

FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-10084

RANI BOLTON,
ALISON MERCKER,
JAMES ARMSTRONG,
MELISSA SUTER,
BENJAMIN LYMAN,
individually and as representatives of a class of
participants and beneficiaries on behalf of the
Inland Fresh Seafood Corporation of America, Inc.
Employee Stock Ownership Plan,

Plaintiffs-Appellants,

versus

INLAND FRESH SEAFOOD CORPORATION OF AMERICA,
INC.,
JOEL KNOX,
BILL DEMMOND,
CHRIS ROSENBERGER,
LES SCHNEIDER, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:22-cv-04602-LMM

Before WILLIAM PRYOR, Chief Judge, and JORDAN, ROSENBAUM, JILL PRYOR, NEWSOM, BRANCH, GRANT, LUCK, LAGOA, BRASHER, ABUDU, and KIDD, Circuit Judges.

JORDAN, Circuit Judge:

Today, we revisit *Mason v. Continental Group, Inc.*, 763 F.2d 1219 (11th Cir. 1985), which imposed a mandatory administrative exhaustion requirement for all statutory claims brought under the Employee Retirement Income Security Act (“ERISA”), 29 U.S.C. §§ 1001 *et seq.* For the reasons which follow, we overrule *Mason* and its progeny to the extent they hold that ERISA itself requires exhaustion of statutory claims (including those alleging a breach of fiduciary duty).

Because the district court’s dismissal of the plaintiffs’ claims was based on *Mason* and its progeny, we reverse the dismissal order and remand to the panel for further proceedings.

I

The dispute in this case arises from an employee pension plan created by Inland Fresh Seafood Corporation of America. The named plaintiffs in this class action are five former Inland Fresh employees. They sued Inland Fresh and several alleged fiduciaries—

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namely, the plan's trustee, the plan's committee, and four of the company's officers and directors (whom we refer to collectively as the defendants). *See Bolton v. Inland Fresh Seafood Corp. of Am., Inc.*, 155 F.4th 1272, 1278 (11th Cir. 2025). Their claims arise from the transaction described below.

In November of 2016, the plan used the proceeds from a \$92 million loan, guaranteed by Inland Fresh, to purchase all outstanding shares of the company's common stock from four of the company's officers and directors. *See id.* According to the plaintiffs, that purchase price was inflated—the result of false financial projections, among other things—and far exceeded Inland Fresh's fair market value.

On behalf of the plan itself and a proposed class of the plan's 578 participants, the plaintiffs brought claims under § 502(a)(2) and (a)(3) of ERISA, 29 U.S.C. § 1132(a)(2) & (a)(3). They alleged that the defendants breached their fiduciary duties by causing the plan and its participants to overpay by tens of millions of dollars for the Inland Fresh common stock. *See Bolton*, 155 F.4th at 1278. They also alleged that the plan's trustee failed to conduct proper due diligence before settling on the purchase price. *See id.*

The defendants moved to dismiss. They argued, among other things, that the plaintiffs did not exhaust administrative remedies prior to filing suit and that the deadline for pursuing such remedies had passed. The plaintiffs responded that administrative exhaustion was not necessary; that exhaustion need not have been pleaded, in any event; and that if exhaustion were required, the

case should be stayed to allow for them to pursue administrative remedies.

The district court dismissed the complaint and denied the plaintiffs’ request to stay the case to allow them to pursue administrative remedies. The court explained that it and the parties were bound by *Mason* and its progeny, which require administrative exhaustion for statutory ERISA claims. See *Bolton v. Inland Fresh Seafood Corp. of Am., Inc.*, 2023 WL 9196735, at *2 (N.D. Ga. Dec. 5, 2023) (rejecting the plaintiffs’ argument that other circuits “hold[] that there is no administrative exhaustion requirement for ERISA suits”). See also *id.* at *6 (denying a stay: “That the Eleventh Circuit may be unique in requiring exhaustion of administrative remedies prior to filing suit does not justify ignoring the requirement.”).

