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6th Circ. Ruling Shows Toughening On ERISA Fiduciary Suits

By **Kellie Mejdrich**

Law360 (May 9, 2025, 5:53 PM EDT) -- A recent Sixth Circuit decision that backed the dismissal of a proposed class action against an auto parts maker demonstrates how appellate courts are raising the bar for cases alleging breaches of fiduciary duty under federal benefits law, experts say.

A three-judge panel in an **opinion published Tuesday** backed a Michigan federal court's decision from **July 2023 to toss** former Denso International America Inc. worker Martha D. England's Employee Retirement Income Security Act suit for failure to state a claim. The decision has already spurred supplemental authority notices from attorneys defending other employers against other 401(k) excessive fee claims, including in Florida district court and a **worker-side appeal** at the Eighth Circuit.

Katie Barrett Wiik, a litigation partner at Saul Ewing LLP, who serves as co-chair of the firm's appellate practice group and is a former Sixth Circuit law clerk, said "the decision makes clear that within the Sixth Circuit, the plausibility pleading standard for ERISA breach of the fiduciary duty of prudence has real teeth."

"Both the district court and appellate court rigorously scrutinized the complaint before concluding that it fell short," Barrett Wiik said.

England, the former Denso worker, first sued in 2022, alleging that Denso breached ERISA's fiduciary duty of prudence by allowing its employee 401(k) plan to pay excessive recordkeeping fees and offering poorly performing investments. The proposed class only appealed the recordkeeping fee claims.

England argued on appeal that comparing the plan's recordkeeping costs with what other large employers paid should have been sufficient without the district court requiring the proposed class to get into details on the types of services provided across the different plans in the complaint. Among the cases she cited in support of that argument was the Seventh Circuit's 2023 **decision to revive similar claims** against Northwestern on remand from the U.S. Supreme Court, after justices **revived the case in January 2022**.

But the Sixth Circuit panel rejected that argument, calling claims that the Seventh Circuit panel revived against Northwestern "not specific enough" for comparisons of excessive recordkeeping fees relative to the services rendered, citing its **decision from June 2022** in Smith v. CommonSpirit Health . In that case, the Sixth Circuit backed dismissal of workers' allegations that certain 401(k) investment offerings had excessive fees, finding comparisons to lower-cost funds with a different investment profile were insufficient to state a claim.

The appellate court's decision analyzed cases from multiple other circuits, noting additional conflicts in its reasoning with analysis from the Third and Fifth Circuits.

Attorneys from both sides of the bar took note of the differences between circuits highlighted by the Sixth Circuit panel, though many expressed doubt that the appellate court outlined an actual circuit split, given the numerous factual differences between the cases discussed.

"There seems to be a lot less patience for these claims in the Sixth Circuit, absent the ability to show a real, palpable lack of due care," said Andrew Oringer, a partner at the Wagner Law Group and a longtime ERISA attorney representing employers.

Oringer said he wasn't sure if there was "an actual circuit split" between the Sixth Circuit and other appellate courts, even if the standard articulated was a strict one.

"The Sixth Circuit here is really taking a surgical look at this, and is really holding plaintiffs' feet to the fire, maybe even more than some other circuits, on whether there's potential justification for pricing differences, even at the pleading stage," Oringer added.

Charles Field, a plaintiffs-side partner and chair of the financial services litigation practice at plaintiffs firm Sanford Heisler Sharp LLP, also doubted that the decision created a split.

"I don't see it as a break myself. I think it's very similar to what some of the other courts have said, and that is, if you're going to plead that these are excessive fees, then you need to show us meaningful comparators," Field said, including relative to what plans paid for specific services.

"The difference between here and the Seventh Circuit is that they just weren't going to take a generic pleading, that these were fungible services that anybody could provide," Field added.

Carl Engstrom, a plaintiffs-side partner at Engstrom Lee, said the panel's decision reiterated to attorneys "you need to write a good complaint that's convincing, that makes your case sound unique."

The decision also seemed to be a reaction to the volume of excessive recordkeeping fee cases that have been filed against employers, he said.

"It's always the case that when a lot of cases get filed in a certain area, the case law is going to become more severe and make it more difficult to plead a claim. That has definitely happened within the area of 401(k) fee litigation, particularly as it relates to recordkeeping claims," Engstrom said.

--Editing by Amy Rowe and Nick Petruncio.
