

ERISA Litigation Update

Covering Q2 Cases

The Morgan Stanley ERISA Litigation Update seeks to provide an overview of recent, relevant cases which may impact your responsibilities as a plan sponsor and/or plan fiduciary.

I. 401(k) Plan Fee and Performance Litigation

There have been nearly 700 ERISA-related class action lawsuits challenging the investment lineups and fees for defined contribution plans. Plaintiffs typically allege that plan fiduciaries breached ERISA by retaining imprudent, underperforming funds and by paying unreasonable fees, eroding participants' retirement savings. A recurring variant of these claims targets the plan's provider directly, challenging the retention of the provider's own proprietary funds as a plan investment option or the compensation paid to affiliated service providers. More recently, plaintiffs have begun to test less conventional theories, such as whether a fiduciary's prudent process for selecting and monitoring plan investment options adequately accounts for climate-related financial risk.

Two recent court decisions have let plaintiffs' proprietary fund-related claims proceed. In *Fezer v. Lockheed Martin Corp.*, the District of Maryland sustained claims accusing Lockheed of self-dealing in its 401(k) plans. Specifically, plaintiffs, in their March 2025 filing, alleged that plan fiduciaries selected and retained underperforming, high-cost proprietary target date funds ("TDFs") in the relevant plans' investment menus, causing the plans to pay excessive fees to affiliates of the Lockheed defendant. The court dismissed the fee claims but let the fund underperformance claims continue. In *Ang v. Franklin Resources, Inc.*, the Northern District of California let claims proceed alleging that Franklin Templeton breached its fiduciary duties by keeping underperforming proprietary funds in the plan's investment lineup, which generated fees for the defendant. The court concluded that the engagement of, and involvement by, an independent fiduciary with respect to such proprietary funds did not sufficiently establish or prove that the retention of the funds in the plan's investment lineup was prudent.

New 401(k) plan fee and performance cases continue to be filed. In *Clayton v. Aon Corp.*, plaintiffs allege Aon imprudently retained underperforming Vanguard funds in the Aon's own defined contribution plan. Plaintiffs in *East v. Principal Global Investors Trust Co.* alleged that Principal, serving as both investment manager and recordkeeper to the plan, populated the plan with the Principal's own underperforming TDFs (that also charged higher fees). In *Kvek v. Cushman & Wakefield*, the plaintiff set forth a novel climate risk theory, alleging that the plan fiduciaries imprudently retained an underperforming, high-fee fund without adequately evaluating its exposure to climate-related financial risk.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Consider implementing more frequent reviews of a plan's investment menu, particularly with respect to default investment options to ensure such selected investment options are, and remain, prudent. Such reviews may include periodic benchmarking exercises.
- In light of the importance court rulings place on maintaining rigorous processes related to a fiduciary's selection and monitoring of investment options available to participants as well as appointments of plan providers (also known as "procedural prudence," which focuses on the process utilized by a fiduciary rather than the ultimate performance or outcome of such decisions), consider establishing, maintaining and periodically reviewing formal, clearly documented processes utilized by plan fiduciaries when making investment-related and/or service provider decisions for the plan.

II. Key Procedural Developments in ERISA Litigation

a. Pleading "Meaningful Benchmarks"

One of the most important defenses in fee litigation is that the plaintiffs have not plead facts about the reasonableness of fees sufficient for a court to infer that there was a breach of fiduciary duty. During its next term, the Supreme Court will consider whether plaintiffs must plead a meaningful benchmark to survive a motion to dismiss in Anderson v. Intel Corp. Investment Policy Committee, and the decision will influence how lower courts evaluate these claims moving forward. Courts are already using the meaningful benchmark standard in fee litigation, resulting in many lawsuit dismissals at the pleading stage of litigation.

Fund comparisons remain central in ERISA class action litigation, with several courts of appeals having adopted some form of the "meaningful benchmark" standard. Under this standard, a plaintiff must plead facts showing that "benchmark" funds share similar strategies, risk profiles, and objectives as the challenged investment. This standard is often described as an "apples-to-apples" comparison.