A panel of this court affirmed the dismissal. See *Bolton*, 155 F.4th at 1289. The panel, like the district court, concluded that it was bound by *Mason*. See *id.* at 1281. In a separate concurrence, two members of the panel opined that *Mason* had been wrongly decided and should be overruled by the full court. See *id.* at 1289–91 (Jordan, J., joined by Jill Pryor, J., concurring). We vacated the panel opinion and ordered rehearing en banc. See 166 F.4th 106, 107 (11th Cir. 2026).

II

We do not take our decision to overrule *Mason* lightly. But our holding requiring administrative exhaustion in *Mason* was an atextual product of judicial creation based solely on policy reasons.

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That holding, moreover, has not withstood the test of time as most of our sister circuits have come to a contrary conclusion.¹

A

We start with ERISA itself. Despite its “comprehensive” scope, *see Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 209 (2002) (internal quotation marks and citation omitted), ERISA does not contain an exhaustion requirement for statutory claims. And it has long been understood that courts “are not at liberty to add to or take from the language of [a] statute.” *Stockley v. United States*, 260 U.S. 532, 540 (1923). As a general matter, therefore, we should not impose a requirement that Congress has omitted. *See, e.g., Silva-Hernandez v. U.S. Bureau of Citizenship & Immigr. Servs.*, 701 F.3d 356, 361 (11th Cir. 2012) (“We cannot add to the terms of the provision what Congress left out.”) (citation omitted).²

¹ We limit our discussion, and holding, to whether ERISA requires administrative exhaustion for statutory claims. We do not address our cases requiring exhaustion in cases where a plaintiff is challenging the denial of benefits under the terms of a plan governed by ERISA. *See, e.g., Springer v. Wal-Mart Associates’ Grp. Health Plan*, 908 F.2d 897, 900 (11th Cir. 1990) (“[I]t is no longer open to serious dispute that plaintiffs in ordinary breach-of-contract ERISA actions must normally exhaust available administrative remedies.”).

² There are some limited exceptions to this general rule. For example, sometimes federal courts “look to background common-law principles to fill in obvious gaps in statutes, such as a missing *mens rea* element in a criminal statute.” *Hewitt v. United States*, 606 U.S. 419, 455 (2025) (Alito, J., dissenting). *See, e.g., Elonis v. United States*, 575 U.S. 723, 736 (2015) (“When interpreting federal criminal statutes that are silent on the required mental state, we read into the statute only that *mens rea* which is necessary to separate wrongful conduct from otherwise innocent conduct.”) (internal quotation marks and citation

Mason acknowledged that ERISA itself does not require exhaustion for statutory claims. *See* 763 F.2d at 1225. Yet it imposed an exhaustion requirement for policy reasons:

Compelling considerations exist for plaintiffs to exhaust administrative remedies prior to instituting a lawsuit. Administrative claim-resolution procedures reduce the number of frivolous lawsuits under ERISA, minimize the cost of dispute resolution, enhance the plan’s trustees’ ability to carry out their fiduciary duties expertly and efficiently by preventing premature judicial intervention in the decisionmaking process, and allow prior fully considered actions by pension plan trustees to assist courts if the dispute is eventually litigated.

Id. at 1227 (following the Seventh Circuit’s decision in *Kross v. Western Electric Co.*, 701 F.2d 1238, 1244–45 (7th Cir. 1983)).

“Whatever merits these and other policy arguments may have,” however, “it is not [our] province . . . to rewrite the statute to accommodate them.” *Artuz v. Bennett*, 531 U.S. 4, 10 (2000). “[G]eneral policy concerns cannot overcome the plain language of [a] statute.” *In re Guillen*, 972 F.3d 1221, 1228 (11th Cir. 2020). We are bound by statutory text, and the matter of exhaustion is no exception.

omitted). But here, as we explain, “[t]here is no ‘interstice’ . . . to be filled by federal common law[.]” *City of Milwaukee v. Illinois and Michigan*, 451 U.S. 304, 323 (1981).

