LITIGATION

A Perfect Example of Why a Prudent Process is So Important: NAPA D.C. Fly-In Forum

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By:
John Sullivan

"Who's read the 86-page Natixis trial decision?" The Wagner Law Group's COO Thomas Clark, JD, LLM, asked 2025 NAPA D.C. Fly-In Forum delegates on Tuesday afternoon.

"You," American Retirement Association Chief Legal Officer Allison Wielobob answered to laughter.

Referring to Waldner v. Natixis Inv. Mgrs, Clark said it was an excessive fee case recently dismissed by a federal judge that alleged imprudence in the selection and monitoring of funds in the global financial institution's 401(k) plan, including proprietary options.

"It's another one of these in-house plans with 22 mutual fund options, and 17 or 18 were proprietary," he explained. "It's just like *Wildman v. American Century Services, LLC*, that, if you've seen me up here on stage any time in the last four years, you know I've talked about that case a lot. Why? Because it's a great case for every single advisor in this room to justify your existence to your plan sponsors."

An investment manager that's accused of using proprietary funds in their company plan, something both American Century and Natixis were accused of (as well as many other plan sponsors), is "literally one of the worst things to be accused of under ERISA," Clark claimed.

"You're accused of stealing from your employees to line your corporate pockets," he emphasized. "You're using your own funds, excessive fees, all the bad stuff. And somehow, in both instances, they went to trial and won. Why did they win? Because they had a great process."

As with *Wildman*, the Natixis decision reiterated what it means to have a great process.

"They were doing all the stuff you stress when out there selling your wares," Clark said. "They had meetings, they had an IPS, they were keeping minutes. When they had to do a fund review, they looked at all the different types of funds from different fund companies. It's all the stuff that you're out there selling."

However, what made it different from Wildman is that for years, they were not great fiduciaries. They had a contract saying they're supposed to meet four times a year, and they met once. They had no IPS until roughly 2018. They forgot to keep minutes.

Despite it all, they eventually "got their act together," and corrected the issues, which resulted in an interesting quote in the court's decision: "The contours of this case are not etched in black and white but shaded in gray and charcoal."

"Plaintiffs saw a Natixis committee alternately lining its pockets and sleeping on the job. Defendants presented a rosy picture of an exemplary plan with ideal fiduciaries," Clark concluded. "Neither showed the true colors of this case, but you could take this, go back to your clients and say, 'Here's the lesson.' You could repeat it verbatim. Why go all the way to the end of a federal trial in front of a court to test whether your process is prudent enough? These people got through by the skin of their teeth."

READ NEVIN ADAMS' COVERAGE OF THE NATIXIS CASE HERE

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Contact Us

4401 Fairfax Drive
Suite 600
Arlington

703-516-9300

703-516-9308

customercare@napa-net.org

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