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Retirement industry wants firm ‘meaningful benchmarks’ guidelines from the Supreme Court to cut litigation risk

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Encouraged by Supreme Court justices’ comments about “meaningful benchmarks” during oral argument this week, retirement industry officials are now pressing the court for something more specific: clear, uniform standards that would end years of conflicting lower-court rulings over how DC plan investments should be judged.

Retirement industry members' remarks were triggered by the Oct. 6 oral argument in *Anderson et al. v. Intel Corporation Investment Policy Committee et al.*, in which justices indicated support for “meaningful benchmarks” — valid comparisons between a plan’s investments and marketplace investments cited by participants in asserting ERISA violations.

The justices confessed they weren’t sure how much guidance they should provide to lower courts for this legal version of apples-to-apples comparisons, but they agreed a meaningful benchmark requires more than a distinction based solely on investment performance.

The Supreme Court’s decision — there is no timetable — could have a profound impact on DC plan managers defending ERISA lawsuits against claims that plans’ investments and/or fees are worse than what is readily available in the marketplace.

A tighter definition by the Supreme Court could increase sponsor-defendants’ abilities to win ERISA complaint dismissals at the federal district court level. Looser guidelines may enable participant-plaintiffs to survive a motion to dismiss.

The justices’ questioning was based on a May 2025 decision by the 9th U.S. Circuit Court of Appeals, San Francisco, upholding two federal court rulings for Intel in 2021 and 2022. Former employees sued in 2019 arguing that Intel’s use of alternative investment in two retirement plans violated ERISA by producing worse results than other investments available in the marketplace. The appeals court said the ex-employees’ comparison of equity-heavy retail funds vs. Intel’s use of alternatives within custom target-date funds wasn’t appropriate.

“A ruling giving guidance to lower courts about what makes a comparator ‘meaningful’ could be helpful in stemming the tide of lawsuits based on conclusory allegations against retirement plan sponsors,” Andy Banducci, senior vice president of retirement and compensation policy at the ERISA Industry Committee, wrote in an email response to questions. The committee represents large employers in their role as employee benefits plan sponsors.

Sponsor advocates want specifics

“The justices seemed to be in agreement that a meaningful benchmark should be required when the fiduciary breach claims relate to underperformance,” Carol Buckmann wrote in an email responses to questions. She is co-founding partner of Cohen & Buckmann and the firm’s fiduciary and plan governance practice chairperson.

“This will come as a relief to plans sponsors and fiduciaries trying to defend against meritless lawsuits,” she wrote.

However, the justices “lacked a clear view as to whether they should define a ‘meaningful benchmark’ to provide clear uniform guidelines for the lower courts to follow, Buckmann added. “It would be in the interest of all concerned, but particularly the plan sponsors and fiduciaries who have been targeted in these underperformance lawsuits, for the court to do so.”

Buckmann, whose firm defends sponsors in ERISA cases, suggested the court could provide guidelines similar to the proposed [Department of Labor](#) regulations addressing DC plans’ offering of private markets investments. (DOL [supported](#) Intel in the lawsuit.)

A proper “meaningful benchmark” would be “similar mandates, strategies, objectives and risks to the designated investment alternative,” Buckmann wrote in referencing the DOL proposal. “The guidance should be specific enough to require the ‘apples-to-apples’ comparison the justices discussed.”

The justices’ “meaningful benchmark” comments also sounded encouraging to Alison Douglass, partner and head of ERISA litigation practice at the Goodwin Procter law firm, for the proposed DOL alternative assets regulations. “Importantly for plan sponsors and asset managers, nothing about the argument suggested a ruling that would favor or disfavor any particular investment strategy,” wrote Douglass whose firm represents sponsor defendants in ERISA cases.

Like other interviewees, Douglass wrote that the justices comments noted that “investment underperformance alone does not state a fiduciary breach claim,” adding they “acknowledged that the challenge was how far they should go in prescribing what a meaningful comparison between funds should consist of.”

Simply supporting “meaningful benchmarks” standard won’t be enough, wrote Richard E. Nowak, partner and co-leader of ERISA litigation at Mayer Brown, whose firm defends sponsors in ERISA cases.

“It will be important to see whether the court goes a step further and provides guidance to the benefits industry by defining the term ‘meaningful benchmark,’ ” and explaining that plaintiffs “must compare a challenged investment to other similar investments with like aims and strategies,” he wrote.

Plaintiffs' bar wants guidance too

The plea for greater guidance wasn't restricted to defenders of plan sponsors.

"It is now up to the Court to establish standards for what constitutes 'meaningful comparator,' which from my reading means similar — not exact," Charles Field, who represents plaintiffs' in ERISA cases, wrote in a response to questions. Field is co-chair of the financial mismanagement and ERISA litigation practice group at Sanford Heisler Sharp McKnight.

"I expect the Supreme Court will define a standard and remand to the lower court to determine whether Anderson met the standard," he wrote.

Norman Stein, senior policy and legal adviser to the Pension Rights Center, advocated narrow guidelines for a Supreme Court decision. The center is a nonprofit consumer organization seeking to protect workers' retirement security.

"I hope the Court makes clear that a meaningful benchmark standard does not require a nearly identical comparator, with closely aligned asset allocations — but would include comparators with similar overall strategic goals," wrote Stein, who is also professor emeritus of law at the Thomas R. Kline School of Law, Drexel University.

The Pension Rights Center filed an [amicus brief](#) with the Supreme Court, along with other consumer groups, supporting the former Intel employees, saying the "meaningful benchmarks" standard isn't supported by ERISA and restricts participants' ability to challenge alleged ERISA violations.

"I hope the court also makes clear that plaintiffs do not necessarily need to identify similar comparators to successfully plead that a fiduciary acted imprudently when formulating or implementing an investment strategy," Stein added.

A debate that may outlast the ruling

Based on his review of the Supreme Court's oral argument, attorney Andrew L. Oringer believes the "meaningful benchmarks" debate may continue beyond a decision in the Intel case.

"Assuming for the moment that the court does impose a meaningful-benchmark analysis, it remains to be seen whether the court is willing to provide to fiduciaries some meat on the bones

as to just what that would require,” wrote Oringer, partner and general counsel for the Wagner Law Group, in response to questions.

“It’s worth noting that the court focused on narrowing the question to underperformance based on comparisons to a meaningful benchmark,” wrote Oringer who firm defends sponsors in ERISA cases. “The court seemed not to want to address questions outside of the one presented in the (ex-Intel employees’) petition, such as whether a strategy itself is inappropriate. Thus, the final decision here may not cover all possible issues,” he added.

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By **Rob Kozlowski**