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ERISA Release of Claims Is No Match for Breach of Fiduciary Duty Allegations: Ninth Circuit Joins Seventh and Eighth Circuits in Requiring Consideration of Alleged Fiduciary Misconduct in Determining Enforceability of ERISA Releases

By Joseph J. Torres, Jennifer T. Beach and Jeffrey Salvadore

The enforcement of ERISA release of claims faces a new hurdle in the U.S. Court of Appeals for the Ninth Circuit. In June, the Ninth Circuit decided *Schuman v. Microchip Technology Inc.*,[1] which considered an issue of first impression for that court: "what the relationship is between enforceability [of ERISA releases] and allegations of employer and fiduciary abuse."[2] Noting the various factor-based analyses employed by other circuits, the Ninth Circuit joined the U.S. Courts of Appeals for the Seventh and Eighth Circuits in explicitly requiring the consideration of fiduciary misconduct related to obtaining the release when determining the enforceability of an ERISA release of claims.

Then, the Ninth Circuit took it a step further, directing that that any fiduciary misconduct may weigh heavily against the enforcement of the release.

This column examines the facts at issue in *Schuman*, the district court and Ninth Circuit's holdings, plus key takeaway for plan sponsors, fiduciaries and ERISA practitioners.

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THE PLAN AND RELEASE

The Plan

Almost exactly a decade ago, the severance plan at issue in *Schuman* was created. In July 2015, on the verge of a potential merger, Atmel Corporation created an ERISA-governed severance plan, entitled the "U.S. Severance Guarantee Benefit Program" (the Plan).[3] The Plan provided for severance benefits to Atmel employees if several conditions were met. First, an "Initial Triggering Event" had to occur prior to November 1, 2015.[4] If the triggering event occurred by that date, then the Plan would remain in effect for the next 18 months; if there was no triggering event prior to November 1, 2015, the Plan expired.[5] The Plan defined an "Initial Triggering Event" as Atmel "enter[ing] into a definitive agreement . . . that will result in a Change of Control of the Company."[6] If the triggering event occurred, Atmel employees were entitled to the Plan's severance benefits if (1) a "Change of Control actually occur[red]," and (2) their employment was terminated without cause by Atmel or its successor within 18 months of the execution of the definitive agreement.[7]

Atmel's Representations

Atmel made numerous representations to its employees regarding the Plan, including representations about when the plan would remain in effect. When the Plan was first distributed to Atmel's employees, it came with a cover letter explaining that "Atmel recognized there 'had[d] been significant market speculation regarding possible transactions involving the company,' and that 'such rumors can be distracting and unsettling[]' [and therefore] the Plan was 'intended to ease concerns among [] employees' and allow them to 'focus[] on [the company's] continued success.'"[8]

Additional representations were made in September 2015 when Atmel received competing offers from Dialog Semiconductor and Microchip Technology Inc.[9] At that time, Atmel sent its employees another letter stating that the Plan "continues to remain in place" and reminding employees of the benefits under the Plan "following 'an acquisition by Dialog *or* Microchip.'"[10] Atmel's CEO also testified that he explained to employees that "their severance agreements would be effective if Microchip turned out to be the acquirer."[11]

Atmel ultimately entered into a merger agreement with Microchip in January 2016.[12] The next month, Atmel's Human Resources Department circulated a FAQ document to employees concerning "compensation & benefits relating to the Microchip merger."[13] It stated that "Microchip has agreed to honor each of your employment and compensatory contracts agreements" – including severance agreements – "*that are in effect*

immediately prior to the closing of the transaction."[14] In April 2016, the merger between Atmel and Microchip closed.[15]

Release of Claims

Following the merger, Microchip terminated plaintiffs without cause.[16] Microchip leadership explained that the Plan had expired, and thus Microchip would not honor its terms.[17] Microchip and Atmel offered plaintiffs a portion of the severance benefits available under the Plan in exchange for their execution of a release of liability "related to or arising out of [their] employment" with Atmel or its subsidiaries and affiliates.[18] The two named plaintiffs, and all but five of the later-certified class members, signed the release.[19]