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The Supreme Court has told the lower federal courts that “crafting and imposing” exhaustion rules that “are not required” by the text of a federal statute “exceeds the proper limits on the judicial role.” *Jones v. Bock*, 549 U.S. 199, 203, 216–17 (2007) (rejecting a judicially-created rule that plaintiffs have to plead exhaustion in suits covered by the Prison Litigation Reform Act because the Act “does not itself require plaintiffs to plead exhaustion”). Although *Jones* did not do away with *Mason* under our strict abrogation standard, see, e.g., *Jennings v. Sec’y, Fla. Dep’t of Corr.*, 108 F.4th 1299, 1304 (11th Cir. 2024), it does show that *Mason* erred in relying on policy considerations to create an atextual exhaustion requirement for statutory claims under ERISA. If exhaustion is going to be required for such claims, “that is a result which must be obtained by the process of amending [ERISA], and not by judicial interpretation.” *Leatherman v. Tarrant Cnty. Narcotics Intel. and Coordination Unit*, 507 U.S. 163, 168 (1993).

That the administrative exhaustion holding in *Mason* was unmoored from ERISA’s text is enough, in doctrinal terms, to call it into serious question. But it is also noteworthy that *Mason* and its progeny are at odds with seven of our sister circuits; the Third, Fourth, Fifth, Sixth, Ninth, Tenth, and D.C. Circuits have held that plaintiffs asserting statutory claims under ERISA do not have to exhaust administrative remedies. See generally *Hitchcock v. Cumberland Univ.* 403(b) DC Plan, 851 F.3d 552, 564 (6th Cir. 2017) (“We agree with the Third, Fourth, Fifth, Ninth, Tenth, and D.C. Circuits . . . [and] hold that ERISA plan participants or beneficiaries do not need

to exhaust internal remedial procedures before proceeding to federal court when they assert statutory violations of ERISA.”) (citing cases).

Secondary authorities side with the majority position that exhaustion is not required for statutory claims under ERISA. *See, e.g.,* RIA Pension & Benefits Library § 139, 411 (2025) (“Exhaustion of administrative remedies is not required in actions for breach of fiduciary duty.”); Andrew L. Oringer, ERISA: A Comprehensive Guide § 8.04[E] at 8-43 (9th ed. 2024) (“Unlike actions to recover benefits, the courts generally have not required the exhaustion of internal claims procedures as a precondition to filing suit [for breach of fiduciary duties]. Because suits alleging breach of fiduciary duty involve statutory application rather than plan interpretation, the special expertise of plan administrators with respect to plan language and prior applications would be of little or no assistance to a reviewing court.”); Jared A. Goldstein, *Employment Discrimination Claims Under ERISA Section 510: Should Courts Require Exhaustion of Arbitral and Plan Remedies?*, 93 Mich. L. Rev. 193, 197 (1994) (“[C]ourts should not impose an exhaustion of plan remedies requirement for statutory claims . . . because neither the text nor the legislative history of ERISA indicates that Congress intended to require exhaustion for statutory claims.”); Stephen R. Bruce, *Pension Claims: Rights and Obligations* 704 (2d ed. 1993) (“Exhaustion of a plan’s claims procedure is not a prerequisite to an action to remedy a statutory violation if the violation is independent of the correct interpretation of the plan’s terms.”). These authorities provide further support for overruling *Mason*.

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The only circuit to align with *Mason*, the Seventh Circuit, reasoned that exhaustion should be required for statutory ERISA claims in part because “Congress’[] apparent intent in mandating internal claims procedures found in ERISA was to minimize the number of frivolous lawsuits, promote a non-adversarial dispute resolution process, and decrease the cost and time of claims settlement.” *Lindemann v. Mobil Oil Corp.*, 79 F.3d 647, 650 (7th Cir. 1996) (citing 29 U.S.C. § 1133). But, as the Third Circuit has explained, “[t]he [ERISA] provision relating to internal claims and appeals procedures, [§ 1133(2)], refers only to procedures regarding claims for *benefits*,” and therefore does not support creating an exhaustion requirement for statutory/non-benefit claims. See *Zipf v. AT&T*, 799 F.2d 889, 891 (3d Cir. 1986).

Moreover, the Seventh Circuit’s exhaustion rule, unlike that in *Mason*, is not mandatory. See *Lindemann*, 79 F.3d at 650 (“[T]he law of this Circuit remains that the decision to require exhaustion as a prerequisite to bringing a federal lawsuit is a matter within the discretion of the trial court and its decision will be reversed only if it is obviously in error.”). See also *Salus v. GTE Directories Serv. Corp.*, 104 F.3d 131, 138–39 (7th Cir. 1997) (affirming, as not an abuse of discretion, the district court’s determination that a former employee asserting an ERISA statutory claim under 29 U.S.C. § 1140 did not have to exhaust administrative remedies). So we stand alone in requiring mandatory exhaustion for fiduciary-breach and statutory claims under ERISA.

