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CLIENT ALERT

Supreme Court Clarifies the Application of ERISA Statute of Limitations to Plan Investment Decisions

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On Monday, May 18, 2015, in *Tibble v. Edison International*, the U.S. Supreme Court ruled that the Employee Retirement Income Security Act's (ERISA) six-year statute of limitations for claims of fiduciary breach applies to both the initial selection of a plan investment and the ongoing monitoring of that plan investment.

Under ERISA, a breach of fiduciary duty complaint must be filed no more than six years after the date of the last action that constitutes a part of the breach or violation or, in the case of an omission, the latest date on which the fiduciary could have cured the breach or violation.

Tibble arose in 2007 when beneficiaries of the Edison 401(k) Savings Plan sued plan fiduciaries to recover damages for alleged losses suffered by the plan with respect to three mutual funds added to the plan's investment lineup in 1999 and three mutual funds added in 2002. Plan beneficiaries argued that plan fiduciaries breached their duties by offering these six investment funds in the form of higher priced retail-class mutual funds when materially identical lower priced institutional-class mutual funds were available. The district court agreed that fiduciaries breached their duty of prudence with respect to the funds added in 2002. The district court also held that claims related to the funds added in 1999 were time-barred because the funds were added as plan investments more than six years before the complaint was filed and circumstances had not changed enough to obligate plan fiduciaries to review the funds. The Ninth Circuit affirmed.

The Supreme Court unanimously ruled that the Ninth Circuit erred by applying the six-year statute of limitations to the initial selection of the investment without fully considering alleged breaches of fiduciary duty following the initial investment. As many expected, the Court found that fiduciaries have a continuing duty, separate and apart from the duty to exercise prudence in selecting investments at the outset, to monitor and remove imprudent investments.

In remanding the case, the Court noted that the Ninth Circuit failed to recognize that under trust law a fiduciary is required to conduct a regular review of its investment with the nature and timing of the review contingent on the circumstances. In other words, the Ninth Circuit should have reviewed whether plan fiduciaries conducted the sort of review that a prudent fiduciary would have conducted absent a significant change in circumstances. However, the Court expressed no view on whether a review was indeed required or what the review should have looked like given the circumstances.

Tibble makes clear that plan fiduciaries cannot use ERISA's six-year statute of limitations as a shield against claims that plan fiduciaries have failed to monitor and remove imprudent investments from a plan's investment lineup. Although the decision was based on the narrow issue of investments, the impact of the decision is more significant, as it opens the door for dozens of similar lawsuits over 401(k) plan fees. While many plan sponsors maintain policies and procedures to periodically monitor plan investments and fees, *Tibble* illustrates the need for all plan sponsors to maintain a robust process to monitor plan investments and fees. Further, given the Court's refusal to establish bright line rules on what the review process should look like, plan fiduciaries will need to monitor how lower courts flesh out the Court's ruling.

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