DISTRICT COURT PROCEEDINGS

Despite having signed the releases, plaintiffs sued Microchip and Atmel over the severance benefits in the U.S. District Court for the Northern District of California. The operative complaint contained two claims: a claim for breach of fiduciary duties in violation of ERISA § 404(a), 29 U.S.C. § 1104(a), and a denial of benefits claim in violation of ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(b).[20] Defendants moved for summary judgment, arguing that by signing the releases, plaintiffs "knowingly and voluntarily" waived their rights to pursue the claims at issue.[21] Plaintiffs responded that the releases were not enforceable given the "unique context" of the case, claiming that whether they knowingly and voluntarily waived their rights was irrelevant.[22]

According to the plaintiffs, the "unique context" here was the defendants' alleged fiduciary breaches. Plaintiffs argued that defendants "breached their fiduciary duties in multiple ways, including by failing to provide complete information about the benefits to which plaintiffs were entitled, failing to investigate the intended meaning of the Atmel Plan, and offering plaintiffs reduced severance benefits in exchange for releases."[23] Plaintiffs argued that the releases were unenforceable because they were obtained in violation of defendants' fiduciary duties.[24]

The district court rejected plaintiffs' argument and instead employed a "heightened scrutiny" six-factor test used to determine if the release was "knowing and voluntary."[25] None of the six factors concerned the employer's misconduct. Finding that, pursuant to the six-factor test, the two named plaintiffs had knowing and voluntarily signed the release, the court granted defendants' motion for summary judgment as to the named plaintiffs.[26] As for the other plaintiffs who had signed the releases, it ordered the parties show cause as why the class should not be decertified in light of the individualized analysis necessary to assess whether the releases were knowing and voluntary.[27]

Shortly thereafter, plaintiffs filed a "Response to Order to Show Cause, and In the Alternative, Request For Entry of Rule 54(b) Judgment and Stay of Further Class-Related Proceedings."[28] Plaintiffs argued that decertifying the class "at this juncture would create an enormous, and enormously inefficient, procedural mess."[29] However, if the court was inclined to decertify the class, plaintiffs asserted that "the most straightforward and efficient solution to this potential dilemma . . . is for the Court instead to enter a Rule 54(b) judgment as to the two named plaintiffs" while staying proceedings regarding decertification.[30] That way, prior to addressing the claims of the other class members who signed the release, the Ninth Circuit could rule on the legal issue of first impression: "whether an ERISA fiduciary's breach of fiduciary duty in obtaining a release of a beneficiary's ERISA claims is a material (and perhaps dispositive) factor that should be considered in determining the enforceability of that release."[31] The court agreed and entered final judgment under Rule 54(b) in favor of defendants and against the two named plaintiffs.[32]

NINTH CIRCUIT APPEAL

The parties cross-appealed to the Ninth Circuit, which noted that it had not yet "determined what the relationship is between enforceability [of ERISA releases] and allegations of employer and fiduciary abuse, or whether releases must indeed withstand 'special scrutiny.'"[33]

The Ninth Circuit disagreed with the district court's "strict" application of the six-part test, concluding that "courts must evaluate releases and waivers of ERISA claims with 'special scrutiny designed to prevent potent potential employer or fiduciary abuse' . . . consider[ing] evidence of a breach of fiduciary duty related to a release of claims under ERISA."[34] Doing so, the court opined, aligns with ERISA "purpose, structure, and underlying trust-law principles."[35] The court underscored that ERISA requires plan fiduciaries to act "solely in the interest of the participants" and imposes a fiduciary duty of loyalty, which requires the disclosure of accurate and material information.[36]

Turning to how this special scrutiny should be applied in practice, the court examined the four other circuits with ERISA-specific tests for the enforceability of releases.[37] The U.S. Courts of Appeals for the First and Second Circuits employ the six-factor test used by the district court.[38] The Seventh and Eight Circuits, however, use a more extensive tests, adding factors that take into consideration any improper conduct by the fiduciary.[39]

The Ninth Circuit followed the Seventh and Eighth Circuits' approach, adopting a non-exhaustive nine-part test, with the final factor being "whether the employee's release was induced by improper conduct on the fiduciary's part."[40] It explained that where there is "a genuine issue of material fact to the issue of a breach of fiduciary duty in obtaining the release of claims," this final factor "may weigh particularly heavily

against finding that the release was 'knowing' or 'voluntar[ily]' given and remanded the case for the district court to consider the release under this new test.[41]

TAKEAWAYS

Moving forward, plan sponsors sued in the Ninth Circuit will need to carefully consider fiduciary conduct, such as representations made to plan participants about a plan, when analyzing whether a release of claims concerning the plan will be enforced. Conduct giving rise to an issue of material fact concerning a breach of fiduciary duty claim, even if that claim is not ultimately viable, may preclude an early dismissal in the case based on the release.