B

The defendants argue that stare decisis counsels strongly against overruling *Mason*. In their view, *Mason* was correctly decided and, regardless, we “should . . . not discard forty years of predictability.” Appellees’ Br. at 34.

“We recognize that overturning precedent is and should be a rare occurrence.” *McCarthan v. Dir. of Goodwill Indus.-Suncoast, Inc.*, 851 F.3d 1076, 1095 (11th Cir. 2017) (en banc). Nonetheless, “[t]hough stare decisis is a hallmark of our judicial system, it ‘is not an inexorable command.’” *Corporación AIC, SA v. Hidroeléctrica Santa Rita S.A.*, 66 F.4th 876, 888 (11th Cir. 2023) (en banc) (quotation modified and citation omitted). “We may overrule a prior case that is ‘plainly and palpably wrong’ if doing so would not ‘result in more harm than continuing to follow the erroneous decision.’” *Id.* (citing *McCarthan*, 851 F.3d at 1096).

“In deciding whether to overrule precedent, we consider ‘the quality of the decision’s reasoning; its consistency with related decisions; legal developments since the decision; and reliance on the decision.’” *Id.* (citing *Ramos v. Louisiana*, 590 U.S. 83, 106 (2020)). Here those considerations weigh heavily in favor of overruling *Mason* and its progeny to the extent they hold that ERISA itself requires administrative exhaustion of statutory claims.

We have already discussed the first of these factors—the quality of our analysis in *Mason*. Having taken measure of it, we find it to be wanting. *Cf. A Knight’s Tale* (Columbia Pictures 2001).

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Our holding in *Mason*, as relevant here, favored policy considerations over the text of ERISA itself. And, as noted earlier, *Mason* relied on Seventh Circuit precedent that, over time, has proven to result in a discretionary exhaustion rule instead of a mandatory one. Our circuit thus finds itself in “direct[] conflict with the decisions of our sister circuits.” *Corporación AIC*, 66 F.4th at 889. Not surprisingly, we have been asked over the years to reconsider *Mason* and its progeny. See, e.g., *Bickley v. Caremark RX, Inc.*, 461 F.3d 1325, 1328 n.6 (11th Cir. 2006); *Counts v. Am. Gen. Life & Acc. Ins. Co.*, 111 F.3d 105, 109 (11th Cir. 1997).

The defendants do not meaningfully grapple with the decisions of our sister circuits. Instead, they contend that because ERISA is silent as to administrative exhaustion, we have discretion to require exhaustion in cases involving statutory claims. They cite no authorities that convince us to adopt such a rule. One of their cited cases, for example, involves a since-superseded regulation; recognizes “appropriate deference to Congress’ power to prescribe the basic procedural scheme under which a claim may be heard in federal court”; and further notes there are “broad sets of circumstances in which the interests of the individual weigh heavily against requiring administrative exhaustion.” *McCarthy v. Madigan*, 503 U.S. 140, 142, 144, 146, 149 (1992) (holding that, despite a federal regulation providing that inmates could seek administrative review of a complaint relating to “any aspect of his imprisonment,” exhaustion was not required for a *Bivens* claim seeking only money damages). To the extent that “sound judicial discretion governs” where “Congress has not clearly required exhaustion,” *id.* at 144,

we decline to reaffirm *Mason* and its exhaustion requirement as an exercise of discretion. First, ERISA “provid[es] for . . . ready access to the [f]ederal courts,” 29 U.S.C. § 1001(b), and an exhaustion requirement will necessarily delay such access. Second, where the statutory claim is for breach of fiduciary duty, those being accused of malfeasance may well have a conflict of interest in administratively reviewing a complaint against them.

Nor do we read much into the fact that Congress has not “correct[ed]” our decision in *Mason*. See Appellees’ Br. at 52. Given that the circuit split on the exhaustion question is a whopping 7-1-1, we very much doubt that Congress would take the time necessary to amend ERISA to expressly reject the view of the two minority circuits.

