

LEGAL UPDATE

Importance of Process

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Like other professionals, attorneys obtain satisfaction when practices that they preach to clients are validated. In this regard, a recent District Court case—*Wildman v. American Century*—validates the importance of process in defending against claims of breach of fiduciary duty.

At *American Century*, upon appointment to the Committee, Committee members received training and information with respect to their fiduciary duties, including a “Fiduciary Toolkit”, which outlined their duties as fiduciaries, as well as a summary plan document, and articles regarding fiduciary duties in general. The materials also included a copy of the plan’s investment policy statement (IPS). The IPS provided guidance as to the plan’s investment menu. It provided that the plan could invest in affiliated funds only “to the extent that mutual funds and other investment products offered by American Century Investment Management and American Century Global Investment Management meet the criteria for investment selection.”

Also, the District Court concluded that the Committee members read these materials and took their responsibilities seriously. The Committee met regularly, three times per year, with an average meeting lasting for one and one half hours. It also held special meetings if something needed to be discussed before the regularly scheduled meeting. The District Court indicated that the meetings were productive and lasted as long as necessary fully to address each issue on the agenda. Prior to each meeting, Committee members received a set of materials that included a copy of the IPS; a list of funds on the watch list; a performance report for the investment options in the core lineup; a plan update regarding the plan’s assets, participation rates, deferral rates; information about fund fees on the basis of gross returns and net of fee performance.

The Committee sometimes heard presentations at meetings from consultants who presented findings from their research and from lawyers providing information relevant to the Committee’s work. The Committee also asked investment professionals to present information on a fund, especially when it was on a “watch list”. The Committee Minutes were documented through a set of meeting minutes. The District Court described the Committee Meetings as “thorough, capturing the topic of discussion, who initiated questioning, and then the outcome of the vote or the Committee’s ultimate decision. An ERISA attorney who served as the Committee’s secretary for six (6) years testified that the Committee’s processes were very good, and amounted to a “best practice set of procedures”, and defendants’ expert on fiduciary processes testified that Committee members understood their fiduciary responsibilities and complied with their fiduciary obligations.

Plaintiff’s attorney suggested ways in which these processes could be improved, and the District Court agreed that plans should strive to obtain the standards that plaintiff’s expert on prudent process advocates. Unfortunately for plaintiff, its expert further acknowledged that his standards had not won wide acceptance by the retirement plan industry—somewhat of an understatement since he further testified that only 14 or 16 retirement plans out of approximately 500,000 conformed to these standards. Since the ERISA prudence standards are the standards “then prevailing,” the standards advocated by plaintiff’s expert were “not the standards ERISA requires.”

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