Molina Healthcare Close to Win in ERISA Lawsuit

A California federal judge's ruling in an ERISA lawsuit against Molina Healthcare provides a window into this court's thinking on ERISA lawsuits and clues to winning plan sponsor defenses.

Reported by NOAH ZUSS

Molina Healthcare Salary Savings Plan participants are not entitled to recover on any of their claims brought under the Employee Retirement Income Security Act, a federal judge in California ruled on March 21.

The allegations from 401(k) plan participants Michelle Mills, Coy Sarell, Chad Westover, Brent Aleshire, Barbara Kershner, Paula Schaub and Jennifer Silva were dismissed with prejudice, wrote U.S. District Judge Stanley Blumenthal Jr., presiding in the Central District of California.

"The judge was persuaded by defendants' argument that broad indices were more appropriate as comparators [of performance] than individual funds," explains Charles Field, managing partner in the San Diego office of law firm Sanford Heisler Sharp LLP, which was not involved in the lawsuit.

The Case

The plaintiffs' 2022 complaint in *Michelle Mills et al. v. Molina Healthcare et al.* challenged the selection and retention of the flexPATH Index target-date funds as the 401(k) plan's qualified default investment alternative. It alleged Molina Healthcare breached its fiduciary duties and engaged in prohibited transactions in violation of ERISA.

Blumenthal ruled the plaintiffs failed to prove losses and instructed the parties to meet and confer no later than March 27 to file a proposed final judgment that is agreed "as to form," he wrote.

"Even using the most profitable reasonable benchmark, the selection and retention of the flexPATH TDFs as the plan's QDIA did not cause a loss to the plan," wrote Blumenthal.

He also rejected the claim that the plaintiffs' alleged payment of fees to flexPATH was an additional loss to the plan because the money paid as fees could otherwise have been invested in other opportunities.

In the class period, the flexPATH TDFs "outperformed most other retirement TDFs and all three of the benchmark indices, which are appropriate comparators in this case: the Dow Jones Target Date Total Return Index, the S&P Target Date Total Return Index, and the S&P Target Date To Retirement Index," wrote Blumenthal. "Using any of these indices as a comparator, the plan earned more through its investment in the flexPATH TDFs than it would have earned if the plan's funds had been otherwise invested in a prudent alternative selected by a prudent and loyal fiduciary."

The money paid to flexPATH for its services as a 3(38) investment manager total less than $550,000, and the flexPATH TDFs earned their investors more than $3.2 million more during the class period than the best-performing benchmark index (the S&P Target Date Total Return Index), Blumenthal determined.

Precedent Setting?

As the case approaches a conclusion favorable to Molina Healthcare, it is unclear what precise basis the court is using for its dismissal and therefore whether the ERISA defense can be used by plan sponsors in future lawsuits when sponsors face similar allegations is unclear, according to Drew Oringer, partner in and general counsel at the Wagner

Law Group, which was not involved in the litigation.

"Predecessor cases involving this sponsor took a number of different directions," Oringer says. "There has been something of a trend in the courts to hold plaintiffs to increasingly higher standards in terms of alleging real bases for impudence. While the [*Hughes v. Northwestern University*] case did give some encouragement to plaintiffs by emphasizing the factual nature of the inquiry, it's becoming clearer that the court's caution about appropriate deference to careful fiduciaries is being heard by the lower courts."

The U.S. Supreme Court issued the Hughes ruling in January 2022.

Regardless of the national legal trends, Molina Healthcare fiduciaries' detailed documentation of their fiduciary selection supported their defense, Oringer says.

"Where the employer goes through proper process and is conflict-free, it becomes hard to second-guess on the basis of mere disagreement with ultimate choices, absent a showing that obvious or other basic considerations were ignored," Oringer says. "In this case, one of the allegations seems to be that the applicable investment strategies were novel. However, I would think that a court would be circumspect about saying that appropriately vetted strategies cannot be used by an ERISA plan merely because they are creative or otherwise new."

According to Field, the ruling "gives insight into the judge's thinking on appropriate benchmarks. Here, the judge felt broad indices were more appropriate as comparators than individual funds.

Additionally, Blumenthal's decision "affects how plaintiffs' experts select comparators/benchmarks against which to measure damages," Field adds.

The Molina Healthcare plan comprises about $892.3 million in retirement assets for 19,618 participants, as of the plan's most recent filing to the Department of Labor. Molina Healthcare is a managed care company headquartered in Long Beach, California.

The complaint against Molina Healthcare's 401(k) plan was filed in March 2022. In December 2022, Blumenthal allowed the case against Molina to continue but dismissed the case against adviser NFP Retirement.

The class of plaintiffs is represented by attorneys with the law firm Schlichter Bogard & Denton LLP; defendant Molina Healthcare is represented by the law firm King and Spalding; NFP Retirement is represented by law firm O'Melveny and Myers LLP; and the business advocacy organization the U.S. Chamber of Commerce, a filer of amicus briefs, is represented by law firm Goodwin Procter LLP.

Representatives of Molina Healthcare did not respond to a request for comment; nor did attorneys for either party.

Tags 401(k) plans, 401k, defined contribution retirement plans, Department of Labor, Employee Retirement Income Security Act, fiduciary breach, fiduciary duty, NFP, Northwestern University, prohibited transactions, Qualified Default Investment Alternative, retirement plan lawsuit, Schlichter, Supreme Court, U.S. Chamber of Commerce

Reported by Noah Zuss