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Supreme Court Rules on Statute of Limitations for Claims Against Plan Fiduciaries

Statute of Limitations for ERISA Fiduciary Claims Can Run From the Date of a Failure to Monitor Investments, Not Merely From the Date of the Initial Investment Decision

SUMMARY

Yesterday in *Tibble et al., Petitioners* v. *Edison International et al.*, the U.S. Supreme Court ruled that the six-year statute of limitations for claims against ERISA fiduciaries runs from the date of a failure to monitor investments, and not simply from the date of the initial investment decision. The case has been remanded to the Ninth Circuit for further review in light of the Court's decision.

DISCUSSION

Under the Employee Retirement Income Security Act of 1974 ("ERISA"), a breach of fiduciary duty complaint is timely if filed no more than six years after "the date of the last action which constituted a part of the breach or violation" or "in the case of an omission the latest date on which the fiduciary could have cured the breach or violation."[1] In 2007, beneficiaries of the Edison 401(k) Plan (the "Plan") filed suit, claiming that fiduciaries of the Plan had acted imprudently when, in 1999 and 2002, the Plan fiduciaries selected retail-class mutual funds as Plan investment options rather than materially identical but lower priced institutional-class mutual funds. In considering the claims with respect to the 2002 investments, the lower courts concluded that the fiduciaries had failed to exercise the required care, skill, prudence, and diligence under the circumstances.[2]

With respect to the 1999 investments, however, both the district court and the Ninth Circuit held that the beneficiaries' claims were untimely because those mutual funds were included in the Plan more than six years before the complaint was filed in 2007.[3] The beneficiaries argued that their complaint was nevertheless timely because the 1999 investments underwent significant changes within the six-year statutory period that should have prompted the fiduciaries to undertake a full due diligence review and convert to lower priced investments.[4] But the district court held that the beneficiaries had not made that showing—*i.e.*, the beneficiaries had not shown that a prudent fiduciary would have undertaken a full due diligence review in response to the changed circumstances. The Ninth Circuit affirmed on the ground that the beneficiaries had not shown any change in circumstances that would have triggered an obligation to review and modify the investments in the first place.[5]

In its decision yesterday, the Supreme Court disagreed with the reasoning of both lower courts with respect to the 1999 investments. The Court reasoned that, under trust law, a fiduciary is required to conduct a regular review of its investments with the nature and timing of the review contingent on the circumstances. The Court noted that this continuing duty to monitor investments exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset.[6] The Court did not address, however, the precise contours of that continuing duty on the part of ERISA plan fiduciaries. Rather, the Court remanded for the Ninth Circuit to consider the beneficiaries' claims "that [the Plan fiduciaries'] breached their duties within the relevant 6-year period under § 1113, recognizing the importance of analogous trust law."[7]

IMPLICATIONS

The Supreme Court's decision in *Tibble* holds that, for purposes of the statute of limitations applicable to claims against ERISA fiduciaries, the entire period after selection of investments is open to potential suits even where there may be no material change in circumstances that would have triggered a full due diligence review of the investments. In other words, the likely result of this ruling is that ERISA plaintiffs will more routinely claim a breach of the continuing duty to monitor investments in addition to claiming a breach of fiduciary duty at the time of the initial investment decision. As a consequence, plan fiduciaries should periodically review prior investment decisions, including investment options under 401(k) plans, for continuing prudence. The Supreme Court did not address, however, the precise contours of the duty to monitor investments absent a significant change in circumstances, although it indicated that the duty for plan fiduciaries under ERISA is analogous to the duty for trustees under trust law. The Court's decision thus opens the door to litigation in this and other cases over how often fiduciaries must review investments and how quickly they must remove imprudent investments. Plan fiduciaries should follow developments on these issues to ensure that they are complying with ERISA.

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ENDNOTES

[1] 29 U.S.C. § 1113.

[2] No. CV 07-5359 (CD Cal., July 8, 2010), App. To Pet. For Cert. 65, 130, 142.

[3] *Id*.

[4] *Id*.

[5] *Id*; 729 F.3d 1110 (Aug. 1, 2013).

[6] No. 13-550 (May 18, 2015).

[7] *Id.*

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