

## Publications

# Groom Files Amicus Curiae Brief on Behalf of American Benefits Council in Support of Plan Arbitration Provisions

## ATTORNEYS &amp; PROFESSIONALS

**Sarah Adams**

[sadams@groom.com](mailto:sadams@groom.com)

202-861-5432

**William Delany**

[wdelany@groom.com](mailto:wdelany@groom.com)

202-861-6643

**Lars Golumbic**

[lgolumbic@groom.com](mailto:lgolumbic@groom.com)

202-861-6615

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Groom Law Group recently filed a brief on behalf of the American Benefits Council as *amicus curiae* in the 7<sup>th</sup> Circuit case [Smith v. Board of Directors of Triad MA](#), No. 20-2708 (7th Cir. Sept. 9, 2020). The case is one of dozens being litigated across the country involving the validity of class action waivers and mandatory arbitration provisions contained in ERISA plan documents. The *amicus* brief, filed with the 7<sup>th</sup> Circuit on November 4, 2020, supported the principles that (i) where a defined contribution plan contains a mandatory arbitration provision and valid class action waiver, a participant binds himself to those provisions through his or her participation in the plan, and that (ii) valid class action waivers providing for arbitration on an individualized basis do not run contrary to participants' rights under ERISA.

The Plaintiff in *Smith* is a former employee in the Triad Manufacturing, Inc. Employee Stock Ownership Plan who brought the action on his own behalf and on behalf of the plan, alleging that the ESOP's trustee and the company's Board of Directors breached their fiduciary duties and engaged in prohibited transactions in violation of ERISA. The Triad Board and the individual Board member defendants moved to compel individual arbitration of Plaintiff's claims pursuant to the mandatory arbitration and class action waiver provision contained in the ESOP plan document, which was added to the plan document by amendment in 2018 – two years after Plaintiff left the company and a year before Plaintiff withdrew his account balance.

The *Smith* District Court denied the motion to compel arbitration for two primary reasons. First, applying Missouri law, the court found that Plaintiff was not given notice of the amendment containing the arbitration provision and did not agree to be bound by that amendment or to arbitrate. Second, the *Smith* court explained that arbitration agreements that act as a "prospective waiver of a party's right to pursue statutory remedies" are unenforceable on public policy grounds, and found that the arbitration provision eliminated Plaintiff's right to pursue plan-wide statutory remedies under ERISA section 502(a)(2).

The Triad Defendants appealed the denial of the motion to compel arbitration to the 7th Circuit (*Smith v. Board of Directors of Triad MA*, No. 20-2708 (7th Cir.)). In their opening brief, the Triad Defendants argued

that, in light of the FAA’s liberal policy favoring enforcement of arbitration agreements, the Plan’s arbitration provision should have been enforced by the District Court. The Triad Defendants contend that Plaintiff-Appellee was bound by the Plan’s arbitration provision through his continued participation in the plan and that class action waivers do not infringe on participants’ right to seek relief under ERISA Section 502(a)(2). Dkt. 17.

In its *amicus* brief in support of the Triad Defendants-Appellants, The American Benefits Council argued that enforcement of written ERISA plan terms – including arbitration provisions with class action waivers – is essential to fulfilling the statutory directives and policy considerations of both the FAA and ERISA. Dkt. 24. In light of the FAA’s intent to offer employers efficient, cost-effective means of resolving disputes, and ERISA’s intent to encourage employers to offer benefit plans and to enforce the terms of the plans as written, the Council argued that the District Court should have harmonized the two statutes by enforcing the Plan’s arbitration provision. The Council also argued that the District Court erroneously relied on Missouri law in evaluating the arbitration provision, and that the District Court should have instead evaluated its validity under ERISA’s comprehensive statutory scheme and the federal common law interpreting it. Finally, the Council contended that the District Court erroneously held that individual arbitration acts as a “prospective waiver” of plan participants’ rights under ERISA Section 502(a)(2), since a participant retains the right to seek individual relief going to his or her plan account under ERISA Section 502(a)(2). Overall, the Council believes it is integral for all plan sponsors to ensure they can author and enforce the terms of ERISA plan documents, while taking advantage of the cost-effective and efficient avenues for dispute resolution that arbitration offers.

Plaintiff-Appellee’s response brief is due on January 14, 2021, and the Triad Defendants-Appellants reply brief is due on February 4, 2021.

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