724 F.2d 747
United States Court of Appeals,
Ninth Circuit.

Santiago AMARO, et al., Plaintiffs-Appellants,
v.
The CONTINENTAL CAN COMPANY, Defendant-Appellee.

No. 83–5519.
|
Argued and Submitted Oct. 5, 1983.
|
Decided Jan. 23, 1984.

Synopsis

Former employees who were laid off brought action alleging violations of the Employee Retirement Income Security Act. The United States District Court for the Central District of California, Laughlin E. Waters, J., entered judgment, and former employees appealed. The Court of Appeals, Skopil, Circuit Judge, held that: (1) arbitration award on grievance under collective bargaining agreement was not res judicata of ERISA claim arising out of same facts; (2) exhaustion of arbitration procedure was not required prior to bringing statutory claim under ERISA; and (3) remand was necessary to determine whether action should be stayed pending arbitration of grievance.

Reversed and remanded.

West Headnotes (9)

[1] Federal Courts
Summary judgment
170B Federal Courts
170BXVII Courts of Appeals
170BXVII(K) Scope and Extent of Review
170BXVII(K)2 Standard of Review
170Bk3576 Procedural Matters
170Bk3604 Judgment
170Bk3604(4) Summary judgment
(Formerly 170Bk766)

In reviewing a grant of summary judgment, the Court of Appeals need only decide whether any genuine issue of material fact remains for trial and whether substantive law was correctly applied.

37 Cases that cite this headnote

[2] Judgment
Matters which might have been litigated
228 Judgment
228XIV Conclusiveness of Adjudication
228XIV(C) Matters Concluded
228k713 Scope and Extent of Estoppel in General
228k713(2) Matters which might have been litigated

Under the doctrine of res judicata, final judgment on the merits precludes parties from relitigating claims which were or could have been raised on that action.

10 Cases that cite this headnote

[3] Judgment
What constitutes identical causes
228 Judgment
228XIII Merger and Bar of Causes of Action and Defenses
228XIII(B) Causes of Action and Defenses Merged, Barred, or Concluded
228k585 Identity of Cause of Action in General
228k585(2) What constitutes identical causes

A factor to be considered in determining whether same claim is involved in instant case as in previous case, for purposes of determining whether the doctrine of res judicata applies, is whether the two suits involve infringement of same right.

14 Cases that cite this headnote

[4] Labor and Employment
Matters concluded
231H Labor and Employment
231HXII Labor Relations
231HXII(H) Alternative Dispute Resolution
231HXII(H)4 Proceedings
231Hk1596 Conclusiveness of Award
231Hk1599 Matters concluded
(Formerly 232Ak465 Labor Relations)

Arbitration award on a grievance under collective bargaining agreement was not res judicata of an Employee Retirement Income Security Act claim arising out of same facts. Employee Retirement Income Security Act of 1974, §§ 2 et seq., 510, 29 U.S.C.A. §§ 1001 et seq., 1140.

12 Cases that cite this headnote

[5] Labor and Employment

Exhaustion

231H Labor and Employment
231HVIII Adverse Employment Action
231HVIII(B) Actions
231Hk854 Exhaustion
(Formerly 232Ak416.1 Labor Relations)

A "participant" or a "beneficiary" within meaning of the Employee Retirement Income Security Act is not required to exhaust grievance or arbitration procedures prior to bringing an action under the Act for acting against participant or beneficiary for the purpose of interfering with attainment of any right to a plan. Employee Retirement Income Security Act of 1974, §§ 3(7, 8), 502, 510, 29 U.S.C.A. §§ 1002(7, 8), 1132, 1140.

64 Cases that cite this headnote

[6] Action

Actions and administrative proceedings

Alternative Dispute Resolution

Stay of Proceedings Pending Arbitration

13 Action
13IV Commencement, Prosecution, and Termination
13k67 Stay of Proceedings
13k69 Another Action Pending
13k69(7) Actions and administrative proceedings
25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk190 Stay of Proceedings Pending Arbitration
25Tk191 In general
(Formerly 33k23.9 Arbitration)

A trial court can stay any statutory claim that arises out of substantially same facts present in ongoing administrative or arbitral proceedings.