Moreover, like in *Schuman*, in the merger and acquisition context, acquiring companies will want to pay close attention to representations made to plan participants about the continued viability of the acquired company's plans, and whether those representations conflict with the acquiring company's interpretation of the plans. Such representations may give rise to a breach of fiduciary duty claim and thus undermine any future release the acquiring company may be able to obtain from employees of the acquired company.

From an ERISA litigation standpoint, *Schuman* may result in the addition of breach of fiduciary duty claims in cases where the plaintiff has signed a release of claims, even if the breach of fiduciary duty claim is weak. Mere allegations of a breach of fiduciary duty may be enough under *Schuman* to move the case through the beginning stages of litigation notwithstanding the ERISA release at play, potentially driving settlement due to the possibility of higher litigation costs.

Notes

1. 139 F. 4th 1045 (9th Cir. 2025).

2. Id. at 1052.

3. Schuman v. Microchip Tech. Inc., No. 16-cv-05544-HSG, 2023 WL 5498065, at *1 (N.D. Cal. Aug. 23, 2023), rev'd in part, appeal dismissed in part, 139 F.4th 1045 (9th Cir. 2025); see also Schuman, 139 F. 4th at 1049.

4. Schuman, 2023 WL 5498065, at *1.

5. Schuman, 139 F. 4th at 1049; see also Schuman, 2023 WL 5498065, at *1.

6. Schuman, 2023 WL 5498065, at *1.

7. Schuman, 139 F. 4th at 1049.

8. Schuman, 2023 WL 5498065, at *1 (internal citations omitted).

9. Id.

10. Id. at *2 (emphasis added).

11. Id.

12. Id.

13. Id.

14. Id.

15. Id.

16. Id. at *3. The plaintiffs in this case were a certified class of 220 former employees of Atmel. Id. at *1.

17. Id. at *2.

18. Id. at *3.

19. Schuman, 139 F. 4th at 1050 n.1.

20. Schuman, 2023 WL 5498065, at *3.

21. Id. at *5.

22. Id. Plaintiffs also argued that defendants waived the right to rely on the releases because during the administrative review process, the plan administrator did not base its benefit denial on the existence of the releases. The court rejected that argument. Id. at *5-6.

23. Id. at *7.

24. Id.

25. Id. at *8-10. The six factors, previously employed by other Ninth Circuit district courts, were "(1) plaintiff's education and business sophistication; (2) the respective roles of employer and employee in determining the provisions of the waiver; (3) the clarity of the agreement; (4) the time plaintiff had to study the agreement; (5) whether plaintiff had independent advice, such as that of counsel; and (6) the consideration for the waiver." Id. at *7.

26. Id. at *10, 14.

27. Id. at *11.

28. Response to Order to Show Cause, and In the Alternative, Request For Entry of Rule 54(b) Judgment and Stay of Further Class-Related Proceedings at 1, Schuman v. Microchip Tech. Inc., No. 16-cv-05544-HSG, (N.D. Cal. Aug. 23, 2023), Dkt. No. 187.

29. Id. at 14.

30. Id. at 14-15.

31. Id. at 6.

32. Judgment Pursuant to F.R.C.P 54(b) at 2, Schuman v. Microchip Tech. Inc., No. 16-cv-05544-HSG, (N.D. Cal. Apr. 11, 2024), Dkt. No. 198.

33. Schuman, 139 F. 4th at 1052.

34. Id. at 1051-52.

35. Id. at 1052.

36. Id.

37. Id.at 1052-1053.

38. Id. (citing Morais v. Cent. Beverage Corp. Union Employees' Supplemental Ret. Plan, 167 F.3d 709, 713 & n. 6 (1st Cir. 1999); Finz v. Schlesinger, 957 F.2d 78, 82 (2d Cir. 1992).

39. Schuman, 139 F. 4th at 1052-1053 (citing Leavitt v. Nw Bell Tel. Co., 921 F.2d 160, 162 (8th Cir. 1990); Howell v. Motorola, Inc., 633 F.3d 552, 559 (7th Cir. 2011).

40. Schuman, 139 F. 4th at 1053.

41. Id. at 1053-54. Defendants-Appellees filed a Petition for Rehearing and Rehearing in Banc on June 20, 2025. That petition was still pending at the time of the writing of this column.