

Self-Dealing Suits

The Latest Trend in Excess Fee Litigation

The newest wave of retirement plan lawsuits targets self-dealing in the sponsored plans of several big name financial firms. This latest trend proves that even industry professionals get lax with their procedures and fail to properly fulfill their fiduciary duties. However, Plan Sponsors can take simple, effective steps to prevent themselves from falling to the same fate.

Self-Dealing: The Latest Trend in Retirement Plan Litigation

In recent years, numerous financial services and investment management firms have been called out as defendants in class action litigation regarding their sponsored retirement plans. Plans in question include those sponsored by JPMorgan Chase, Charles Schwab, and Edward Jones, among others. The specific details may differ, but overall, these lawsuits have many of the same claims. Primarily, the plaintiffs assert that funds managed by their firm account for a majority or all of the funds available in their Plan. Alternatives to these investments, potentially including other funds managed by the firm, have lower expenses with comparable performance. The funds utilized have led the Plan's overall costs to be higher than average for similarly situated plans. Claims of self-dealing and conflicts of interest have resulted, stating that the Plans are being operated to benefit the firm financially and increase assets under management instead of in the best interest of Participants. In one suit, members of the Plan's investment committee also serve as managers of the funds in the Plan's lineup.

Many of these cases are active, however a case involving MassMutual and a plaintiff class of more than 14,000 Participants was recently settled. In addition to a monetary settlement of \$30.9 million, MassMutual agreed to several changes including use of an independent investment consultant, training for all Plan Fiduciaries, and enhanced investment selection procedures.¹

The Takeaway for Plan Sponsors

Self-dealing is the latest trend in retirement plan, excessive fee lawsuits. What can Plan Sponsors learn from these latest lawsuits? The time to act is now. Ensure you fulfill all of your Fiduciary duties, offer the best investment alternatives for your Participants, and protect yourself from any claims that you have done otherwise.

All of your responsibilities as a Fiduciary boil down to one overarching requirement; *acting solely in the best interest of plan participants and their beneficiaries for the exclusive purpose of providing benefits to them.* Under the Prudent Man Standard of Care in the Employee Retirement Income Security Act, ERISA, a Fiduciary is also required to defray reasonable expenses and diversify the Plan's investments to minimize the risk of large losses.

¹ Adams, Nevin E. MassMutual Settles Excessive Fee Case. NAPA Net. 20 June 2016.

Review your investment offerings and processes to identify shortcomings. Consider the following:

*Are processes for investment selection and review prudent and recorded?
Is the fund lineup properly diversified among asset classes and sizes?
Are fees reasonable? Do the funds have strong long-term performance?*

As the Plan Sponsor, it is your duty to diligently select and monitor investment alternatives and associated fees. Even if this duty is outsourced to an ERISA 3(38) Investment Manager, it is important to understand that you retain the duty to monitor this co-Fiduciary. The investments that Participants have to choose from, as well as their associated performance and expenses, directly affect their retirement outcomes. The ability to properly diversify their portfolio will allow Participants to utilize the risk/reward ratio that is best for their needs. Paying only reasonable expenses results in more money staying the Plan, compounding over time to fund a successful retirement future.

The Bottom Line

Retirement plan litigation has proven itself a growing trend with excessive fees and underperforming funds receiving considerable attention in recent years. For Plan Sponsors, this should be wake-up call. Ensure that claims from recent class action lawsuits cannot also be said of your Plan. Fulfill your Fiduciary duties and offer the best retirement outcomes for your Participants.

Want a refresher on your Fiduciary Duties? Consult our featured series, [Building a Better Fiduciary](#):

Part 1 - [Understand the Basics](#)

Part 2 - [Delegating Fiduciary Duties](#)

Part 3 - [Operational Duties](#)