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New York District Court Rejects ERISA Excessive Fee Claims as Insufficient

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A district court in New York recently dismissed a putative class action challenging retirement plan recordkeeping and investment management fees. The case is *Singh v. Deloitte LLP*, No. 21-cv-8458, 2023 WL 186679 (S.D.N.Y. Jan. 13, 2023). The court's decision adds to the growing number of Second Circuit district courts relying on out-of-circuit appellate decisions to dismiss excessive recordkeeping and investment management fee claims for failure to plead proper benchmarks against which to measure fees. It also lends support to a standing argument advocated by the defense bar that, if it were to gain more traction, could substantially reduce the financial exposure in similar lawsuits.

Plaintiffs, former Deloitte LLP employees, sued the firm in the U.S. District Court for the Southern District of New York, alleging that it violated ERISA in its management of both a 401(k) plan and a profit-sharing plan. In particular, plaintiffs alleged that plan fiduciaries breached their duty of prudence by allowing the plans to incur excessive recordkeeping fees and retaining certain funds with above-average investment management fees. Deloitte moved to dismiss the complaint for lack of standing and failure to state a claim upon which relief can be granted.

The court dismissed the complaint in full. *First*, the court held that plaintiffs lacked standing with respect to the profit-sharing plan because they were not participants in that plan. Next, the court held that plaintiffs lacked standing with respect to four of the challenged funds in the 401(k) plan in which they did not invest. Absent investment in a particular fund, the court explained, plaintiffs could not have been harmed by its alleged shortcomings.

Second, as to the two remaining challenged funds in the 401(k) plan, the court held that plaintiffs' imprudence claim failed in two respects. The court rejected the recordkeeping fee claim because plaintiffs did not allege that the fees were excessive relative to the services rendered, and relied on "disingenuous" comparisons of the plan's aggregate costs to only the "direct" costs of comparator plans. Likewise, the court rejected plaintiffs' allegations that the funds charged excessive investment management fees, finding that the industry means and averages to which plaintiffs compared these fees were merely "arbitrary benchmark(s)." Plaintiffs did not "offer any context" for their allegations, such as showing how the challenged funds' fees were comparable to these metrics or pointing to other comparable funds with lower fees.

Third, the court dismissed plaintiffs' claim for the failure to monitor other fiduciaries, having found that the complaint did not state an underlying claim of imprudence.

Proskauer's Perspective

This decision is noteworthy for two reasons. First, it supports an argument that the defense bar has advanced for years in fee cases: absent investment in the challenged fund or service, a plaintiff lacks Article III standing. Second, it represents another example of the emerging trend among district courts to follow the lead of the Sixth Circuit in *Smith v. CommonSpirit Health* (discussed in a previous post) and require plaintiffs to support claims of excessive plan recordkeeping fees with allegations regarding the specific services rendered.

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