Legal Opinion Letter

Washington Legal Foundation
Keeping Free Enterprise Free

Vol. 35 No. 6 August 11, 2026

Fourth Circuit Expands Class Certification Defense to 401(k) Class Actions

by Scott Burnett Smith

Class actions aggregating employee claims against their employer's 401(k) plan are big litigation. And big business. Since 2021, gross settlements of these cases exceed $500 million. A recent U.S. Court of Appeals for the Fourth Circuit decision expands an effective defense against these claims, however. *Trauernicht v. Genworth Financial*, 169 F.4th 459 (4th Cir. 2026). In *Trauernicht*, the court held 401(k) claims are inherently "*individualized* monetary claims." *Id.* at 469 (emphasis in original). As a result, the Court deemed such claims not appropriate for class certification under Federal Rule of Civil Procedure 23(b)(1) or 23(b)(3). *Id.* at 470–73.

The retirement benefits plan in *Trauernicht* was a "defined contribution" plan. Commonly known as 401(k)s or 403(b)s, a defined contribution plan gives each employee participant access to an investment account and a menu of possible investments. These can range from mutual funds, to index funds, to bond funds. Each participant's account is self-directed in terms of investment strategy, risk tolerance, and the like. A young, aggressive participant may max out investments in actively managed stock funds. Another participant may invest 60 percent in stocks and 40 percent in bonds, while another could invest in only one target-date fund keyed to their retirement date. And another might invest conservatively only in bond funds intended to protect against market fluctuation. Add in the compounding of gains and losses over a career, and the results of each account will vary widely by the time each participant retires. (These characteristics of a "defined contribution" plan stand in stark contrast to a traditional "defined benefit" or pension plan, which pays a set retirement benefit set by a calculation calibrated to years of service and salary earned.)

The employer in *Trauernicht* was Genworth Financial. Its 401(k) plan had over 4,000 participants. The investment menu gave participants a dozen investment options to choose from. One choice involved a suite of target date funds, premixed and tied to a participant's retirement date, offered by BlackRock. The class action complaint alleged that Genworth breached its fiduciary duties under ERISA in selecting and retaining the BlackRock funds, which performed significantly worse than other funds by comparison. *See* 169 F.3d at 463–65. On the Plaintiffs' motion, the District Court certified a mandatory class action under Rule 23(b)(1) covering all participants and their beneficiaries who'd invested in the Black Rock funds since 2016. *Id.* at 466.

Scott Burnett Smith is the founder and chair of Bradley Arant Boult Cummings LLP's Appellate team, practicing in the firm's Huntsville, AL office.

The Fourth Circuit reversed, vacating class certification. First, the Court held that 401(k) claims are "*individualized* monetary claims" and thus cannot be joined in mandatory, non-opt-out 23(b)(1) class. "Individualized monetary claims belong in Rule 23(b)(3)," which provides greater procedural protections, the court explained. Following Supreme Court precedent, the Court held a mandatory class action could not be used "when each class member has an 'individualized claim for money.'" 169 F.4th at 471–72 (following and quoting *Wal-Mart v. Dukes*, 564 U.S. 338, 363 (2011)).

Second, the court held 401(k) claims are so individualized they cannot satisfy the more rigorous "commonality" requirement for a 23(b)(3) damages class action. This holding rests on the nature of a "defined contribution" plan, in which each participant invests in a "materially different way." The court explained the heterogeneity:

> Each participant made his or her own investment decisions with respect to his or her individual account, and the participant could change that decision on any given day. Moreover, the participants selected different vintages of the BlackRock LifePath Index Funds at different times during different market conditions. And the different BlackRock TDF vintages carried different risks, depending on the retirement date selected. Finally, each participant withdrew assets from the Plan at different times. And during these times, the market performed uniquely each day.

169 F.4th at 474. The Plaintiffs' mere allegation that they suffered common injuries, the Court concluded, provides "'no cause to believe that all their claims can productively be litigated at once.'" *Id.* (again quoting *Wal-Mart*, 564 U.S. at 350).

The Fourth Circuit's decision in *Trauernicht* builds on the Seventh Circuit's decision in *Spano v. Boeing*, which likewise decertified mandatory 401(k) class actions. 633 F.3d 574, 588–90 (7th Cir. 2011). *Trauernicht* and *Spano* provide a powerful defense to aggregating these claims into a class action. As the Seventh Circuit opined, "the close-to-infinite variety of combinations in each participant's account—varying by which investment, when purchases were ordered, when money was shifted from one fund to another—make" these cases "singularly unattractive for class certification." *Id.* at 589–90.

The main defense against 401(k) class actions has largely focused on a motion to dismiss. If that motion fails, most 401(k) class actions settle there. But *Trauernicht* counsels more patience and fortitude. Defending a 401(k) class action through class certification could well result in denial of class certification, reducing the stakes considerably. Moreover—if you would like recommendations for further reading on this topic—you may discover equally powerful defenses by litigating beyond a threshold motion. For instance, discovery may reveal that members of the putative class never invested in the investment options targeted by the complaint. If so, a recent Second Circuit decision holds this undermines individual standing. *See Collins v. Northeast Grocery*, 149 F.4th 163 (2d Cir. 2025). And if you can prove the plan sponsors followed good investment practices, you might be entitled to summary judgment, as the Third Circuit recently held. *See In re Quest Diagnostics ERISA Litig.*, 179 F.4th 217 (3d Cir. 2026). After all, ERISA guarantees only prudent processes, not positive returns.