16 Cases that cite this headnote

[7] Alternative Dispute Resolution

Elements

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk190 Stay of Proceedings Pending Arbitration
25Tk192 Elements
(Formerly 33k23.9 Arbitration)

Stay imposed by trial court on any statutory claim arising out of substantially the same facts present in ongoing administrative or arbitral proceedings should be premised upon review of satisfactory assurances that arbitration is proceeding with diligence and efficiency, and a determination that relief available will not be jeopardized by stay.

13 Cases that cite this headnote

[8] Alternative Dispute Resolution

Scope and standards of review

25T Alternative Dispute Resolution
25TII Arbitration
25TII(D) Performance, Breach, Enforcement, and Contest
25Tk204 Remedies and Proceedings for Enforcement in General
25Tk213 Review
25Tk213(5) Scope and standards of review
(Formerly 33k73.7(4) Arbitration)

If a court stays a statutory claim that arises out of substantially same facts present in ongoing administrative or arbitral proceedings, it nonetheless considers employee's statutory claim de novo and findings of arbitrator on factual matters may be admitted as evidence and accorded such weight as trial court deems appropriate.

28 Cases that cite this headnote

[9] Federal Courts

Issues or questions not passed on below

170B Federal Courts
170BXVII Courts of Appeals

170BXVII(L) Determination and Disposition of Cause
170Bk3779 Directing New Trial or Other Proceedings Below; Remand
170Bk3783 Issues or questions not passed on below
(Formerly 170Bk943.1, 170Bk943)
Action alleging violation of Employee Retirement Income Security Act would be remanded to the district court to decide whether statutory claims should be stayed pending arbitration of grievance. Employee Retirement Income Security Act of 1974, §§ 2 et seq., 510, 29 U.S.C.A. §§ 1001 et seq., 1140.

8 Cases that cite this headnote

Attorneys and Law Firms

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Appeal from the United States District Court for the Central District of California.

Before KENNEDY, SKOPIL, and PREGERSON, Circuit Judges.

SKOPIL, Circuit Judge:

INTRODUCTION

In this case we are confronted with the competing tensions of access to the courts and arbitration. The issue presented is whether an arbitration award on a grievance under a collective bargaining agreement is res judicata of an Employee Retirement Income Security Act ("ERISA") claim arising out of the same facts. A related issue is whether exhaustion of arbitration procedures for contractual grievances is required prior to bringing a statutory claim under section 510 of ERISA. The district court held that the arbitration award on a contractual grievance adverse to former employees of the Continental Can Company barred their ERISA claims against their former employer. We reverse and remand.

FACTS AND PROCEEDINGS BELOW

The plaintiffs are former employees ("employees") of the Continental Can Company ("Continental") who were laid off from the company's Los Angeles plant between 1976 and the present. [1] The employees' union representative, United Steel Workers of America ("Union"), filed a grievance on March 5, 1980 alleging that Continental's layoff of these employees and its correspondent shift of production to other plants violated various provisions of the collective bargaining agreement. The agreement mandates final and binding arbitration of contractual disputes. The Union pursued the grievance to arbitration. The arbitrator denied the grievance, concluding that Continental's conduct was in response to changing market conditions and did not violate the collective bargaining agreement.

On August 13, 1981 the Union filed a second grievance. This was identical to the first grievance, but covered the period subsequent to the arbitrator's decision. No disposition has been rendered in this grievance.

The employees then commenced this action. Their complaint alleges that Continental violated section 510 of ERISA, 29 U.S.C. § 1140, by laying employees off to prevent them from obtaining the number of years of continuous service required to qualify for Continental's Employee Pension Benefit Plan and Employee Welfare Plan.

These plans fall within the coverage of ERISA. *See* 29 U.S.C. § 1003(a)(1), (2). Section 510 of ERISA provides in pertinent part that:

> [i]t shall be unlawful ... to discharge, fine, suspend, expel, discipline, or discriminate against a participant or a beneficiary ... for the purpose of interfering with the attainment of any right to which such participant may become entitled under [an employee benefit plan].

29 U.S.C. § 1140.

This statutory claim arises from the same events that spurred the contractual grievance ***749** —Continental's laying off employees and shifting production work from its Los Angeles plant which resulted in the laid-off employees not being recalled to work. The district court granted Continental's motion for summary judgment, holding that the arbitrator's decision on the contractual claim is res judicata of the employees' ERISA claim. This dismissal came before the plaintiffs were able to pursue any discovery.

