JOURNAL of PENSION BENEFITS

ISSUES IN ADMINISTRATION, DESIGN, FUNDING, AND COMPLIANCE
Volume 33 • Number 3 • Spring 2026

ERISA LITIGATION

Evading the Razor's Edge: The Deferential Standard of Review for Fiduciary Actions

This column discusses how the various Circuits have applied the Firestone deferential standard of review to claims outside the ERISA Section 502(a)(1)(B) context.

BY KATELYN W. HARRELL

Katelyn Harrell is a partner with Bryan Cave Leighton Paisner and is a member of the Class Action and ERISA and ESOP Teams. Her practice focuses on defending employers, plan sponsors, plan administrators, individual fiduciaries, and independent trust companies against fiduciary claims in ESOP cases. Ms. Harrell has represented ESOP clients in Department of Labor investigations and litigation, as well as class action litigation brought by private plaintiffs.

In *Firestone Tire & Rubber Co. v. Bruch* [489 U.S. 101, 111–115 (1989)], the Supreme Court held that courts reviewing benefit claim determinations should apply the abuse of discretion review standard (also referred to as the arbitrary and capricious review standard) when the terms of the plan subject to the Employee Retirement Income Security Act of 1974 (ERISA) governing the claim grant the fiduciary all discretionary authority to construe uncertain terms or make eligibility determinations under the plan. While *Firestone* analyzed the standard of review for benefit claim determinations, many courts since *Firestone* have applied the "*Firestone*" deferential standard of review to fiduciary conduct outside the benefit claim context.

Seventh Circuit

In *Armstrong v. LaSalle Bank Nat'l Ass'n,* the Seventh Circuit applied the *Firestone* standard when holding that "[i]n general, judicial review of the decisions of an ERISA trustee as of other trustees is deferential unless there is a conflict of interest." [446 F.3d 728, 732 (7th Cir. 2006)] The court continued, noting "[w]e must not seat ESOP trustees on a razor's edge." [*Id.*] District courts within the Seventh Circuit have consistently applied this deferential standard of review to trustee decisions where no conflict of interest exists, holding that "with no evidence of any conflict of interest, breach of fiduciary duty claims must be assessed under the typical abuse of discretion standard." [*Rush v. GreatBanc Trust Co.,* 2025 WL 975214 at *18 (N.D. Ill. Mar. 31, 2025); *see also Brieger v. Tellabs, Inc.*, 629 F. Supp. 2d 848, 860 (N.D. Ill. 2009) ("[s]o long as they do not have a conflict of interest, ERISA trustees are entitled to deferential judicial review"); *Campbell v. Whobrey,* 2017 WL 11714343, at *2 (N.D. Ill. June 30, 2017) ("courts have applied [the abuse of discretion standard] to a variety of decisions by ERISA fiduciaries that require an 'exercise of discretion,' where that discretion is both authorized by the plan documents and actually exercised by the fiduciaries")] Courts within the Seventh Circuit are not alone.

First Circuit

The First Circuit in *Mahoney v. Board of Trustees*, [973 F.2d 968, 970–73 (1st Cir. 1992)] took an even more expansive view of when the arbitrary and capricious standard of review should apply, holding that despite the existence of a conflict in interest between the trustees and certain participants, as long as the trustees were making discretionary decisions, the arbitrary and capricious standard of review applied and "no special, strict standard of review" was appropriate. [*Mahoney*, 973 F.2d at 970] Consistent with this holding, in *Caterino v. Barry* [8 F.3d 878, 883 (1st Cir. 1993)], the First Circuit held that trustees' decisions must be reviewed "at a distance," finding that trustee decisions must be reviewed under an "arbitrary and capricious [standard] in light of the trustees' responsibility to all potential beneficiaries." [*See also Barchock v. CVS Health Corp.*, 2017 WL 9324762 (D.R.I. Jan. 31, 2017) *aff'd*, 886 F.3d 43 (1st Cir. 2018) (Under ERISA, courts review "discretionary decisions 'deferentially' to ensure an appropriate process was employed.") (internal citations removed)]

Third Circuit

Similarly, the Third Circuit in *Edwards v. Wilkes-Barre Pub. Co. Pension Tr.*, [757 F.2d 52, 57 (3d Cir. 1985)] held that the fiduciaries' interpretation of the governing plan was a reasonable interpretation and did not constitute arbitrary and capricious conduct.

Then, in *Mator v. Wesco Distribution, Inc.* [102 F.4th 172 (3d. Cir. 2024)], the Third Circuit quoted *Hughes v. Northwestern Univ.* [595 U.S. 170, 177 (2022)], when holding that "[t]he circumstances confronting a fiduciary sometimes require 'difficult tradeoffs,' so 'courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise.'" [*Mator*, 102 F.4th at 184]

Circuit Court for the District of Columbia, Sixth, Eighth, Ninth, and Tenth Circuits