The standard continues to prove difficult for plaintiffs to navigate. In *Fumich v. Novo Nordisk Inc.*, employees sued plan fiduciaries for failing to review the prudence of including Charles Schwab TDFs in Novo Nordisk's 401(k) plan investment menu. The District of New Jersey dismissed the claims, finding plaintiffs did not identify sufficiently similar, better-performing alternatives to the TDFs at issue as required by the meaningful benchmark standard. In *Tedford v. Equitable Financial Life Insurance Co.*, a former employee claimed plan fiduciaries kept an underperforming guaranteed investment contract ("GIC") in the defendant's 401(k) plan. The District of New Jersey dismissed the claim, holding that the plaintiff failed to show comparators sufficiently similar to the GIC at issue. The court granted leave for the plaintiff to amend his claim within 60 days.

This upcoming term, the Supreme Court is scheduled to hear *Anderson v. Intel Corp. Investment Policy Committee*. In *Intel*, the Supreme Court will consider whether ERISA requires plaintiffs that challenge a plan investment option based on comparative performance must identify a meaningful benchmark to such investment option at issue in the case. Facing investment underperformance claims, Cigna filed a motion requesting that the Eastern District of Pennsylvania stay the proceedings in *In Re: Cigna ERISA Litigation* – meaning the defendant requested the proceedings be paused – pending the Supreme Court's decision in *Intel*. The court denied Cigna's motion to stay, reasoning that *Intel* might not resolve all claims and issues in the *In Re: Cigna ERISA Litigation*, which includes both investment performance and plan forfeiture claims.

The United States, on behalf of the Department of Labor (the "DOL"), recently filed an amicus brief (friend of the court) supporting the *Intel* respondents and endorsing a moderate version of the benchmark standard. The DOL argued that a plaintiff relying on comparative underperformance must identify a benchmark that is similar to the challenged investment in relevant respects, including its strategy, objectives, risk profile, holdings, and asset allocation. The DOL characterized this as an application of ordinary pleading rules rather than a heightened standard under ERISA. The DOL's brief also emphasized that a benchmark is required only when the claim rests on relative underperformance and highlighted that

plaintiffs may instead challenge the fiduciary's process or allege that an investment was inherently risky. The DOL further stated that comparators need only be similar, not identical, and that a benchmark selected by the fiduciary may qualify if the fiduciary represented that it was meaningfully comparable to the fund at issue.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- In light of the importance court rulings place on maintaining rigorous processes related to a fiduciary's selection and monitoring of investment options available to participants as well as appointments of plan providers (also known as "procedural prudence," which focuses on the process utilized by a fiduciary rather than the ultimate performance or outcome of such decisions), consider establishing, maintaining and periodically reviewing formal, clearly documented processes utilized by plan fiduciaries when making investment-related and/or service provider decisions for the plan, including, but not limited to, any metrics or benchmarks used by plan fiduciaries to determine the reasonableness of any such service provider's fees.
- Consider, in such processes, documenting a plan fiduciary's reasonable actions in its investment decisions and selection of service providers, as applicable, under the circumstances facing the fiduciary at such time, to demonstrate both procedural prudence and the fiduciary's basis for such decisions.
- Fiduciaries should keep records of not only the decisions made but also the rationale, including any research conducted, RFP discussions or outcomes, and/or expert recommendations (including, if applicable, in meeting minutes).

b. Class Certification

Class certification in ERISA litigation is generally a large hurdle for plaintiffs and requires a determination that class issues predominate in the allegations of the complaint. Plan sponsor defendants generally oppose class certification due to the larger damages that may be awarded in such class action cases. The Fourth Circuit recently denied class certification in Trauernicht v. Genworth Financial, Inc. holding that DC plans are inherently individualized as any recovery granted in such lawsuits would be allocated to each participant's plan account, further emphasizing the need to analyze the commonality requirement for class certification on an individual participant level. As a result, it is likely that more defendants in these suits will seek class decertification as shown in Sweeney v. Nationwide Mutual Insurance Company.

