

ERISA Fiduciary Litigation Intensifies



OCTOBER 14, 2016

This year has brought a significant number of lawsuits accusing retirement plan fiduciaries of violating their fiduciary obligations under ERISA. Because lawsuits of this nature have resulted in significant settlements, we expect this trend to intensify. While the allegations made in these lawsuits vary from case to case, there are common threads among the lawsuits that ERISA plan fiduciaries, which can include board members and officers, should be aware of. Common allegations include:

- The recordkeeping fees paid from plan assets are too high and have not kept up with market trends.
- Investment fiduciaries have failed to remove underperforming investment options.
- Investment fiduciaries have included in a plan's investment lineup more expensive share classes when share classes with lower fees were available.
- Investment fiduciaries have failed to evaluate float income.

Other, more novel, allegations include:

- Investment fiduciaries have including too many investment options.
- Investment fiduciaries have elected to use mutual funds instead of separate accounts.
- Investment fiduciaries have offered target date funds with flawed allocations or excessive fees.

Over the course of the following months, the Benefits Blast will dive into each of these common allegations in detail, as well as other related issues facing plan fiduciaries.

The fiduciary litigation landscape is evolving and plan fiduciaries need to stay abreast of the latest developments. As always, a fiduciary's best strategy to avoid breach of fiduciary duty claims is to first understand their role as a plan fiduciary and second to establish and follow a well-documented and prudent process to oversee their plans. Winston & Strawn has proficiency in these areas and considerable experience in helping plan fiduciaries in navigating their responsibilities.

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