Supreme Court Rules on Plan Fiduciaries Duty to Monitor Plan Investments

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In a unanimous decision, the U.S. Supreme Court held on Monday, May 18, 2015, that a plan trustee has a continuing duty to adequately monitor plan investments and remove imprudent ones. *Tibble v. Edison, Int'l*, 2015 BL 152750, U.S., No. 13-550, 5/18/15. The Supreme Court held that this duty is separate from the duty to exercise prudence in making the initial selection of plan investments.

The case had arisen from a class action suit brought by plan participants in the Edison 401(k) Savings Plan against the plan's fiduciary committee. The plaintiffs alleged that the plan fiduciaries had breached their fiduciary duties by offering higher cost retail share funds when materially identical institutional-class mutual funds were available to the plan at a lower price. The funds at issue were six mutual funds, three selected in 1999 and three selected in 2002. For the 2002 funds, the plaintiffs argued that the plan fiduciaries did not offer any credible reason for offering the higher cost funds that cost the plan unnecessary administrative fees. The district court agreed with the plaintiffs for the 2002 funds, finding the fiduciaries liable for the extra costs of the retail funds. However, the district court barred claims relating to the 1999 funds as being untimely because the plan added the funds more than six years prior to the date that the claim was filed. For the 1999 funds, the district court found that the plaintiffs had failed to allege a change in circumstances obligating the fiduciaries to complete a full scale review of the funds. The Ninth Circuit affirmed the district court's opinion, finding that the claims with respect to the 1999 funds were barred by the statute of limitations.

The Supreme Court reviewed the limited issue of whether ERISA's statute of limitations barred the claims for the 1999 funds. The Supreme Court overturned the Ninth Circuit court's decision, holding that there did not need to be a significant change in circumstances to trigger a fiduciary's duty to do a full review of plan investments. The Supreme Court instead found that a fiduciary should "conduct a regular review of its investment." The Supreme Court cited to the common law of trusts to provide that fiduciaries have a continuous duty to monitor investments and remove imprudent ones. Therefore, the statute of limitations is triggered by the breach of fiduciary duty to monitor an investment, and not by its initial selection.

The Supreme Court declined to address the scope of a fiduciary's ongoing duty to monitor plan investments, and whether the plan fiduciaries had violated this duty. Instead the Supreme Court

remanded the case back to the Ninth Circuit to decide these issues.

The decision did not surprise many ERISA practitioners as the concept of a fiduciary's duty to monitor plan investments has been well-established. However, as the case will likely result in increased plan fee lawsuits, plan fiduciaries should ensure that they have implemented the appropriate procedures to monitor plan investments and remove funds. The procedures should be documented in a written investment policy that establishes regular intervals for the review of plan investments. Plan fiduciaries should keep a record of their review of the investments and the frequency of the review, including documenting reasons for removing a plan investment. Given the importance of monitoring plan investments, plan sponsors may want to consider appointing an investment committee charged with the task of selecting, monitoring and removing funds.

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