

American Airlines Breaches Fiduciary Duty of Loyalty with BlackRock ESG Funds in 401(k) Plans

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Whether, and the extent to which, a plan fiduciary can consider nonpecuniary environmental, social and governance (“ESG”) objectives in selecting plan investments has been a hot-button issue for many years, with the view on such practices tending to swing back-and-forth with each new administration.

In ***Spence v. American Airlines, Inc.***, 2025 WL 225127 (N.D. Tex. 2025), Plaintiff brought a class action suit against American Airlines and its Employee Benefits Committee (“EBC”) alleging breaches of fiduciary duties of loyalty and prudence resulting from the plan fiduciaries’ investment practices. Specifically, Plaintiff argued the plan fiduciaries mismanaged retirement plan assets when the plans’ investment manager, BlackRock Institutional Trust Company, Inc. (“BlackRock”), pursued non-financial and nonpecuniary ESG policy goals through proxy voting and shareholder activism. Plaintiff claimed that including BlackRock as an investment manager harmed the financial interests of plan participants and their beneficiaries due to BlackRock pursuing socio-political outcomes rather than exclusively chasing financial returns.

It is no coincidence that this suit was filed in the Northern District of Texas. That district, and the Fifth Circuit generally, has been a popular forum for those seeking to challenge federal regulations, and the Fifth Circuit recently remanded a suit challenging the DOL’s ESG-friendly regulation back to district court.

Defendants Breached the Fiduciary Duty of Loyalty

The district court in *American Airlines* concluded that the plan fiduciaries breached their duty of loyalty by failing to act solely in the retirement plan’s best financial interest when the plan fiduciaries allowed their corporate interests to influence management and investment of plan assets. The court found it apparent that the plan fiduciaries failed to question BlackRock’s ESG activities, either because the plan sponsor’s corporate objectives were aligned with BlackRock’s ESG objectives or because the plan fiduciaries were afraid to question a large shareholder (or both).

The court took note of the following factors that showed the various corporate ties to BlackRock that were inappropriately leveraged to influence management of the plan:

- BlackRock was one of American Airline’s largest shareholders.
- BlackRock managed billions of dollars in plan assets at a time that it owned 5% of American Airline’s stock.
- BlackRock financed roughly \$400 million of American Airline’s corporate debt when American Airlines was experiencing financial difficulty.

Defendants Did Not Breach the Fiduciary Duty of Prudence

Despite finding that the plan fiduciaries breached the duty of loyalty, the court found that their investment monitoring practices were consistent with prevailing industry practices and that the plan fiduciaries acted in a manner similar to other fiduciaries in the industry. Accordingly, the court did not find that the plan fiduciaries breached the duty of prudence when using BlackRock as an investment manager.

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Recommended Actions

This case marks the largest victory for opponents of ESG investing to date and could spark a new wave of class action litigation against retirement plans. *American Airlines* demonstrates the need for employee benefit committees or plan sponsors to closely monitor and perform risk assessments when investing—or relying on others to invest—employee retirement assets toward ESG objectives, as well as to monitor an investment manager’s proxy voting and ESG policy goals.

Please contact the authors or your Miller Canfield attorney if you have any questions or would like to know how this ruling could affect your investment practices.