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CLIENT ALERT

Ninth Circuit Again Invalidates Representative-Action Waiver in ERISA Plan Arbitration Provision

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On July 30, 2026, the Ninth Circuit held in *Pover v. The Capital Group Companies, Inc.*[1] that a representative-action waiver in an ERISA-governed defined-contribution plan's arbitration provision is unenforceable under the effective-vindication doctrine. In a 2-1 decision, the court affirmed the district court's denial of the defendant's motion to compel arbitration, finding that the plan's waiver of claims brought "on a class, collective, or representative basis" impermissibly prevented the plaintiff from pursuing claims under ERISA §§ 409(a) and 502(a)(2)—which are inherently representative in nature.[2]

The *Pover* decision reinforces a prior 2025 Ninth Circuit ruling and aligns with the Second, Third, Fifth, Sixth, Seventh, Tenth, and Eleventh Circuits, which have reached the same conclusion.[3] Plan sponsors and fiduciaries

1 *Pover v. Capital Grp. Co.*, No. 24-5298, 2026 LEXIS 401616 (9th Cir. July 30, 2026).

2 *Id.* at *25.

3 *See, e.g., Cedeno v. Sasson*, 100 F.4th 386 (2d Cir. 2024); *Henry v. Wilmington Tr., N.A.*, 72 F.4th 499 (3d Cir. 2023); *Parrott v. Int'l Bancshares Corp.*, 167 F.4th 728 (5th Cir. 2026); *Parker v. Tenneco, Inc.*, 114 F.4th 786 (6th Cir. 2024); *Smith v. Bd. of Dirs. of Triad Mfg.*,

should take note that representative-action and class-action waivers have been found to be unenforceable across many federal circuits, channeling disputes back into court as class actions.

The Decision

Plaintiff Cathy Pover, a participant in The Capital Group's defined-contribution retirement plan, brought claims under ERISA §§ 409(a) and 502(a)(2) alleging breach of fiduciary duty in a representative capacity on behalf of the plan.[4] The plan contained an arbitration provision with a waiver barring "class, collective, and representative actions," as well as a severability clause directing that if the waiver is found unenforceable, representative claims "shall be filed and adjudicated in a court . . . and not in arbitration."[5]

The Ninth Circuit applied the effective-vindication doctrine, which voids arbitration agreements that prevent individuals from pursuing statutorily protected rights.[6] The Ninth Circuit found that because claims under ERISA §§ 409(a) and 502(a)(2) are inherently representative—they provide only plan-wide relief, not individualized recovery—a waiver barring all representative proceedings eliminates the plaintiff's ability to pursue her statutory remedy.[7] The court relied on Supreme Court and Ninth Circuit precedent to confirm that § 502(a)(2) claims seek relief for the plan as a whole.[8]

The court rejected the defendants' argument that the Supreme Court's decision in *LaRue v. Dewolff, Boberg & Associates, Inc.*[9] limited § 502(a)(2) claims in defined-contribution plans to individual account losses.[10] Instead, it adopted a broad reading of *LaRue* under which participants may bring claims for either individual or plan-wide harms.[11] Having found the waiver unenforceable, the court enforced the plan's severability clause, which directed that representative claims proceed in court rather than arbitration.[12]

Judge VanDyke dissented on two grounds. First, he argued that the waiver's reference to "representative" actions, read alongside "class" and "collective," encompassed only collective-action suits — not the principal-agent suits at issue under § 502(a)(2) — and thus did not implicate the effective-vindication doctrine.[13] Second, he contended that the arbitrability question should have been delegated to the arbitrator under the AAA Rules incorporated into the plan.[14]

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13 F.4th 613 (7th Cir. 2021); *Harrison v. Envision Mgmt. Holding, Inc.*, 59 F.4th 1090 (10th Cir. 2023); *Williams v. Shapiro*, 161 F.4th 1313 (11th Cir. 2025).

4 *Pover*, 2026 LEXIS 401616, at *4–7.

5 *Id.* at *7.

6 *Id.* at *11.

7 *Id.* at **18–19.

8 *Id.* at **19–22.

9 552 U.S. 248 (2008).

10 *Pover*, 2026 LEXIS 401616, at *22.

11 *Id.* at *23.

12 *Id.* at **25–26.

13 *Id.* at **28–35.

14 *Id.* at **37–40.

The Broader Appellate Landscape

Pover is the latest in a line of federal appellate decisions holding that representative-action or class-action waivers in ERISA plan arbitration provisions are unenforceable.[15] Since 2021, eight federal circuit courts of appeals have held that such provisions are unenforceable under the effective-vindication doctrine when they prevent participants from bringing claims on behalf of the plan under ERISA §§ 409(a) and 502(a)(2).[16] The Second, Third, Fifth, Sixth, Seventh, Ninth, Tenth, and Eleventh Circuits have applied the same core reasoning: because ERISA § 502(a)(2) claims are inherently representative—seeking relief for the plan as a whole, not individual recovery—a waiver that bars representative proceedings eliminates the only mechanism for vindicating those statutory rights. No federal circuit court has reached the contrary conclusion. The Supreme Court has not yet addressed the issue, but the growing unanimity and lack of circuit conflict makes a petition for *certiorari* seem unlikely here.

Key Takeaways

The practical implications are clear: representative and class action waivers in ERISA plan arbitration provisions have been deemed unenforceable across eight federal circuits with no circuit holding to the contrary and Supreme Court review unlikely. Defined contribution plan sponsors should work with counsel to evaluate current plan language and determine the impact of these rulings on existing dispute resolution procedures.

If you have any questions regarding this client alert, please contact the following attorneys or the Willkie attorney with whom you regularly work.

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[15] *See supra* note 3.

[16] *Id.*