DISCUSSION

A. Standard of Review.

[1] In reviewing a grant of summary judgment, we need only decide "whether any genuine issue of material fact remains for trial and whether the substantive law was correctly applied." *Taxpayers for Vincent v. Members of City Council,* 682 F.2d 847, 848–49 (9th Cir.1982), *cert. denied,* 459 U.S. 1199, 103 S.Ct. 1180, 75 L.Ed.2d 429 (1983). There are no disputed facts. Accordingly, we must only determine whether the substantive law was correctly applied. *Beers v. Southern Pacific Transportation Co.,* 703 F.2d 425, 428 (9th Cir.1983). That is, we must decide whether the district court erred in holding the arbitral decision is res judicata of the employees' ERISA claim.

B. Res Judicata.

[2] **[3]** **[4]** Under the doctrine of res judicata, a final judgment on the merits precludes the parties from relitigating claims which were or could have been raised in that action. *Nevada v. United States,* 463 U.S. 110, 103 S.Ct. 2906, 2918, 77 L.Ed.2d 509 (1983). There is no precise or simple test that can be applied in determining what constitutes a claim. *Harris v. Jacobs,* 621 F.2d 341, 343 (9th Cir.1980). A factor to be considered in determining whether the same claim is involved is "whether the two suits involve infringement of the same right." *Id.* We find that the rights involved in the employees' contractual claim before the arbitrator are independent of those implicated in their statutory claim under ERISA.

Continental contends that the employees' ERISA claim is in reality a contractual claim that has been the subject of final and binding arbitration. Specifically, it claims this is a contractual claim for a breach of an implied covenant of good faith. The essence of its argument is that the statutory claim is another attempt to relitigate the contractual claim. It claims the court should not reconsider the merits of the contractual grievance.

We reject this reasoning. Continental inaccurately characterizes the ERISA claim. The employees' statutory claim is premised on a violation of section 510 of ERISA. Section 510 prohibits anyone from interfering with the attainment of any rights to which a person may become entitled under the provisions of an employee benefit plan that falls within the coverage of ERISA. This statutory claim is not for benefits under a collective bargaining agreement. The employees, in fact, are not yet eligible for those benefits. Nor is this the same as an action for a breach of an implied covenant of good faith. The ERISA action is to enforce statutory rights designed to protect the employees from actions which interfere with their attainment of eligibility for those benefits. We are persuaded that in enacting section 510, Congress created a statutory right independent of any collectively bargained rights. *See Kross v. Western Electric Co., Inc.,* 701 F.2d 1238, 1242–43 (7th Cir.1983). [2]

***750** To hold otherwise would endanger the protection afforded employees by Congress' enactment of ERISA. *See* 29 U.S.C. § 1001. That protection then would become subject to elimination in the collective bargaining process. An ERISA claim could be defeated without the benefit of the protections inherent in the judicial process. [3] The "ready access to the Federal courts" that ERISA was intended to provide would be eliminated. *See* 29 U.S.C. § 1001(b).

Moreover, employees not covered by a collective bargaining agreement would not face this threshold obstacle in an ERISA claim. Employees could bring an ERISA claim and avail themselves of liberal pretrial discovery without first succeeding in a grievance proceeding. We will not sanction results where the ability to bring an ERISA claim is dependent in part on the existence of a collective bargaining agreement or the scope of that agreement. [4]

Finally, the arbitrator of the employees' grievance did not consider the ERISA claim. Nor should he have. Arbitrators, many of whom are not lawyers, *see* F. Elkouri and E.A. Elkouri, *How Arbitration Works,* 3d Ed. (1981) at 90–91, 94, lack the competence of courts to interpret and apply statutes as Congress intended. [5] As the Supreme Court has said, "[t]he specialized competence of arbitrators pertains primarily to the law of the shop, not the law of the land." *Alexander v. Gardner-Denver Co.,* 415 U.S. 36, 57, 94 S.Ct. 1011, 1024,

39 L.Ed.2d 147 (1974). The resolution of statutory issues "is a primary responsibility of courts," not arbitrators. *Alexander,* 415 U.S. at 57, 94 S.Ct. at 1024.

The district court misapplied the substantive law when it held the arbitrator's decision barred the employees' claim under section 510 of ERISA.

