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ERISA Fiduciary Duty Claim Against Plan Not Subject to Arbitration

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Although courts routinely enforce arbitration agreements, they will not compel arbitration of claims outside the scope of the parties' agreement. That was the outcome in *Hawkins v. Cintas Corp.*, in which two former employees and participants in the company's defined contribution retirement plan sued the company for breach of fiduciary duty under ERISA for mismanaging the plan.

The company moved to compel arbitration, based on an arbitration provision in the plaintiffs' employment agreements. The plaintiffs opposed, arguing that because the action was filed on behalf of the plan, the arbitration provisions in the employment agreements — which did not include the plan — did not apply. In response, the company argued that because the plan is a defined contribution plan with individual accounts, the participants' claims are inherently individualized.

The court disagreed, holding that when a cause of action is focused on mismanagement of the entire plan, not specific individual accounts, the claim falls "squarely" within ERISA section 409 and the relief sought is to benefit the plan. The court also found that there was no valid arbitration agreement between the plan and the company. The arbitration clause in the employment agreement was limited to claims by an employee and did not extend to nonentities, such as the plan. Consequently, the court denied the motion to compel arbitration.

Citing Ninth Circuit authority, the court acknowledged that the outcome might have been different if the plan documents had required arbitration of claims, disputes, or breaches arising out of the plan. The court's reasoning seems, however, to foreclose the possibility that an arbitration provision in an employment agreement could extend to claims that other parties (e.g., a plan) could have against the employer. But careful thought should be given to the possibility of including language in employee agreements that covers such claims.

The case provides yet another cautionary tale about the importance of careful drafting of plan documents and arbitration provisions.

The action is on appeal to the Sixth Circuit Court of Appeals.

Authored By

Irma Reboso Solares

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