

Connecticut District Court Again Certifies Nationwide Class in 401(k) Revenue Sharing Case

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After the Second Circuit vacated his original class certification order last year, the Connecticut federal district court judge overseeing a long-running 401(k) "revenue sharing" case against retirement plan service provider, Nationwide Life Insurance Company, has again certified a class, but this time under Federal Rule of Civil Procedure 23(b)(3) rather than Rule 23(b)(2). According to the Second Circuit, the district court's original Rule 23(b)(2) certification of a nationwide class of retirement plan trustees in *Haddock v. Nationwide Financial Services, Inc.* failed to survive the Supreme Court's landmark 2011 *Wal-Mart* decision because the case would require thousands of individualized proceedings to determine each class member's entitlement to a monetary award. However, the district court revisited the class certification issue on remand, this time analyzing plaintiffs' renewed motion under Rule 23(b)(3). The district court first found that the Second Circuit's mandate did not disturb its previous analysis regarding the proposed class's satisfaction of Rule 23(a)'s prerequisites. Thus, the court reaffirmed that aspect of its original holding, as well as its prior determination that plaintiffs' ERISA liability theories are legally viable. Second, the court held that the proposed class met Rule 23(b)(3)'s "predominance" and "superiority" requirements, finding that the two "core determinations" of fiduciary function and breach with respect to Nationwide's receipt of revenue sharing payments from mutual funds placed on its retirement product menu "both hinge on the ERISA consequences of Nationwide's basic investment process, a process that was relatively uniform across the proposed class." In making this finding, the court reiterated its earlier conclusion that "the plaintiffs' liability case is particularly well suited for class-wide adjudication" because the plaintiffs' "legal and factual theories are premised on the structural nature of Nationwide's contractual relationship with the Plans, which is identical across the Class." The court declined to credit Nationwide's concerns about individualized issues associated with adjudicating plaintiffs' disgorgement claims, and it similarly rejected Nationwide's "manageability" arguments.

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