DISTRICT COURT DENIES MOTION TO COMPEL ARBITRATION OVER BREACH OF FIDUCIARY DUTIES CLAIMS

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Despite the strong federal policy in favor of arbitration, the U.S. District Court for the Southern District of Ohio recently denied a motion to compel arbitration concerning an alleged injury to a defined contribution retirement plan and its participants. In this case, two plaintiffs brought an action pursuant to § 409 and § 502(a)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA") individually and on behalf of other similarly situated plan participants against Cintas Corporation for breaching its fiduciary duties of loyalty and prudence by mismanaging and failing to investigate and select better cost options for the plan. In response to this lawsuit, Cintas filed a motion to compel arbitration based on the employment agreements signed by the two plaintiffs.

In considering Cintas' motion, the District Court identified four central issues: "(1) it must determine whether the parties agreed to arbitration; (2) it must determine the scope of the arbitration agreement; (3) if federal statutory claims are asserted, it must consider whether Congress intended those claims to be nonarbitrable; and (4) if the court concludes that some, but not all, of the claims in the action are subject to arbitration, it must determine whether to stay the remainder of the proceedings pending arbitration." It was the second issue, the scope of the arbitration agreement, that doomed Cintas' motion.

First and foremost, the District Court found that the plaintiffs' claims were on behalf of the plan. As mentioned above, the plaintiffs brought this action pursuant to ERISA § 409 and § 502(a)(2). This is important because the Supreme Court has read these sections together to "authorize the Secretary of Labor as well as plan participants, beneficiaries, and fiduciaries, to bring actions *on behalf of a plan* to recover for violations of the obligations defined in § 409(a)." *LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248, 253 (2008) (emphasis added). Moreover, the plaintiffs sought relief that would benefit the plan as a whole rather than their individual accounts. Thus, the District Court found that the claims were on behalf of the plan and not for individual relief.

Consequently, because the claims were on behalf of the plan, the question became whether the plan was a party to the arbitration agreement between the plaintiffs and Cintas. The answer was no. Here, the arbitration agreement stated that "the rights

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

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and claims of Employee" will be subject to arbitration. However, this provision was limited to the employees and does not extend to nonentities such as the plan. This is in contrast to another dispute where an agreement provided that "[a]ny claim, dispute or breach arising out of or in any way related to the Plan shall be settled by binding arbitration" and the court compelled arbitration. *Dorman v. Charles Schwab Corp.*, 934 F.3d 1107 (9th Cir. 2019). As a result, the District Court denied the motion to compel arbitration because the claims were on behalf of the plan and claims by the plan were not subject to the arbitration agreement between Cintas and the plaintiffs.

This case highlights the importance of drafting when it comes to arbitration agreements. If a plan sponsor wants to arbitrate disputes brought on behalf of a plan, then it is in their best interest to make sure the plan agreement is written clearly to convey that desire. Although federal courts favor arbitration, they cannot compel it when the contract does not. *Hawkins v. Cintas Corps.*, No. 1:19-CV-1062, 2021 WL 274341 (S.D. Ohio Jan. 27, 2021).