ERISA's Fiduciary Duty to Monitor Investments Trumps Its Six-Year Statute of Limitations

On May 18, 2015, the United States Supreme Court ruled that, contrary to a lower court's opinion, the six-year statute of limitations contained in ERISA does not allow a plan sponsor to stop monitoring an investment option six years after it has been added to a plan. By reaching this conclusion in Tibble v. Edison, the Court reaffirmed a plan sponsor's ongoing fiduciary duty to monitor the performance and cost of the investment options it makes available to participants.

Background

In 2007, a lawsuit was brought against Edison International retirement plan fiduciaries, claiming that the plan fiduciaries violated their duty of prudence when they invested plan assets in more expensive mutual funds when comparable, less expensive options were available. Although the lower courts agreed that the plan fiduciaries should have invested plan assets in the lower-cost funds, they found that investments made in 2009 were barred by ERISA's six-year statute of limitations.

Supreme Court Decision

The Supreme Court re-affirmed prior decisions that a plan fiduciary "has a continuing duty - separate and apart from the duty to exercise prudence in selecting investments at the outset - to monitor, and remove, imprudent trust investments." The Court held that the decision to continue investing in the more expensive funds occurred within ERISA's six-year statute of limitations. Unfortunately, the Court did not express an opinion as to the prudence of investing in the more expensive funds. Nor did it express an opinion on what constitutes a proper monitoring process, leaving plan fiduciaries wondering what to do.

What You Should Do

First, review your process for monitoring the investment options in your company's participant-directed retirement plan. While the Court did not indicate how frequently investments should be monitored, it is considered industry "best practice" to monitor retirement plan investment alternatives on a quarterly basis. Too much happens during the course of a year to monitor investment alternatives only once or twice per year.

Next, review the mutual fund share class selected for each fund offered to plan participants. This case makes one issue quite clear: plan fiduciaries must inquire as to the availability of cheaper share classes in the same fund. Often, plan fiduciaries justify the use of higher cost share classes as a means of off-setting plan expenses. However, as Tibble illustrates, such a justification may not be deemed prudent.

Finally, document your decisions. In Tibble, the plan fiduciaries were not able to show evidence that research had been conducted on lower-cost funds. Without documentation, it is very difficult to prove your case if your decisions are ever challenged.

The decision in Tibble serves as a clear reminder to all plan sponsors of the importance of vigilant monitoring. Taking the necessary steps to implement a disciplined oversight process will go a long way to protecting plan fiduciaries in the event you ever find your decisions called into question.

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