Last quarter, the Fourth Circuit rejected certification of the proposed class in *Trauernicht v. Genworth Financial, Inc.*, concluding that adjudicating the claims and requested relief would require consideration of participant-specific investment decisions and injuries. The court also rejected the assumption that fiduciary breach claims automatically satisfy the commonality condition required by the applicable class action rule, emphasizing the need for participant-specific analysis, particularly where some participants may not have suffered injury (and therefore don't have standing to bring such claims). Plaintiffs filed a motion to rehear the case, arguing that the Fourth Circuit's decision improperly characterized their ERISA fiduciary breach claims as claims for individual damages, departing from established precedent supporting class treatment in such cases. In their motion for rehearing, plaintiffs warned that the Circuit Court's decision could make it substantially more difficult for plaintiffs to pursue fiduciary breach class action claims involving defined contribution plans. In June, the Fourth Circuit denied plaintiffs' motion, allowing its original decision to stand.

On the eve of trial in *Sweeney v. Nationwide Mutual Insurance Company*, Nationwide filed a motion asking the Southern District of Ohio to decertify a class of plaintiffs previously certified in 2024. Citing the Fourth Circuit's original decision in *Genworth*, Nationwide argued that the certified claims require individualized determinations that defeat the commonality necessary for class treatment. While the court has yet to render a decision and the case is now well underway, we are likely to see more defendants seeking class decertification based on *Genworth*, especially given the Fourth Circuit's recent refusal to rehear *Genworth*.

Best Practices for Plan Sponsors & Plan Fiduciaries to Consider:

- Consult your ERISA and litigation counsel to discuss whether plaintiff's allegations are supported by questions of law or fact that are common to the entire class and whether plaintiff satisfies all

relevant class certification requirements under federal law to determine whether there are grounds to oppose a plaintiff's efforts to obtain class action certification.

- Consider the merits of any defense used to oppose class certification and the likelihood of such defense succeeding and whether agreeing or stipulating to class certification would save time and resources, or as leverage to narrow the scope of plaintiff's claims with your ERISA counsel.

c. Administrative Exhaustion

The DOL filed an amicus brief in Bolton v. Inland Fresh Seafood Corp. opposing the Eleventh Circuit's practice of requiring ERISA plaintiffs to first exhaust their benefit plan's administrative remedies prior to filing claims alleging fiduciary breaches under ERISA – otherwise known as the "exhaustion rule." The DOL argues that the Eleventh Circuit's application of the exhaustion rule imposes additional roadblocks to workers' claims and is not supported by the statutory text of ERISA and is "inconsistent with ERISA policies and practical considerations."

The DOL has asked the Eleventh Circuit abandon its judicially created rule requiring ERISA plaintiffs to first exhaust their benefit plan's administrative remedies prior to filing claims alleging fiduciary breaches under ERISA. In *Bolton v. Inland Fresh Seafood Corp.*, plaintiffs allege fiduciaries of an employee stock ownership plan ("ESOP") overpaid for employer stock in 2016. The district court dismissed the case for failure to exhaust remedies, and a three-judge panel affirmed.

In its amicus brief, the DOL argued the Eleventh Circuit is alone in requiring exhaustion of plan remedies in order to bring statutory ERISA claims, and that this approach conflicts with ERISA's text, purpose, and other circuit courts' approaches. The DOL said exhaustion should apply to benefit claims, not fiduciary breach or prohibited transaction claims, which are federal law questions for courts. Requiring claimants to present such claims to the very fiduciaries accused of wrongdoing, the DOL argued, is unfair and impractical. The Eleventh Circuit granted the DOL leave to participate in oral arguments as amicus curiae during its en banc review. The court's decision could determine whether ERISA plaintiffs in the Eleventh Circuit can bring statutory fiduciary breach claims directly in federal court without first exhausting administrative remedies under the relevant plan.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Consider whether there is any pending litigation pertaining to ERISA statutory breach claims in the Eleventh Circuit and discuss how such venue may impact the outcome of the ongoing litigation, the plan, the plan sponsor and fiduciaries with ERISA counsel.

