

## Sixth Circuit Sets Limits on Mandatory Arbitration Provisions in ERISA Plans

---

September 3, 2024

---

**PRACTICES** Employee Benefits and Executive Compensation

---

Plan sponsors often include arbitration provisions in employee benefit plans in an effort to resolve plan disputes outside of the courtroom. However, the recent Sixth Circuit Court of Appeals decision in *Parker v. Tenneco, Inc.* is a good reminder to plan sponsors to ensure that plan arbitration provisions are not too restrictive and do not otherwise impede or waive a participant's statutory rights and remedies under ERISA to avoid a court finding the arbitration provision unenforceable.

In *Parker*, Tenneco Inc. amended its two 401(k) plans to include mandatory individual arbitration provisions that "required plan participants to bring suit in arbitration only in an individual capacity, not in a representative, class, or collective capacity, and to seek remedies only for losses to the participant's individual plan account, not for monetary benefits that would accrue to any other participant's account." Two participants filed a lawsuit in federal court via a class action on behalf of the plan and others similarly situated alleging that plan fiduciaries had breached their fiduciary duties under ERISA Section 502(a)(2) by failing to implement a prudent process for selecting, monitoring, and removing investment options available under the plans resulting in investment options that had higher costs and fees than other nearly identical options, thus lowering retirement savings for participants. The fiduciaries for the plans moved to compel arbitration in accordance with the individual arbitration provisions in the plans.

The court disagreed with the plan fiduciaries' claim that the plans' arbitration provisions required individual arbitration thereby barring the participants from suing on behalf of the plans or in a representative capacity. Citing similar decisions in the Second, Third, Seventh, and Tenth Circuits, the court explained that it is well settled that claims under ERISA Section 502(a)(2) are brought on behalf of the plan as a whole and that ERISA grants participants a statutory right to bring a claim on behalf of the plan in a representative capacity. According to the court, the arbitration provision in the plans prospectively compelled participants to waive this important statutory right provided by ERISA. The court was careful to explain that its holding was limited to the specific facts of this arbitration provision and that the court's decisions should not be constructed as implying that arbitration provisions are incompatible with ERISA Sections 409(a) and 502(a)(2).

The *Parker v. Tenneco, Inc.* (6th Cir. Aug. 20, 2024) opinion is available [here](#).