Rule 23(b)(1). Although such claims are brought on behalf of the plan, the court emphasized that, unlike a defined benefit plan, where recoveries generally inure to a collective pool of plan assets, gains and losses in a defined contribution plan are allocated to individual participant accounts. As a result, any recovery ultimately flows to participants' individual accounts based on their individual losses. Those losses may vary significantly depending on factors such as the amount invested, the length of time an investment was held, and the timing of purchases and sales. The court therefore concluded that these claims seek individualized monetary relief rather than a single plan-wide remedy and thus cannot be certified as a mandatory class under Rule 23(b)(1).

Relying on U.S. Supreme Court precedent, the court further reasoned that claims seeking individualized monetary relief belong, if anywhere, in a Rule 23(b)(3) class, which provides class members with greater procedural protections, including notice and the opportunity to opt out of the lawsuit.

Holding 2: Commonality was not satisfied

The Fourth Circuit also concluded that Plaintiffs' claims failed to satisfy the commonality requirement under Rule 23(a)(2), which requires plaintiff to demonstrate that class members suffered the same injury. The Court rejected the district court's view that ERISA fiduciary-breach claims are inherently common and emphasized that participants experienced the challenged investments differently and did not have the same injury. Participants made their own investment decisions, invested in different vintages of the BlackRock TDFs, which carried different risks, and bought, sold, and withdrew assets at different times under different market conditions. As a result, participants' gains and losses under the BlackRock TDFs varied based on their individual investment experience.

The court also found that some putative class members may not have suffered any injury at all. Plaintiffs measured injury by comparing the BlackRock TDFs to four comparator target-date funds, two of which were actively managed and two of which were passively managed. Because the BlackRock TDFs were passively managed, the court viewed the two passive comparator funds as the more appropriate benchmark. The court noted that the two passive comparator funds underperformed the BlackRock funds during the class period, meaning that some participants would have been better off invested in the challenged BlackRock TDFs than in the proposed comparators. The court therefore concluded that the proposed class had not demonstrated the "same injury" required to establish commonality under Rule 23(a).

More broadly, in the context of a defined contribution plan, the Fourth Circuit held that courts may not assume commonality nor that all participants suffered the same injury simply because an alleged fiduciary breach affected the plan. Instead, courts must conduct a "rigorous analysis" of whether class members suffered the same injury, particularly where gains and losses depend on individualized investment decisions and account performance. Because the district court relied on an assumption of "inherent" commonality rather than undertaking the analysis, the Fourth Circuit concluded that Rule 23(a)(2)'s commonality requirement was not satisfied.

Why It Matters

The Fourth Circuit's decision represents a significant challenge to the long-standing assumption in ERISA litigation that fiduciary-breach claims brought under ERISA § 502(a)(2) are generally suitable for certification as mandatory Rule 23(b)(1) classes because the claims are asserted on behalf of the plan. The court rejected that premise in the context of defined contribution plans, holding that losses and recoveries in such plans are ultimately tied to individual participant accounts and therefore, the impacts on the participants may differ substantially from participant to participant.

The decision is equally significant for its treatment of commonality. Rather than assuming that all participants suffered the same injury because an alleged fiduciary breach affected the plan, the court required a closer examination of whether class members actually suffered the same injury. The court emphasized that participants selected different investment vintages, entered and exited investments at different times, and experienced different market conditions. The court also found that some participants may not have suffered any injury because the passively managed comparator funds identified by the plaintiffs underperformed the challenged BlackRock TDFs during the class period.

As a practical matter, *Trauernicht* may make class certification more difficult in certain ERISA excessive-fee and imprudent-investment cases involving defined contribution plans, particularly within the Fourth Circuit. Defendants are likely to rely on the decision to argue that participant-specific differences defeat commonality and that claims seeking recovery for losses to individual participant accounts should not proceed as mandatory Rule 23(b)(1) classes.

Whether other circuits will adopt the Fourth Circuit's reasoning remains to be seen. Although the plaintiffs' petition for rehearing *en banc* was unsuccessful, it received support from a group of employee benefits law professors, who argued in an amicus brief that the panel's reasoning departs from longstanding interpretations of ERISA. For now, however, Defendants in cases across the country are likely to cite *Trauernicht* for the proposition that courts may be less willing to treat fiduciary-breach claims involving defined contribution plans as inherently suitable for class treatment. Instead, courts may increasingly focus on whether participants actually suffered the same injury and whether recovery is truly plan-wide or instead reflects individualized account losses.

PUBLICATION INFO:

The Trucker Huss Benefits Report is published monthly to provide our clients and friends with information on recent legal developments and other current issues in employee benefits. Back issues of the Benefits Report are posted on the Trucker Huss website (www.truckerhuss.com (https://www.truckerhuss.com))

Editor: Nicholas J. White, nwhite@truckerhuss.com (mailto:nwhite@truckerhuss.com)

SAN FRANCSICO
135 Main Street, 9th Floor
San Francisco, California 94105-1815

LOS ANGELES
15760 Ventura Blvd, Suite 910
Los Angeles, California 91436-3019

PORTLAND
329 NE Couch St., Suite 200
Portland, Oregon 97232-1332

Tel: (415) 788-3111
Fax: (415) 421-2017
Email: info@truckerhuss.com (mailto:info@truckerhuss.com)
Website: www.truckerhuss.com (https://www.truckerhuss.com)