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The Inevitable Impact of Anderson v. Intel on Plan Sponsors

By Amanda Umpierrez

August 4, 2026

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When the Supreme Court agreed to hear arguments in a lawsuit that challenged the importance of prudent processes over investment returns in January, the industry hoped it would bring some clarity on pleading standards.

The *Anderson v. Intel* case, first filed in 2019 by a former Intel 401(k) participant, disputed the technology corporation's fiduciary responsibilities under the Employee Retirement Income Security Act of 1974 (ERISA). The complaint originally accused Intel of violating its fiduciary duty by including hedge funds and private equity funds into custom target date and global diversified fund portfolios within its 401(k) plan, with allegedly resulted in lower investment returns.

The lawsuit would eventually garner questions on how investment committees and plan participants can establish "meaningful benchmarks" to compare funds and their performance, which the Supreme Court will consider in this latest appeal.

U.S. Court of Appeals for the Ninth Circuit, have already dismissed the complaint after concluding that plaintiffs failed to allege a "meaningful benchmark" that exposed Intel's investments or fees as imprudent. Simply alleging underperformance wasn't enough to prove Intel's wrongdoing, the courts concluded.

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Establishing ‘meaningful benchmarks’

Fred Reish, Prime Capital Financial

Largely regarded as the crux of the Supreme Court’s review, “meaningful benchmarks” question whether the performance of plan investments should be compared against the average of other popular funds, or whether plan investments should be benchmarked against a standard that applies to the design of that particular fund, said Fred Reish, an ERISA attorney and director of ERISA Compliance and Fiduciary Strategy at Prime Capital Financial.

In other words, it questions whether investment results should be likened to a generic benchmark or a true comparator.

It’s not the first time the Supreme Court has reviewed a case establishing “meaningful benchmarks.” The court had a previous opportunity to address pleading standards when it heard arguments in *Hughes v. Northwestern University*, only the court eventually provided general guidance that has since divided lower courts.

It’s possible that could change in this latest lawsuit. In the case of *Anderson v. Intel*, the corporation’s investment committee designed its custom TDFs to be less volatile and more conservative than other known target date suites by allocating to private equity funds and hedge funds. Intel told participants that the strategy was designed to reduce volatility and the risk of large losses during market downturns, while acknowledging that the funds might trail more equity-heavy investments during bull markets.

In the plaintiffs' eyes, Intel's committee should have compared its TDFs to the design and results of the largest target-date fund suites. However, that reasoning can be deeply problematic, as it does not consider distinct plan and participant nuances, Reish contends.

"In my view, fiduciaries can consider the needs and circumstances of the participants in the plan and prudently select investments, conservative or aggressive, that match their evaluation of the covered workforce," he observed. "In other words, in my view, the proper way to measure the performance of an investment is to look at the purpose and design of the investment."

Bradford Campbell, Faegre Drinker

Comparing a plan's funds to broader investments undermines the very essence of ERISA, notes Bradford Campbell, partner at law firm Faegre Drinker and past head of the Employee Benefits Security Administration (EBSA) under former President George W. Bush. "ERISA doesn't require us to pick only winners," he said. "The prudence of the investment is determined by the process you used to select it, not by whether markets go up or down."

Ultimately, the Supreme Court's ruling will directly affect the pleading standard for ERISA imprudence lawsuits and could indirectly influence how fiduciaries document investment objectives, comparator selection and monitoring decisions.

"If the plaintiffs win the case, it will discourage fiduciaries from selecting investments that they view as appropriate for their participants, particularly if the investments are more aggressive or conservative than the norm…" said Reish. "If Intel wins the case, the Supreme Court will likely say that investment performance should be compared to a benchmark that is relevant to the design and purpose of the investment. That in turn, will encourage fiduciaries to select investments that they believe are better for their participants than the average or typical investment."

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Fiduciary impact of DOL's proposed regulation

Meanwhile, the Department of Labor's (DOL) proposed rulemaking on selecting investments would require fiduciaries to establish a "meaningful benchmark" for each plan fund.

Matthew Eickman, Fiduciary Law Center

This could pose a challenge for plan fiduciaries who incorporate alternative investment funds, said Matthew Eickman, an ERISA attorney and managing partner of Fiduciary Law Center, a boutique law firm focusing on employee benefits cases. Whereas fiduciaries have ample publicly available benchmarks to choose from for traditional asset classes in 401(k) plans, comparisons for private market investments are scarce.

"Even if you think about the DOL's proposed regulation and safe harbor… there will be some challenges for plan fiduciaries to establish what the appropriate benchmark might be," he added. "I think there will also be challenges when litigation arises, as to what the meaningful benchmark might suggest."

At the same time, plaintiffs in an ERISA suit may struggle to determine what a “meaningful benchmark” means for alternative investments, as is the case in *Anderson v. Intel*. “That’s an issue here,” Eickman said. “The plaintiffs in this case have struggled to identify what a meaningful benchmark might be, because of the thoughtful and sophisticated way in which the Intel fiduciaries went about their utilization of alternative investments in this situation.”

These are some of the questions the DOL will have to provide before it issues its final regulation, remarked Campbell.

“To the extent there’s an index that’s appropriate for that, or to the extent that you have to construct one of your own, that’s probably one of the more pressing question for fiduciaries,” he said. “To the extent that there is not a publicly available index that is similar to this, how do we evaluate it on our own and what do we compare it to?”

NEXT: What can fiduciaries do differently?

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What can fiduciaries do differently?

As the retirement planning industry and fiduciaries await the Supreme Court's verdict and further guidance from the DOL, plan sponsors should ensure they're following prudent processes and strict documentation practices.

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Marcia Wagner, The Wagner Law Group

"From the perspective of the relevant plan fiduciary, increased attention should be paid to taking into account 'meaningful comparators,' although there are no precise guidelines as to the scope of that exercise," said Marcia Wagner, ERISA attorney and founder of The Wagner Law Group.

Investment advisors could also help by providing clients with information related to written policy statements or investment guidelines, said Eickman. "That's a very common error, is a mismatch between what an IPS says and then the data that is provided, received, and considered in selecting an investment menu and in making decisions around what investments to retain or change out," he stated.

It could also lead others to clarify or question benchmarking standards in their plans.

benchmark, then it suggests that perhaps more plan sponsors will endeavor to define those benchmarks more clearly in advance, so that they could be provided or afforded some deference regarding what the appropriate meaningful benchmark would be," Eickman added.

Regardless of how the Supreme Court sides, Wagner pointed out that courts could end up just respecting a committee's investment or fee decisions, so long as the fiduciaries exemplify a prudent process.

"Some courts have recognized that trustee decisions with respect to investment options and fees are to be reviewed with judicial deference, in the same manner as decisions by an administrative committee with respect to benefit entitlements," she said. "Those decisions should not lessen the relevant fiduciary's due diligence in administering a plan but will make it more difficult for a plaintiff to prevail in litigation."

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