Consistent with the Seventh, First, and Third Circuits, the Circuit Court for the District of Columbia similarly found the arbitrary and capricious standard was appropriate when reviewing fiduciary conduct in *Foltz v. U.S. News & World Rep., Inc.* [865 F.2d 364, 374 (D.C. Cir. 1989)], affirming the review of "fiduciaries' decisions as to the allocation of benefits among beneficiaries by an 'arbitrary or capricious' standard so long as the decisions involved no conflict of interest." The Sixth, Eighth, Ninth, and Tenth Circuits have also held that a deferential standard of review applies to fiduciary actions. [*See Hunter v. Caliber Sys., Inc.*, 220 F.3d 702, 711 (6th Cir. 2000) (finding "no barrier" to applying a deferential standard to a case "not involving a typical review of denial of benefits"); *Tussey v. ABB, Inc.*, 746 F.3d 327, 335 (8th Cir. 2014) ("Like most circuits to address the issue, we see no compelling reason to limit *Firestone* deference to benefit claims."); *Tibble v. Edison Int'l,* 729 F.3d 1110, 1129-130 (9th Cir. 2013) (holding that fiduciary's actions, in action alleging breach of fiduciary duty, were subject to arbitrary and capricious standard of review), *vacated on other grounds by Tibble v. Edison Int'l,* 575 U.S. 523 (2015); *Ershick v. United Missouri Bank of Kansas City, N.A.*, 948 F.2d 660, 666 (10th Cir. 1991) ("The decisions of a fiduciary will be upheld unless they are arbitrary and capricious, not supported by substantial evidence or erroneous on a question of law."); *In re YRC Worldwide, Inc. ERISA Litigation,* 2010 WL 4386903 at *4 (D. Kan. Oct. 29, 2010) ("a 'highly deferential' standard should be used to review a fiduciary's actions.")]

While the Supreme Court has not clarified whether breach of fiduciary duty claims should be assessed under a deferential standard of review, the Court in *Hughes v. Northwestern University* suggested that it may be open to such an application. [*See Hughes v. Northwestern Univ.,* 595 U.S. 170, 177 (2022) ("At times, the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, *and courts must give due regard* to the range of reasonable judgments a fiduciary may make based on her experience and expertise.") (emphasis added)]

Second Circuit

The Second Circuit has been less straightforward in clarifying the appropriate standard of review for fiduciary conduct. In *John Blair Commc'ns, Inc. Profit Sharing Plan v. Telemundo Grp., Inc. Profit Sharing Plan* [26 F.3d 360, 369 (2d Cir. 1994)], the Second Circuit declined to apply the arbitrary and capricious standard beyond the "simple denial of benefits." When analyzing whether an ERISA fiduciary violated ERISA by failing to give notice of a policy in a summary plan description, the Second Circuit in *Wilkins v. Mason Tenders Dist. Council Pension Fund* reversed the district court's application of a deferential standard of review, holding that where the analysis of the fiduciary's actions focused on whether the act complied with ERISA rather than whether the fiduciary's interpretation of a plan provision was wrongful, the appropriate standard of review was *de novo* rather than deferential review. [*Wilkins*, 445 F.3d 572, 581–82 (2d Cir. 2006); *but also see Frommert v. Conkright,* 738 F.3d 522, 531 (2d Cir. 2013) (it "is an open question whether our analysis of a claimed violation of ERISA's notice requirements, which requires an interpretation of the [plan's] SPDs, is subject to review under a de novo or abuse of discretion standard."] However, in *Ganton Technologies, Inc. v. National Indus. Group Pension Plan,* the Second Circuit held that where a trustee has discretion to interpret plan terms, it will not "substitute [its] judgment for theirs unless the trustees' interpretation is arbitrary and capricious," even where the claim is for a fiduciary breach rather than a claim for benefits. [76 F.3d 462, 466-467 (2d. Cir. 1996)]

Fourth and Eleventh Circuits

As with the Second Circuit, the extension of *Firestone* deference beyond benefits cases remains an open question in the Fourth and Eleventh Circuits. [*See DiFelice v. U.S. Airways, Inc*., 497 F.3d 410, 419 n.4 (4th Cir. 2007) ("Because we find that the challenged actions of the fiduciary survive review under the usual standards, we need not determine here the applicability of the more deferential *Firestone* standard."); *Huang, et al., v. Trinet HR III, Inc.,* 2022 WL 93571 at *4 (M.D. Fla. Jan. 10, 2022) ("the Eleventh Circuit has not opined on this issue…")]

Fifth Circuit

Taking an alternate position, the Fifth Circuit has been reticent to apply an arbitrary and capricious standard of review in fiduciary breach cases. In *Browdy v. Hartford Life & Acc. Ins. Co.* [630 Fed.Appx. 278, 283 (5th Cir. 2015)], the Fifth Circuit refused to apply a deferential standard of review to a breach of fiduciary duty claim under ERISA Section 502(a)(3), holding that "the ERISA standard for determining whether [the defendant fiduciary] breached its fiduciary duty is *de novo*."

In Sum

On balance, courts across the country have been receptive to applying a deferential standard of review where plaintiffs bring breach of fiduciary duty claims against fiduciaries who made discretionary decisions. While there are nuances to the application of the deferential standard, there is strong support for the use of the deferential standard of review beyond benefits cases. And the deferential standard of review ensures ERISA fiduciaries can carry out their duties without constant fear of someone second-guessing every decision they make—and avoid "seat[ing] [fiduciaries] on a razor's edge."