C. Exhaustion of Arbitration Procedures.

We must also decide whether the employees' ERISA claims are barred for failure to exhaust their contractual remedies. The Union's August 13, 1981 grievance ("second grievance") has not reached a final disposition. Continental maintains that the employees' section 510 claim is barred by this failure to exhaust contractual remedies. The question is not whether the employees have exhausted their contractual claims, but whether they must do so prior to bringing a section 510 claim. Section 502 of ERISA, 29 U.S.C. § 1132, which provides for civil enforcement of the Act, is silent on the exhaustion doctrine being a prerequisite to an ERISA action.

Continental offers two principal arguments to support its position that section 510 claims may not be pursued until all contractual claims have been fully resolved. ***751** It first contends that the employees are taking a contractual dispute and masking it as a statutory claim to gain access to the federal courts. [6] We have already rejected this argument.

Continental next argues that judicial interpretation of ERISA requires exhaustion of contractual remedies when the claim arises from an alleged breach of contract. [7] We have decided this claim does not specifically arise from a breach of contract. *Cf. Amato v. Bernard,* 618 F.2d 559, 568 (9th Cir.1980) (exhaustion required in claim for declaration of rights under a plan). We construe this argument to address the situation where the same essential facts give rise to both a section 510 claim and a contractual grievance. *See Kross v. Western Electric Co., Inc.,* 701 F.2d 1238 (7th Cir.1983).

In this argument Continental relies on the Seventh Circuit decision in *Kross,* a factually similar case, which expressly adopts the exhaustion of remedies doctrine. The *Kross* court concluded that the "strong federal policy expressed in case law, encouraging private resolution of ERISA-related disputes, mandates the application of the exhaustion doctrine in this case." *Id.* at 1244. In reaching this conclusion, that court relied heavily on its decision in *Challenger v. Local Union No. 1 of International Bridge,* 619 F.2d 645 (7th Cir.1980) and our decision in *Amato,* 618 F.2d 559 (9th Cir.1980).

Challenger involved a claim under section 401 of ERISA, 29 U.S.C. § 1104, concerning a dispute regarding provisions of a pension plan. The plan mandated final and binding arbitration of any disputes. Section 503 of ERISA, 29 U.S.C. § 1133, requires all plans to have an internal appeal procedure. The court relied on this internal appeal procedure requirement of section 503 in its conclusion that the plaintiff must first exhaust his available remedies. The court in *Challenger* reasoned that "[t]o make every claim dispute into a federal case would undermine the claim procedure contemplated by the Act." *Id.* at 649. *See Kross,* 701 F.2d at 1244 (quoting *Challenger*).

In *Amato* we enforced the exhaustion requirement in an action for "a declaration of the parties' rights and duties" under a pension plan. *Amato,* 618 F.2d at 561. Like *Challenger,* the pension plan in *Amato* contained the internal appeal procedure required by section 503. Our decision was based on the required section 503 administrative remedies and on the assistance the courts receive by "pension plan trustees *interpreting* their plans." *Id.* at 568 (emphasis added).

Both *Challenger* and *Amato,* the cases relied on by *Kross,* dealt with the rights of a party under a pension plan that falls within ERISA coverage. Both cases contained internal appeal procedures, congressionally mandated by section 503, that were designed to hear the claims presented in those cases. [8] We are faced solely with an alleged violation of a protection afforded by ERISA. There is no internal appeal procedure either mandated or recommended by ERISA to hear these claims. Furthermore, there is only a statute to interpret. That is a task for the judiciary, not an arbitrator. ***752** *Alexander,* 415 U.S. at 57, 94 S.Ct. at 1024. Therefore, a "primary reason for the exhaustion requirement," *Amato,* 618 F.2d at 568; *see Kross,* 701 F.2d at 1245 (quoting *Amato*), is not present in this case. Accordingly, we find *Kross* to be based on a flawed premise, and we refuse to follow it.

We instead are persuaded by the reasoning in *Alexander* and *Barrentine v. Arkansas-Best Freight System, Inc.,* 450 U.S. 728, 101 S.Ct. 1437, 67 L.Ed.2d 641 (1981). *Kross* did not discuss these decisions. While these cases deal with statutes other than ERISA, they do concern situations analogous to the one here. In *Alexander,* the Supreme Court held that a prior arbitration decision did not foreclose a Title VII action. [9] In *Barrentine,* the Supreme Court extended this holding beyond

Title VII to a case involving the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201 *et seq.*

