

Ninth Circuit Steps In-Line on Arbitrability of ERISA Claims

October 04, 2019

The Ninth Circuit, in back-to-back opinion and memorandum decisions in *Dorman v. Charles Schwab Corp.*, overruled long-standing precedent that ERISA claims are not arbitrable. The plaintiff, a former Schwab employee, filed a class action suit alleging that the defendants violated ERISA and breached their fiduciary duties by including and retaining several poorly performing Schwab-affiliated investment funds in a defined-contribution retirement plan to generate fees for Schwab and its affiliates.

The district court denied the defendants' motion to compel individual arbitration pursuant to an arbitration agreement in the 401(k) retirement plan. On interlocutory appeal, the Ninth Circuit addressed the threshold question whether ERISA claims can be subject to mandatory arbitration. In an opinion decision, the court concluded that its 1984 decision in *Amaro v. Continental Can Co.*, which held that ERISA claims were not arbitrable, was “clearly irreconcilable” with intervening Supreme Court precedent, including *American Express Co. v. Italian Colors Restaurant* in 2013, and was no longer binding precedent.

In a companion memorandum decision, the Ninth Circuit addressed the enforceability of an arbitration provision that was added to the Schwab defined-contribution plan in December 2014 that provided for individual arbitration only and precluded arbitration on a class, collective, or representative basis. The court rejected the district court's finding that the arbitration clause was invalid, finding that the plaintiff's claims arose out of and related to the plan and that ERISA claims may be subject to mandatory arbitration. Because the arbitration provision was valid and enforceable in accordance with the Supreme Court's recent decision in *Lamps Plus Inc. v. Varela*, the Ninth Circuit reversed and remanded the case with instructions for the district court to order arbitration of the plaintiff's individual claims.

These decisions bring the Ninth Circuit in line with recent Supreme Court precedent upholding the arbitrability of ERISA claims and enforcing class waivers in arbitration provisions.

Authored By



Irma Reboso Solares

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