

Fiduciary Liability Critical in Russell Investments ERISA Case

A judge dismissed plaintiffs' complaints against plan sponsor Caesars Holdings but allowed complaints against the fiduciary investment manager to move forward.

Reported by [JAMES VAN BRAMER](#)

A federal judge greenlighted complaints against Russell Investments Group LLC for allegedly causing plan participants to lose more than \$100 million by placing them in its proprietary target-date funds, while dismissing complaints against the plan sponsor, Caesars Holdings Inc.

The ruling indicates that plan sponsors can mitigate their fiduciary liability by delegating investment authority to a 3(38) fiduciary, says Marcia Wagner, founder of the Wagner Law Group.

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"This case reinforces the premise that a 3(38) delegation, so long as there is a process to evaluate other 3(38)s and there is a reasonable basis to select the 3(38), is a good way to insulate a plan sponsor from liability with respect to lawsuits regarding investment performance," Wagner says.

Caesars and Russell were initially [sued in May 2021](#) by participants in the \$1.9 billion 401(k) plan. The complaint alleges that the investment firm replaced the retirees' diverse investment options solely with underperforming Russell products.

In *Wanek et al. v. Russell Investments Trust Co. et al.*, Caesars Holdings selected Russell Investments to serve as a 3(38) fiduciary manager, making Russell Investments the investment manager of the retirement plan, with the authority to make investment decisions on behalf of the plan.

According to the complaint, after being selected as the fiduciary, Russell Investments replaced the previous investment menu, which included State Street TDFs, with Russell's own TDFs, which then allegedly underperformed the previous lineup.

U.S. District Judge Cristina Silva, presiding in U.S. District Court for the District of Nevada, ruled that Russell violated its fiduciary duty of loyalty and prudence by choosing underperforming TDFs. Silva wrote in her opinion that the evidence indicated that the decision may have been influenced by Russell's "need for [assets under management]," an allegation she wrote needs to be addressed during trial.

Silva also ruled that Caesars Holdings followed a prudent process in selecting Russell Investments as its plan's 3(38) fiduciary because it hired a consultant that evaluated five potential investment managers before the selection of Russell Investments was made. Silva further reasoned that since Russell Investments was only working as the investment fiduciary for four years, it would have been "premature" of Caesars to intervene and remove Russell Investments.

Nichols Kaster represents the plaintiffs, while Milbank LLP represents Russell Investments.

Tags

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