



Supreme Court Declines to Review Attempt by USC to Compel Arbitration of ERISA Class Action Lawsuit

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On February 19, 2019, the Supreme Court of the United States denied certiorari in *Munro v. University of Southern California*, a closely watched ERISA case in the Ninth Circuit.

The plaintiffs in *Munro* were required to sign employment contracts containing arbitration agreements that waived their right to file suits against the University of Southern California (USC) as a condition of employment. Under the employment contracts, employees were only able to arbitrate claims brought on their own behalf, which effectively precludes class actions. The plaintiffs brought action arguing that Section 502(a)(2) of ERISA permits participants to file suit on behalf of a retirement plan. The district court agreed with the plaintiffs reasoning that an arbitration agreement – signed by participants at the start of their employment but not signed by anyone with authority to bind an ERISA plan – cannot require participants who file fiduciary breach claims on behalf of the plan to submit those claims to arbitration. The decision was confirmed on appeal to the Ninth Circuit.

In its ruling, the Ninth Circuit held that arbitration agreements do not apply to fiduciary breach claims brought under Section 502(a)(2) of ERISA because such claims are brought on behalf of the plan. The Ninth Circuit determined that although employees were required to sign away their right to sue when they accepted their jobs, the plan had never signed such an arbitration agreement. USC petitioned the Supreme Court for review of the Ninth Circuit's decision.

The Supreme Court declined to hear the case. The decision not to grant the petition took no position on the merits of the case, and plaintiffs can therefore proceed with their lawsuit.

This case has received a lot of attention because of the Supreme Court's decision last year in *Epic Systems v. Lewis*. The *Epic Systems* decision upheld the enforceability of arbitration agreements containing class and collective action waivers of wage and hour disputes but did not speak to whether those agreements could force fiduciary-breach claims into individual arbitration.

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