

SCOTUS: Timeliness of Fiduciary Breach Claim May Depend on Alleged Failure to Monitor Selection of Investment Options

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On May 18, 2015, the U.S. Supreme Court unanimously concluded that the timeliness of an Employee Retirement Income Security Act (ERISA) breach of fiduciary claim regarding the selection of investments in a 401(k) plan is not necessarily based on the initial selection of investments. Instead, the Court concluded that “a plaintiff may allege that a fiduciary breached the duty of prudence by failing to properly monitor investments and remove imprudent ones.”

In *Tibble v. Edison International*, the plaintiffs challenged the selection and retention of certain mutual funds in their 401(k) plan. The plaintiffs argued that the funds were higher priced retail-class funds and that the Plan should have been able to obtain lower cost mutual funds that were not available to retail investors. The lower courts had dismissed as untimely breach of fiduciary claims regarding three investments that were selected more than six years before the lawsuit was filed, finding that the circumstances had not changed enough within the limitations period to require the fiduciaries to review the funds.

The Supreme Court reversed, noting that under trust law, a trustee has a continuing duty to monitor trust investments and remove imprudent ones. The Court further explained that this duty to monitor exists separate and apart from the duty to exercise prudence in selecting the initial investments. Notably, the court expressly declined to express any view on the scope of the fiduciary duty.

What does this case mean for plan fiduciaries? Fiduciaries must be cognizant of their duty to monitor plan investment options. Simply because an option has been part of the plan for years does not imply that the option should automatically remain in the plan. Instead, plan fiduciaries must re-evaluate investment options. Fiduciaries with questions about the scope of their duty to monitor investment options should consult counsel.

Brian Schwartz

+1.313.496.7551

schwartzb@millercanfield.com