Continental argues these cases are distinguishable. Title VII and the FLSA deal with statutes that give non-waivable rights not subject to the collective bargaining process. *See Alexander,* 415 U.S. at 51, 95 S.Ct. at 1021; *Barrentine,* 450 U.S. at 740, 101 S.Ct. at 1444. We do not accept this distinction. In enacting ERISA, Congress intended "that *minimum standards be provided* assuring the equitable character of such plans...." Section 2 of ERISA, 29 U.S.C. § 1001(a) (emphasis added). We do not believe Congress intended that these minimum standards could be eliminated by contract. ERISA is intended to protect the interests of the pension plan participants "by improving the equitable character ... of such plans *by requiring them to* [meet certain standards]...." Section 2 of ERISA, 29 U.S.C. § 1001(c) (emphasis added). Congress did not intend section 510 of ERISA to be waivable.

We are persuaded by the Supreme Court's willingness in *Barrentine* to extend the *Alexander* doctrine to statutory claims other than those arising under the Civil Rights Act. This indicates the Supreme Court's reasoning is based not on the *type* of non-waivable statutory right involved, but rather on placing realistic limits on the arbitration process when it is in tension with non-waivable statutory rights. Judicial procedures are more capable of safeguarding individual statutory rights than are arbitral procedures. *See* n. 3, *supra.* Arbitrators "very often are powerless to grant the aggrieved employees as broad a range of relief," *Barrentine,* 450 U.S. at 745, 101 S.Ct. at 1447, as is available under ERISA. *See* 29 U.S.C. § 1132.

[5] **[6]** **[7]** We conclude that a "participant" or a "beneficiary" within the meaning of section 3 of ERISA, 29 U.S.C. § 1002(7) and (8), is not required to exhaust grievance or arbitration procedures prior to bringing an action under Section 510 of ERISA. In so holding, we are mindful of the potential effects of this decision on the dockets of the courts. A trial court can stay any statutory claim that arises out of substantially the same facts present in an ongoing administrative or arbitral proceeding. *Cf. Leyva v. Certified Grocers of California, Ltd.,* 593 F.2d 857 (9th Cir.), *cert. denied,* 444 U.S. 827, 100 S.Ct. 51, 62 L.Ed.2d 34 (1979) (trial court may stay FLSA claim pending resolution of independent procedures that bear upon the case). The stay should be premised upon: (1) "receipt of satisfactory assurances that the arbitration is proceeding with diligence and efficiency," *Leyva,* 593 F.2d at 864; and (2) a determination that the relief available under section 502 of ERISA, 29 U.S.C. § 1132, will not be jeopardized by the stay. In some cases it may be necessary to grant immediately an injunction or other equitable relief, available under section 502, to avoid irreparable harm to a party. [10]

***753** **[8]** **[9]** If a court does stay the statutory claim, it must nonetheless "consider the employee's [statutory] claim *de novo.*" *Alexander,* 415 U.S. at 60, 95 S.Ct. at 1025. The findings of the arbitrator on factual matters "may be admitted as evidence and accorded such weight as the court deems appropriate." *Id.* In its consideration of the weight to be given the arbitrator's decision, the court should consider the adequacy of the record with respect to the section 510 claim, the procedures used in the arbitral forum, and the significance of new evidence that has been produced through pretrial discovery. *Cf. Alexander,* 415 U.S. at 60 n. 21, 95 S.Ct. at 1025 n. 21 (factors to consider in exercising discretion to accept arbitral findings in Title VII case). In the end, the court must exercise its discretion based on the circumstances of each individual case, while keeping in mind that the courts are the forum that must ultimately decide these statutory claims. *Id.*

CONCLUSION

We reverse the district court's finding that the decision on the first grievance is res judicata of the employees' statutory claim. We remand the case to the district court to decide whether the statutory claim should be stayed pending the determination of the August 13, 1981 grievance. When the employees proceed with their statutory claim, the claim must be considered *de novo,* subject to the appropriate deference due the arbitrator's findings on factual matters.

All Citations

724 F.2d 747, 100 Lab.Cas. P 10,849, 5 Employee Benefits Cas. 1215

Footnotes

1 The named plaintiffs are 17 former employees of the Company who sue on behalf of themselves and nearly 200 others who are similarly situated.