III. Stable Value Fund Litigation

Stable value funds continue to be a focus of ERISA class action litigation. These funds, designed to provide principal preservation and steady returns, have come under scrutiny as rising interest rates allegedly left their crediting rates lagging behind comparable fixed income alternatives. The filings that surged in 2025 have continued into 2026, with plaintiffs asserting that plan fiduciaries failed to respond prudently to changing market conditions, and further alleging that plan fiduciaries breached their duties under ERISA by offering or retaining stable value funds in a plan's investment line-up that had lower credit ratings or produced lower returns than other investment options. Courts continue to emphasize the importance of procedural prudence at the time of a fiduciary's investment decision.

In April, the Northern District of Texas dismissed the complaint in *Eibensteiner v. EssilorLuxottica USA Inc.*, holding that participants failed to plead meaningful comparators for a challenged Prudential stable value product and did not adequately allege that Prudential's use of offshore reinsurance or capital levels made the stable value fund investment imprudent. Participants later amended their complaint, and the defendants' subsequent, renewed motion to dismiss remains pending.

The Western District of Michigan dismissed the complaint in *Gritsavage v. Auto-Owners Insurance Co.* in April. The plaintiffs argued that holding roughly one-third of plan assets in a conservatively invested fund was imprudent. The court concluded that the allegations did not plausibly support an inference that retaining the conservative investment option reflected an imprudent process by the plan fiduciary. The plaintiffs filed a notice of appeal on April 23.

In *Wallace v. Pilgrim's Pride Corp.*, the plaintiff alleged that the plan imprudently retained a Great-West Life & Annuity GIC whose crediting rates trailed comparable funds. In a motion to dismiss filed in May, the defendants argued that the plaintiff failed to plausibly allege underperformance of the GIC or that the plan fiduciaries followed an imprudent process in breach of their fiduciary duties under ERISA. After the close of the quarter, the plaintiff filed an amended complaint.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Consider documenting a plan fiduciary's reasonable actions in its selection of an investment option under the circumstances facing the fiduciary at the time of such investment decision in such processes to demonstrate both procedural prudence and the basis for each investment decision.
- If a plan offers a stable value contract as an investment option to its participants, consider whether any actual or perceived conflicts of interest exist between the participants and the plan fiduciary when setting the credit rate to ensure that the fiduciary acts in the best interest of the participants, particularly where such stable value contract investments made by participants may result in an incidental benefit to the plan sponsor.

IV. Plan Forfeiture Litigation

Plan forfeiture cases remain among the most active areas of ERISA litigation, with nearly 100 suits filed over the past few years. Plaintiffs challenge plan sponsors' use of forfeitures—unvested employer contributions left by departing participants—arguing that ERISA requires these funds be used to cover plan expenses, and not to reduce employer contributions. The DOL has evidenced its support of defendants in these suits through an amicus brief filing citing both long-standing IRS guidance and ERISA that permit the use of plan forfeitures to offset employer contributions to a plan. Appellate courts are now considering this issue with appeals pending in several circuits.

A plan forfeiture occurs when a participant's plan balance is forfeited due to events set forth in the plan document. Most commonly, plan forfeitures occur when participants separate from employment before becoming fully vested in employer contributions. Longstanding IRS and Treasury Department guidance indicates that such use of forfeitures is permitted and forfeitures may be used to either pay plan administrative expenses or be used to satisfy the employer's matching contribution obligations under the plan; provided the plan document permits such uses of forfeitures. Plaintiffs continue to target this practice and allege that plan sponsors and fiduciaries violated ERISA by exercising discretion to use forfeitures to offset the employer's matching contributions to the relevant plans, which plaintiffs argue are an impermissible use of such forfeitures for the employer's benefit.