Mason is long-standing precedent and we recognize that it may have created certain reliance interests over the years. But any reliance is likely minimal. Although *Mason* added a procedural hurdle to litigation by grafting an exhaustion requirement onto ERISA, it did not alter the nature of available claims brought, duties owed, and remedies authorized under ERISA itself.

We overrule *Mason* and its progeny to the extent they hold that ERISA itself requires exhaustion of statutory claims, including claims for breach of fiduciary duty.

C

The defendants urge us to overrule *Mason* only prospectively. We have explained that “[t]he Supreme Court has retreated from, but has not abandoned, prospectivity in civil cases.” *Glazner*

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v. Glazner, 347 F.3d 1212, 1217 (11th Cir. 2003) (en banc). But we see no reason here to depart from the “normal rule of retroactive application.” *Harper v. Va. Dep’t of Tax’n*, 509 U.S. 86, 97 (1993) (quotation marks and citation omitted).

Citing *Chevron Oil Co. v. Huson*, 404 U.S. 97, 105–09 (1971), we have recognized three factors that help us determine “whether to reject retroactive application of a new decision in favor of purely prospective application.” *Glazner*, 347 F.3d at 1216. Even assuming that the first of those factors is satisfied—that is, that our decision today “announce[s] a new principle of law,” *id.* at 1220 (alteration in original) (quotation marks and citation omitted)—the other considerations weigh in favor of our usual rule of retroactivity.

Take the second factor, which is “whether ‘retrospective operation will further or retard [the rule’s] operation.’” *Id.* (alteration in original) (quoting *Chevron Oil*, 404 U.S. at 107). ERISA, as noted, contemplates “ready access to the [f]ederal courts.” 29 U.S.C. § 1001(b). Today’s overruling of *Mason* furthers that objective rather than hindering it.

We are left, then, to consider “whether making the rule retroactive would be inequitable.” *Glazner*, 347 F.3d at 1220 (citing *Chevron Oil*, 404 U.S. at 107). This factor also favors retroactivity. Given our conclusion that exhaustion is not required by ERISA, we are not persuaded by the argument that retroactively applying our holding today would “frustrate the parties’ bargain” as reflected in the terms of the plan. *See Appellees’ Br.* at 56. As discussed below,

the plan’s language does not require exhaustion. Nor are we concerned with an uptick in liability for those who “faced no possibility of liability before,” *Glazner*, 347 F.3d at 1220, because our overruling of *Mason* today, although making access to the courts easier, does not expand liability for statutory claims under ERISA.

Because the *Glazner* test (applying *Chevron Oil*) counsels it, our holding today applies to the parties in this case.

III

The defendants argue that we should not consider whether the panel was correct in ruling that the plan itself—aside from ERISA—requires administrative exhaustion for all ERISA claims. Determining whether the plan requires exhaustion of ERISA statutory claims would normally require us to answer an antecedent question: whether the parties can contract through the language of a plan to require exhaustion of statutory claims where ERISA itself is silent on the matter. Ultimately, we need not decide this antecedent question because we conclude that the plan here does not mandate exhaustion for statutory ERISA claims.

We start with § 8.10 of the plan, which addresses “Claims and Review Procedures.” It states that “[w]hile a Participant or Beneficiary *need not* file a claim to receive a benefit under the Plan, such a person *may* submit a written claim to the Committee or seek a review of the Committee’s *benefit determination*. The Committee will afford the Participant or Beneficiary a full and fair review of such a request as provided in Supplement A.” Appendix (D.E. 23) at A214 (emphasis added). This language tracks the summary plan

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description (the SPD): “Although you *do not need* to file a formal claim to receive your benefit, you *may* submit a written claim to the Committee or seek a review of the determination by the Committee on your Plan *benefit*.” *Id.* at A153 (emphasis added).

The defendants say that this language requires exhaustion of statutory ERISA claims. We do not think so.