2 Accordingly, we find Continental's reliance on *United Steelworkers of America v. American Manufacturing Co.,* 363 U.S. 564, 80 S.Ct. 1343, 4 L.Ed.2d 1403 (1960), to be without merit. That case involved a dispute between the parties as to the interpretation and application of the collective bargaining agreement. *Id.* at 569, 80 S.Ct. at 1347. It did not concern a statutory claim. Our holding here is consistent with the deference given to arbitral interpretation of contract claims expressed in this and the two other cases comprising the United Steelworkers trilogy, *United Steelworkers of America v. Warrior & Gulf Navigation Co.,* 363 U.S. 574, 80 S.Ct. 1347, 4 L.Ed.2d 1409 (1960); *United Steelworkers of America v. Enterprise Wheel & Car Corp.,* 363 U.S. 593, 80 S.Ct. 1358, 4 L.Ed.2d 1424 (1960), and subsequent cases. *See, e.g., Hines v. Anchor Motor Freight, Inc.,* 424 U.S. 554, 562–63, 96 S.Ct. 1048, 1055–56, 47 L.Ed.2d 231 (1976); *Iowa Beef Packers, Inc. v. Thompson,* 405 U.S. 228, 92 S.Ct. 859, 31 L.Ed.2d 165 (1972); *Leyva v. Certified Grocers of California, Ltd.,* 593 F.2d 857 (9th Cir.1979).

3 The United States Supreme Court has stated that "[t]he record of the arbitration proceedings is not as complete [as judicial proceedings]; the usual rules of evidence do not apply; and rights and procedures common to civil trials, such as discovery, compulsory process, cross-examination, and testimony under oath, are often severely limited or unavailable." *Alexander v. Gardner-Denver Co.,* 415 U.S. 36, 57–58, 94 S.Ct. 1011, 1024, 39 L.Ed.2d 147 (1974).

This case provides an example of the differences between the two processes. The employees here commenced discovery shortly after filing their complaint by making a request for the production of documents. After receiving additional time to respond to this request, Continental did not produce any of the documents. Before the employees could compel production of the documents, the district court dismissed the action. The arbitral decision had previously been made without consideration of the information in these documents, as the employees had no means to seek production of them.

4 The logical result of Continental's position is that ERISA rights would become part of the collective bargaining agreement. This case is illustrative. Had it not been for the inclusion of the clause in the contract that prohibited subcontracting out, the employees may not have had a grievance to bring in the first place. There could then have been no arbitral decision that would be res judicata of the statutory claim.

5 This is not intended to denigrate the status of arbitrators, whose high level of competence has made arbitration work so effective that it has relieved the courts of a large burden.

6 We add that Continental's reliance on *General Teamsters v. Mitchell Brothers Truck Lines,* 682 F.2d 763 (9th Cir.1982), is misplaced. *Mitchell Brothers* was "a case based solely on the applicability of the Collective Bargaining Agreement, not upon a statute." *Id.* at 769. That is not parallel to the situation here.

7 In its brief, Continental claims that what the employees actually allege is that Continental has breached the terms of the collective bargaining agreement. Brief for Appellees at 14. However, a review of the complaint reveals that the employees specifically allege a violation of section 510 of ERISA. Contrary to Continental's claim, the employees do not need to allege a defect in the collective bargaining or pension agreements themselves in a section 510 action. There is no such element required in section 510 of ERISA. *See* 29 U.S.C. § 1140.

8 We note that the cases we relied on in *Amato* also involved contractual questions that the statutorily required internal appeal procedure was designed to answer. *E.g., Lucas v. Warner & Swasey Co.,* 475 F.Supp. 1071 (E.D.Pa.1979); *Taylor v. Bakery and Confectionery Union and Industry International Welfare Fund,* 455 F.Supp. 816 (E.D.N.C.1978); *Morgan v. Laborers Pension Trust Fund for Northern California,* 433 F.Supp. 518 (N.D.Cal.1977).

9 The district court and court of appeals in *Alexander* held the plaintiff was bound by the prior arbitration decision. The courts based their decisions on "notions of election of remedies and waiver and [on] the federal policy favoring arbitration of labor disputes." *Alexander,* 415 U.S. at 46, 95 S.Ct. at 1018.

10 We recognize that in some instances an employee may file a statutory claim before filing a contractual claim. In this situation the trial court must also consider if the statutory claim has progressed to the point where it would not be in the best interests of the court to stay the action.

