



Benjamin L. Grosz Interviewed for PLANSPONSOR Magazine Cover Story on Monitoring and Evaluating Retirement Plan Fees

ATTORNEYS

Benjamin L. Grosz

PRACTICE AREAS

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Ivins attorney Benjamin Grosz was quoted extensively in the cover story of the January/February 2017 edition of PLANSPONSOR Magazine. The article, by Judy Ward, is entitled "ON GUARD - *Increased litigation leads plan sponsors to take a defensive stance in monitoring and evaluating fees.*" The article reflects on common themes that have arisen in recent fee lawsuits against plan sponsors and fiduciaries, as well as lessons learned and best practices going forward.

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COMMON THEMES [Excerpt]

Share-class selection. Investment-focused lawsuits often center on the theme that a plan has not obtained the best-cost share class, says Benjamin Grosz, an attorney at Ivins, Phillips & Barker ... "A common claim is that a plan offered a retail share-class fund when there was an institutional share class of the same fund available," he says. "For plans large enough to be in an institutional share class, that can be problematic if the sponsor never asked for access to the institutional share-class fund." Plaintiffs also have alleged that a plan already in such a fund had enough assets to be qualified to access an even lower-cost institutional share class of the same fund, he says.

Out-of-line recordkeeping charges. Lawsuits are not just focusing on investment fees but have expanded to recordkeeping charges as well. "The claims have included that a plan fiduciary did not do an RFP [request for proposals]



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frequently enough, or that a plan didn't get any competitive bids for a recordkeeping contract--it just stuck with the incumbent," Grosz says.

Asset-based recordkeeping fees. "The biggest takeaway from the recordkeeping suits is not just the level of fees, but the fee structure," Grosz says. Suits have been filed against plans that structure recordkeeping fees to an asset basis, with the recordkeeper getting paid some percentage of participants' assets. "That can lead to problems if a sponsor does not monitor the fee reasonableness closely," he says. "A plan's asset-based fee might be reasonable when the contract is first signed, but if the market goes up 20%, the recordkeeper just got a 20% raise without doing anything more. And, as participants put money into their accounts over time, the recordkeeper's fees also go up, for not doing any more work."

Using an asset-based fee creates more responsibility for the sponsor to closely monitor the ongoing reasonableness and renegotiate as needed, Grosz says. "All things being equal, in most cases it is a best practice now to pay recordkeeping fees on a per-participant basis instead," he says. "Sponsors should be evaluating that question regularly: What fee structure makes the most sense for their plan?"