First, the “Claims and Review Procedures” language is permissive, not mandatory. *See, e.g.*, § 8.10 (stating that a participant “need not file a claim” but “may submit a written claim”). As in a statute, the use of the word “may” in the plan “implies that what follows is a permissive rule,” because “‘may’ cannot, by any rendering, mean ‘must.’” *MSPA Claims 1, LLC v. Kingsway Amigo Ins. Co.*, 950 F.3d 764, 773–74 (11th Cir. 2020) (some internal quotation marks and citations omitted). *See, e.g.*, The American Heritage Dictionary of the English Language 1083 (4th ed. 2009) (defining “may” as “[t]o be allowed or permitted to”). This ordinary understanding of “may” is reinforced by the “need not” language which precedes it.

We recognize that the district court disagreed with this reading of § 8.10, as did the panel. *See Bolton*, 2023 WL 9196735, at *3–4; *Bolton*, 155 F.4th at 1284–85. But those decisions were rendered in the context of a different ERISA world—one where *Mason* and its mandatory exhaustion requirement governed. Indeed, our earlier cases said that such language in a plan “merely recites plan participants’ general rights under ERISA and does not excuse a participant from satisfying the exhaustion requirement.” *Bickley*, 461

F.3d at 1329. Having now overruled *Mason* to the extent discussed, we do not need to read the plan language with a *Mason* gloss.

Second, our view is supported by the “Participant Rights” section of the SPD. The SPD—which informs, but does not dictate, our view of the plan itself, *see* SPD at (i) (stating that “[i]f there is a discrepancy between this summary and the Plan, the provisions of the Plan will control”)—provides: “If it should happen that Plan fiduciaries misuse the Plan’s money . . . you *may* seek assistance from the U.S. Department of Labor, *or* you *may* file suit in a federal court.” Appendix (D.E. 23) at A156 (emphasis added). Again, we see no mandate to exhaust before “fil[ing] suit in a federal court” for misuse of the plan’s money, which is one of the wrongs alleged here. We note, too, that the Department of Labor, which filed a brief as *amicus curiae* in this en banc appeal, agrees “that the plan documents at issue here make clear that its internal review process is *voluntary*, not mandatory.” Dep’t of Labor *Amicus Curiae* Br. at 24. We concur in the DOL’s assessment.

The defendants further assert that the panel correctly ruled that the arbitration clause in the plan confirms that the internal claims procedures must be exhausted before the parties can assert claims in arbitration. *See* Appendix (D.E. 23) at A232 (“Subject to and without waiver of full compliance with the Plan’s claims procedures as described in Supplement A which, to the extent applicable, must be exhausted with respect to any claim before any arbitration pursuant to this Section 14.1, all Covered Claims (defined below) must be resolved exclusively pursuant to the provisions of

this Section 14.1 (the ‘Arbitration Procedure’).”). They also say that *Williams v. Shapiro*, 161 F.4th 1313 (11th Cir. 2025), a decision issued after our initial panel opinion, “would not change the analysis.” Appellees’ Br. at 29 n.9. In *Williams*, we declined to enforce the arbitration provision at issue, which required individual arbitration, because it constituted a prospective waiver of a statutory right under ERISA. *See* 161 F.4th at 1322–23.

The Department of Labor, for its part, asserted at oral argument that parties to an ERISA plan should not be able to contract away statutory rights that are provided by ERISA. *See, e.g.*, Oral Argument Recording at 19:53–20:15 (“[I]n a future case, if it came up, we would take the position that contract-creator requirements for statutory claims would be subject to an awful lot of judicial scrutiny; we don’t believe that . . . by virtue of contract, plaintiffs or employers should be able to contract away or force their employees to contract away their rights under ERISA.”). And in at least some scenarios, a contractual exhaustion requirement can be excused in a suit based on a federal statute. *See, e.g.*, *Clayton v. Int’l Union, United Auto., Aerospace, and Agr. Implement Workers of Am.*, 451 U.S. 679, 689–93 (1981); *Glover v. St. Louis-S. F. Ry. Co.*, 393 U.S. 324, 329–31 (1969).

Putting *Williams* aside, we do not think that the exhaustion language in the arbitration clause is relevant. The simple reason is that no one has moved to compel arbitration.

IV

ERISA does not require administrative exhaustion of statutory claims, including breach of fiduciary duty claims, and the plan

here did not mandate exhaustion. We reverse the district court's order of dismissal and remand the case to the panel for any further proceedings that may be necessary.

REVERSED & CASE REMANDED TO THE PANEL.