Legal Update Article

Failure to Identify Sound Comparisons Sinks ERISA Fee, Investment Claims in Eighth Circuit

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Plaintiffs must plead a "sound basis for comparison—a meaningful benchmark" — to sustain their claims of imprudent investment and excessive fee against a 401(k) plan, the federal appeals court in St. Louis has held, dismissing a class action lawsuit for breached of fiduciary duties under ERISA. *Matousek v. MidAmerican Energy Co.*, No. 21-2749 (8th Cir. Oct. 12, 2022).

The U.S. Courts of Appeals for the Sixth and Seventh Circuits reached similar conclusions in dismissing cases before them. More than 200 class action lawsuits claiming imprudent investment and excessive fee against 401(k) plans have been filed around the country since January 2020.

Jackson Lewis attorneys Lindsey H. Chopin, Stacey C.S. Cerrone, and Howard Shapiro defended MidAmerican at the district court level, and Chopin argued the case before a three-judge panel in the Eighth Circuit on April 13, 2022.

The Eighth Circuit has jurisdiction over Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota.

Background

Filed in November 2020, the class action lawsuit challenged the management of MidAmerican's $1.1 billion 401(k) defined contribution plan. It alleged that MidAmerican breached its fiduciary duties by charging excessive recordkeeping fees and offering expensive and poorly performing investments.

The district court dismissed the case with prejudice. *Matousek v. MidAmerican Energy Co.*, No. 20-cv-352, 2021 U.S. Dist. LEXIS 150379 (S.D. Iowa July 2, 2021). It held, "Defendants persuasively argue that plaintiffs have failed to allege facts establishing a meaningful benchmark for assessing the performance of the challenged funds." The plaintiffs appealed.

Eighth Circuit Decision

The Eighth Circuit panel unanimously affirmed the judgment of the district court.

For several years, the Eighth Circuit has required plaintiffs asserting imprudent investment claims to plead a "sound basis for comparison—a meaningful benchmark" to sustain their claim. In *Matousek*, the Eighth Circuit made clear that this standard applies equally to excessive fee claims.

The plaintiffs did not meet that bar because, the Eighth Circuit explained, instead of identifying recordkeeping fees paid by specific, comparably sized plans, they pointed to industry-wide averages and drew apples-to-oranges comparisons between total fees reported in the plan's 5500s and pure recordkeeping fees they alleged to be reasonable. Accordingly, the Eighth Circuit dismissed the plaintiffs' excessive fee claims.

The court similarly dismissed the plaintiffs' imprudent investment claims. It held that undefined peer groups and other broad categories of investments are not "meaningful benchmarks" sufficient to show that other funds with similar styles and strategies performed better.

Takeaways

The court has further refined the pleading standard for ERISA breach-of-fiduciary-duty claims challenging defined contribution plans' fees and investments. Complaints must identify meaningful benchmarks when alleging that service providers' fees are too high or that particular funds are too costly or perform poorly. Such benchmarks allow for an apples-to-apples comparison, essential for evaluating the prudence of fiduciaries' actions without relying on hindsight-based outcomes.

Along with recent decisions from the Sixth and Seventh Circuits, *Matousek* adds to the growing body of published, circuit-level decisions requiring sound comparisons to services with lower fees or investments with better performance to survive dismissal.

Please contact a member of our ERISA Complex Litigation Group with any questions.