

District Court of Connecticut Grants Certification of Class of More Than 11,000, But Only for Retrospective Relief

Article By:

Nolan S. McCreedy

Four former employees of Eversource Energy Company recently obtained partial class certification of their claims. However, the District of Connecticut ruled that because the named plaintiffs are all former participants in the plan, they could not seek prospective relief, and only granted certification with respect to claims for retrospective relief.

Plaintiffs' Second Amended Complaint sought prospective injunctive relief as well as retrospective relief for damages related to alleged breaches of fiduciary duty for charging excessive recordkeeping fees, investing in a suite of actively managed target date funds known as the Fidelity Freedom Funds instead of the lower cost, passively managed Freedom Index Funds, and imprudently investing in and retaining other specific investment options. Overall, 14 of 19 investment options in the plan were challenged, and all challenged options were invested in by at least one of the four named plaintiffs.

Defendants opposed class certification on the grounds that the named plaintiffs lacked Article III standing to: (1) seek prospective relief as they were not current participants in the plan; and (2) claim losses on behalf of funds in which they did not personally invest. The Court agreed with the defendants on their first argument, but disagreed as to the second.

First, the Court found that although the plaintiffs satisfied the statutory definition of "participants" in order to bring a cause of action under ERISA, they were still required to show the likelihood that they were subject to future harm when seeking prospective injunctive relief to satisfy Article III standing. Because the plaintiffs were no longer enrolled in the plan, the Court found "the defendant's future management of the Plan does not pose a 'real or immediate threat' to the plaintiffs and they have no Article III standing to seek forward-looking injunctive relief."

Second, the Court engaged in an extensive analysis of the different approaches to determine the extent of a plaintiff's Article III standing to seek relief when suing in a derivative capacity under section 502(a)(2). One approach finds that a plaintiff has standing by simply participating in the plan and alleging injury to the entire plan, regardless of individual loss. The second approach requires a plaintiff to show sufficient injury of individual loss and then can only sue for losses for funds in which the plaintiff invested.

Here, the Court did not opine on the correct approach, but concluded the plaintiffs had constitutional

standing because their Second Amended Complaint identified individual losses stemming from the defendants' alleged breaches. Further, the Court found plaintiffs could also bring claims on behalf of putative class members who invested in the non-challenged funds (i.e., funds that none of the named plaintiffs invested in) because the alleged imprudence of defendants' investment process implicated the "same set of concerns" of all putative class members and the derivative actions under Section 502(a)(2) are brought on behalf of the entire plan. Finally, although the Court denied certification prospectively, it did grant plaintiffs leave to amend to add a current plan participant with standing to seek such relief as a named plaintiff within thirty days.

With nearly 200 similar lawsuits filed in the past few years, this decision provides significant insight into the Article III analysis district courts undertake in the class certification context and highlights an argument all employers should make when former plan participants are seeking prospective relief.

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