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BLOG

U.S. Department of Labor AMICUS Briefs Support Curbing Wave of ERISA Litigation

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An Employee Retirement Income Security Act (ERISA) litigation trend has emerged that would have been unthinkable a few years ago: The U.S. Department of Labor (DOL) is intervening in court *and taking the employer's side*. This trend reflects a deliberate policy shift that matters for every plan sponsor and fiduciary in an environment where "regulation by litigation" has become a default strategy for plaintiffs' lawyers.

FROM PLAINTIFF-FRIENDLY TO FIDUCIARY-FRIENDLY

For years, the DOL's amicus program often appeared to be an extension of the plaintiffs' bar, with the government filing briefs that urged courts to expand standing, lower pleading standards, and aggressively interpret fiduciary duties. However, since Daniel Aronowitz took the helm at the Employee Benefits Security Administration (EBSA) last fall, the DOL has filed a series of briefs that, in tone and substance, reflect his confirmation-hearing pledge to end what he calls ERISA litigation abuse and restore a workable balance for plan fiduciaries. These include the following:

- **Pleading Standard to Allege Investment Underperformance.** On behalf of the DOL, the Solicitor General asked the U.S. Supreme Court to take the *Johnson v. Parker-Hannifin* case and affirm that to plead an imprudent-investment claim, plaintiffs must use a *meaningful* benchmark, not just any fund that happened to outperform. The brief makes clear that cherry-picking a higher-returning comparator is not enough to defeat a motion to dismiss. In addition, the brief stated that by characterizing a "market index" as "inherently a meaningful benchmark," the court sidestepped the "careful, context-sensitive scrutiny of a complaint's allegations" required in ERISA cases. On January 16, 2026, the Supreme Court agreed to take a different case, *Anderson v. Intel*, to decide the same question of whether a claim of breach of fiduciary duty of prudence for investment underperformance requires alleging a meaningful benchmark.
- **Burden of Proving Loss Causation.** In a striking reversal, the government withdrew its earlier position and now argues that ERISA plaintiffs, not defendants, bear the burden of proving loss causation. The brief in *Pizarro v. Home Depot* explicitly states that "the government has reviewed its position and concluded that the relevant authorities are better understood as leaving the burden of proving causation on ERISA plaintiffs." (Note: Shortly after the DOL filed its amicus brief, the parties settled the *Home Depot* litigation.) Similarly, the DOL also withdrew a pro-plaintiff brief it had filed earlier in the ***Vellali v. Yale University*** litigation.

- **Forfeitures.** The DOL sided with the employer in the *Hutchins v. HP*, *Wright v. JPMorgan Chase*, and *Cain v. Siemens* forfeiture cases, supporting dismissal of claims that challenged how forfeitures were reallocated.
- **Pension-Risk Transfers.** In *Konya v. Lockheed Martin*, the DOL urged the Fourth Circuit to dismiss a lawsuit by retirees who are still receiving full benefits, arguing that speculative "increased risk" does not confer standing. The brief affirms that well-structured pension-risk transfers remain permissible.

KEY TAKEAWAYS

These briefs are consistent with EBSA's published agenda and recent public statements. As noted in the Q3 2025 Legal Update, the DOL is preparing to rewrite rules on fiduciary advice and ESG, but the immediate priority, driven by the President's August 7, 2025 executive order titled "Democratizing Access to Alternative Assets" for 401(k) investors, is opening the door to private markets and alternative investments in defined-contribution plans. (The alternative-investment proposal was recently submitted to the White House on an aggressive timeline.)

Amicus briefs are not binding law, but neither are they merely they symbolic. Until regulatory guidance is issued, some key takeaways include the following:

- **A Signal to the Plaintiffs' Bar.** When the DOL files a brief supporting the employer, it tells plaintiffs' lawyers that the government will not be a silent partner. That can chill marginal cases and make sponsors' settlement leverage more realistic.
- **Interpretive Guidance.** Although a recent Supreme Court decision questioned the level of deference that courts must give to agency interpretations, courts still tend to give significant weight to the DOL's views on technical ERISA questions. A brief from the Solicitor General on behalf of the DOL can shape outcomes, even if the Supreme Court ultimately does not take the case.
- **Fiduciary Comfort.** Plan committees have been operating in the unknown, wondering whether a prudent process will get second-guessed with hindsight. The DOL's new posture suggests that process and judgment should get more deference.
- **Regulatory Preview.** The briefs telegraph where the DOL is heading on formal rulemaking. If the government is already arguing that certain claims are too speculative, the final fiduciary-advice and alternative-investment rules will likely embed similar protections.

The DOL under Aronowitz is using the amicus program as an active tool to reset the litigation landscape. For plan sponsors and fiduciaries, that means that the risk calculus may start to shift in ways that will show up in the next wave of complaints, settlement discussions, and committee deliberations.

This is a critical time to review fiduciary governance, including the process for selecting and monitoring investment options, the participant communication strategy, and potential litigation risk. While the DOL is now providing a stronger defense for fiduciaries, a proactive and well-documented process remains a fiduciary's best protection.

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