

An Update on the Alternative Pleading Under ERISA § 502(a)(1)(B) and § 502(a)(3)

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In this article, Anthony Shelley and Michael Khalil* discuss the recent court rulings that allow alternative pleading under ERISA § 502(a)(1)(B) and § 502(a)(3). "One question that has troubled courts in recent years regarding ERISA's civil enforcement provision is the inter-relationship among § 502's six subsections, particularly whether a participant can bring simultaneously both a claim for 'other appropriate equitable relief' under § 502(a)(3) along with a claim for benefits under § 502(a)(1)(B)," Shelley and Khalil write. Following a review of recent decisions, which were based on a number of competing tests developed to evaluate the validity of claims issued, the authors concluded that "despite the recent trend of circuit courts allowing alternative pleading under § 502, there is still disagreement in the lower courts. Overall, the pendulum seems to be swinging toward a more lenient view of the of the availability of § 502(a)(3) claims, at least during the pleading stage."

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