The Eighth Circuit issued the first appellate-level decision in plan forfeiture litigation, affirming the dismissal in *Matula v. Wells Fargo & Co.* due to the plaintiff's lack of standing, without foreclosing the plaintiff from attempting to plead a cognizable injury. The Ninth and Third Circuits heard arguments in *Hutchins v. HP Inc.*, *Cain v. Siemens Corp.*, and *Barragan v. Honeywell International, Inc.* The panels in these suits generally focused on whether the decision as to how to use forfeitures is a settlor or a fiduciary act, and whether the terms of each plan obligated the plan sponsor and/or fiduciary to spend the forfeitures solely for plan administrative expenses rather than offsetting an employer's contributions to a plan. The DOL appeared as amicus supporting the defendant employers in each appeal, arguing that using forfeitures to offset employer contributions to the plan does not alone violate ERISA. The questioning at oral argument reflected substantial skepticism toward aspects of the plaintiffs' theories, but decisions in these lawsuits remain pending.

The first forfeiture case to reach trial has also produced a result favoring defendants. In *Stephan v. Trader Joe's Company*, former plan participants challenged Trader Joe's use of plan forfeitures between 2019 – 2023. After plaintiffs finished presenting their evidence, the court granted judgment for defendants on the forfeiture claim from the bench.

While most early rulings favor defendants, some district courts continue to let forfeiture claims proceed. The Eastern District of Pennsylvania denied Cigna's motion to dismiss in *In re Cigna ERISA Litigation*, and the District of Minnesota denied United's motion to dismiss in *In re UnitedHealth ERISA 401(k) Litigation*.

A new suit from Schlichter Bogard LLP against Ford Motor Company breaks from the standard forfeiture theory. In *Fuller v. Ford Motor Company*, plaintiffs allege that the plan documents required plan administrative costs to be paid by either Ford or from plan forfeitures, and that the defendant improperly used plan assets for other purposes.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Identify and review any forfeiture provisions set forth in plan documents with ERISA counsel and discuss whether any modifications are necessary regarding the exercise of discretion related to the use of forfeitures to reduce or eliminate the type of discretion over the assets that could form the basis for an ERISA fiduciary breach claim.
- Plan sponsors and fiduciaries may want to separately review, consider, and document settlor versus fiduciary functions and decisions with respect to decision on how to use plan forfeitures.
- Plan sponsors should review their plan forfeiture language to determine if the plan authorizes the use of forfeitures for employer contributions and to ensure that any ordering rules set forth in the plan document are followed (e.g., some plans require plan expenses be paid prior to offsetting employer contributions).
- If the clear intent of the plan document is for plan sponsors to use plan forfeitures primarily to offset employer contributions, plan sponsors should consider whether any modifications are needed to the plan document to remove discretion and optionality related to forfeiture use. Consider incorporating ordering rules into the plan document that clearly prioritize and/or define the circumstances in which plan sponsors may use forfeitures to offset employer contributions in lieu of using such forfeitures to pay plan administrative expenses, so that the plan sponsor does not have any discretion or optionality as to how such forfeitures are used (including, if desired, so that offsetting employer contributions is the first or only permitted use).

V. Pension Risk Transfers

Litigation challenging pension risk transfer transactions ("PRTs") continue, with new lawsuits alleging violations of ERISA's fiduciary duties with respect to the plan sponsor's decision to effectuate a PRT and its accompanying selection of an annuity provider. These suits continue to focus on whether the plaintiffs suffered an injury giving them standing to sue. Courts are slowly issuing decisions in these PRT cases, many of which have been dismissed due to the plaintiff's lack of standing to sue (which requires plaintiffs demonstrate a concrete injury or substantial likelihood that participants would suffer a future injury).

It is common for plan sponsors to "de-risk" their defined benefit plans by purchasing annuities to satisfy the benefits for some or all of the plan participants. The annuity is purchased in what is commonly referred to as a PRT that results in the transfer of the benefit obligation from the plan sponsor to one or more insurance companies, which become responsible for paying out the monthly pension benefits. Employers seeking to terminate their pension plan generally must purchase irrevocable annuities for participants that fully transfer the plan's obligations to the insurer, and the number and size of PRT transactions has increased significantly over the past few years as economic conditions have made plan terminations more attractive.