Negative Treatment

Negative Citing References (26)

The KeyCited document has been negatively referenced by the following events or decisions in other litigation or proceedings:

Treatment	Title	Date	Type	Depth	Headnote(s)
Overruled by	1. Dorman v. Charles Schwab Corporation MOST NEGATIVE 934 F.3d 1107 , 9th Cir.(Cal.) LABOR AND EMPLOYMENT — Benefit Plans. Plan participant's claims against plan sponsor under ERISA could be subject to mandatory individual arbitration.	Aug. 20, 2019	Case		9 F.2d
Disagreed With by	2. Bird v. Shearson Lehman/American Exp., Inc. 926 F.2d 116 , 2nd Cir.(Conn.) On appeal from an order entered July 16, 1990 in the District of Connecticut, Jose A. Cabranes, District Judge, denying appellants' motion to compel arbitration of appellees' ERISA...	Jan. 17, 1991	Case		8 F.2d
Declined to Follow by	3. Powell v. A.T. & T. Communications, Inc. 938 F.2d 823 , 7th Cir.(Ill.) Former employee brought action against employer under Employee Retirement Income Security Act (ERISA), alleging that employer discharged him to avoid paying medical insurance and...	Aug. 08, 1991	Case		—
Declined to Follow by	4. Counts v. American General Life and Acc. Ins. Co. 111 F.3d 105 , 11th Cir.(Ga.) Employee sued his former employer and employer's benefits administrator alleging wrongful discontinuance of his long-term disability benefits under the Employee Retirement Income...	Apr. 29, 1997	Case		5 F.2d
Declined to Follow by	5. Santana v. Deluxe Corp. 12 F.Supp.2d 162 , D.Mass. Disabled former employee filed suit against employer to challenge the employer's decision that health plan benefits were secondary to Medicare Part A and Part B payments to which...	June 04, 1998	Case		5 F.2d
Declined to Follow by	6. In re Managed Care Litigation 132 F.Supp.2d 989 , S.D.Fla. HEALTH - HMOs. Physicians' claims against managed care company were not subject to arbitration.	Dec. 11, 2000	Case		—
Overruling Recognized by	7. Dorman v. Charles Schwab Corporation 780 Fed.Appx. 510 , 9th Cir.(Cal.) LABOR AND EMPLOYMENT — Arbitration. Arbitration provision in plan document for employer's defined contribution 401(k) retirement plan was enforceable.	Aug. 20, 2019	Case		—
Overruling Recognized by	8. Trustees of Operating Engineers Pension Trust v. Smith-Emery Co.	Oct. 28, 2019	Case		4 F.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
	2019 WL 5595047 , C.D.Cal. This case is the latest iteration of a labor dispute between plaintiff trustees (“Trustees”) that administer several trusts and funds (“Trust Funds”) that provide benefits to...				
Disagreement Recognized by	9. Southside Internists Group PC Money Purchase Pension Plan v. Janus Capital Corp. 741 F.Supp. 1536 , N.D.Ala. Investment plans brought securities fraud and ERISA action against plan manager and broker dealer. Broker moved for a stay and to compel arbitration, and the plans demanded a...	June 25, 1990	Case		8 F.2d
Disagreement Recognized by	10. McLean Hosp. Corp. v. Lasher 819 F.Supp. 110 , D.Mass. Hospital brought action in Massachusetts state court against husband and wife to recover payments on husband's hospital bills. Wife filed cross claim against husband, and husband...	Apr. 19, 1993	Case		3 F.2d
Disagreement Recognized by	11. Chailland v. Brown & Root, Inc. 45 F.3d 947 , 5th Cir.(La.) Employee who was terminated six months before his benefits would have increased under Employee Retirement Income Security Act (ERISA) plan brought action against employer for...	Feb. 23, 1995	Case		5 F.2d
Disagreement Recognized by	12. Perrino v. Southern Bell Tel. & Tel. Co. 209 F.3d 1309 , 11th Cir.(Fla.) LABOR AND EMPLOYMENT - Benefit Plans. Employer's noncompliance with ERISA's technical requirements did not excuse duty to exhaust administrative remedies.	Apr. 20, 2000	Case		—
Disagreement Recognized by	13. Burds v. Union Pacific Corp. 223 F.3d 814 , 8th Cir.(Mo.) LABOR AND EMPLOYMENT - Benefit Plans. Exhaustion could be required with respect to ERISA interference claim since plan interpretation was required.	Aug. 18, 2000	Case		5 F.2d
Disagreement Recognized by	14. Simon v. Pfizer Inc. 398 F.3d 765 , 6th Cir.(Mich.) LABOR AND EMPLOYMENT - Arbitration. ERISA and COBRA claims were not subject to arbitration under severance plan's arbitration provisions.	Feb. 18, 2005	Case		8 F.2d
Disagreement Recognized by	15. Pension Fund of Eighth Dist. Elec. Pension Fund v. Wasatch Front Elec. and Const., LLC 2012 WL 2090061 , D.Utah Plaintiffs Trustees of the Eighth District Electrical Pension Fund (“Pension Fund”) and International Brotherhood of Electrical Workers, Local 354 (“Local 354”) bring this action...	June 08, 2012	Case		4 F.2d
Called into Doubt by	16. Fabian Financial Services v. Kurt H. Volk, Inc. Profit Sharing Plan	July 31, 1991	Case		8 F.2d

Treatment	Title	Date	Type	Depth	Headnote(s)
	768 F.Supp. 728 , C.D.Cal. Employee pension benefit plan's investment advisor brought action seeking to restrain plan from proceeding with arbitration of its claim under Employee Retirement Income Security...				
Called into Doubt by	17. Peruvian Connection, Ltd. v. Christian 977 F.Supp. 1107 , D.Kan. Former employer sought judgment declaring that it did not violate Employee Retirement Income Security Act (ERISA) when it terminated employee's rights under phantom stock...	Aug. 29, 1997	Case		8 F.2d
Called into Doubt by	18. Munro v. University of Southern California 896 F.3d 1088 , 9th Cir.(Cal.) EDUCATION — Labor and Employment. Claims regarding ERISA plans were outside scope of arbitration agreements.	July 24, 2018	Case		9 F.2d
Declined to Extend by	19. Foster v. Cordis Corp. 707 F.Supp. 517 , S.D.Fla. Employees brought ERISA suit claiming employer failed to provide benefits as provided in plan. Defendants filed motion for summary judgment and the District Court, Spellman, J.,...	Feb. 23, 1989	Case		5 F.2d
Distinguished by	20. Marchese v. Shearson Hayden Stone, Inc. 734 F.2d 414 , 9th Cir.(Cal.) Investor brought action against commodities futures commission merchant seeking declaratory judgment that “increment and interest” on funds maintained pursuant to the Commodities...	June 01, 1984	Case		6 7 8 F.2d
Distinguished by	21. Long v. Flying Tiger Line, Inc. Fixed Pension Plan for Pilots 994 F.2d 692 , 9th Cir.(Cal.) Retired employees of air carrier brought action seeking enforcement of terms of summary plan description in District Court. The United States District Court for the Northern...	June 01, 1993	Case		8 F.2d
Distinguished by	22. International Union of Operating Engineers-Employers Const. Industry Pension, Welfare and Training Trust Funds v. Karr 994 F.2d 1426 , 9th Cir.(Wash.) Employee benefit trust funds brought action to recover accurate payments from employer. The United States District Court for the Western District of Washington, Carolyn R....	June 04, 1993	Case		4 F.2d
Distinguished by	23. Fallick v. Nationwide Mut. Ins. Co. 957 F.Supp. 1442 , S.D.Ohio Beneficiary brought action under the Employee Retirement Income Security Act of 1974 (ERISA), alleging that his employer improperly reduced or denied claims. Employer moved for...	Mar. 12, 1997	Case		5 F.2d
Distinguished by	24. Clancy v. Employers Health Ins. Co.	Nov. 24, 1999	Case		5

Treatment	Title	Date	Type	Depth	Headnote(s)
	82 F.Supp.2d 589 , E.D.La. Participant in group health insurance plan sued insurer in state court to recover coordinated benefits, as well as penalties and attorney fees. Insurer removed action based on...				F.2d
Distinguished by	25. Suozzo v. Bergreen 2003 WL 22387083 , S.D.N.Y. LABOR AND EMPLOYMENT - Benefit Plans. Administrative record would not be expanded in ERISA litigation to allow additional evidence.	Oct. 20, 2003	Case		5 F.2d
Distinguished by	26. Kaminskiy v. Kimberlite Corporation 2014 WL 2196191 , N.D.Cal. Before the Court are two motions: (1) defendants Kimberlite Corporation ("Kimberlite") and Kimberlite Corporation Employee Stock Ownership Plan's ("the ESOP") "Motion to...	May 27, 2014	Case		3 F.2d

History

There are no History results for this citation.