Retirees generally cease to be participants in the transferring plan with respect to the transferred benefits involved in a PRT and as a result such transferred assets (and benefits) are, generally, no longer subject to federal insurance of pension benefits under a defined benefit plan by the Pension Benefit Guaranty Corporation – a federal corporation established under ERISA to insure benefits under most defined benefit

plans – leaving benefit payments dependent on the insurer and applicable state law protections. Numerous suits challenge transfers to Athene, with parallel cases in several district courts.

In *Maneman v. Weyerhaeuser Co.*, retirees challenged the PRT of \$1.5 billion in pension obligations to Athene, alleging it posed substantial financial risk to their benefits. The Western District of Washington held that the plaintiffs had standing, finding that receiving a less valuable annuity as a result of a PRT constitutes a concrete injury, even if payments continue. However, the court dismissed the complaint on the merits, as the plaintiffs' risk allegations pertaining to selected insurer's risk followed the PRT in question, and courts must evaluate fiduciary prudence based on the circumstances at the time of the fiduciary's decision. Plaintiffs amended their complaint in April to include allegations that Athene already evidenced it was in risky condition before the PRT occurred. Defendants again moved to dismiss, and a hearing is set for October. With many similar cases pending, further developments are likely in the coming months.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Plan sponsors and fiduciaries may want to separately review, consider, and document settlor versus fiduciary functions and decisions when de-risking a plan and/or executing a PRT, including when selecting an insurer. If/when selecting an insurer, plan sponsors must perform due diligence into the insurance market and the particular insurer options, and must select the "safest available annuity" provider per the DOL's Interpretive Bulletin 95-1, including after weighing six crucial factors identified by the DOL. Plan sponsors may wish to engage an independent fiduciary to carry out the insurer due diligence, analysis and selection.
- In all events, the process carried out by the plan sponsor and fiduciary at the time of such decision, including if/when selecting an insurer, is key for defending ERISA fiduciary breach claims and so should be conducted in consultation with ERISA counsel and should be well-documented.

VI. Plan Asset Status

Recent litigation highlights the importance of determining "plan asset" status under ERISA, particularly for service providers that may be subject to claims of fiduciary breach under ERISA where certain investments constitute "plan assets" thereunder. The fiduciary status of these service providers remains a critical question in these cases.

Under ERISA, fiduciary status and the corresponding fiduciary duties thereunder attach to discretionary acts involving "plan assets." As such, a recurring threshold question in these lawsuits is whether a plan's investment in a pooled vehicle also pulls the vehicle's underlying assets into the plan. The Second Circuit recently weighed in on the circumstances under which assets underlying an investment may be treated as ERISA plan assets.

In *Powell v. Ocwen Financial Corp.*, the Second Circuit considered whether a mortgage servicer breached ERISA by mismanaging the loans behind residential mortgage-backed securities ("RMBS") held in a pension fund. The pension fund trustees originally filed suit in 2018, alleging Ocwen and Wells Fargo breached their fiduciary duties under ERISA by driving homes into foreclosure and devaluing the pension fund's assets. The district court concluded that both the RMBS notes and certificates were debt instruments lacking substantial equity features and therefore did not cause the underlying mortgage assets to become plan assets. The Second Circuit affirmed the district court's ruling with respect to the status of the notes, but found that the certificates at issue were "equity interests" for purposes of DOL's plan assets regulation. On rehearing, the panel amended and superseded its opinion while reaching the same conclusion, stopping short of holding that the underlying mortgages constituted plan assets subject to ERISA. The court remanded the case for reconsideration of the plan asset regulation's remaining requirements and exceptions. The outcome of *Powell v. Ocwen Financial Corp.* may impact whether loan servicers and related service providers act and serve as fiduciaries within the meaning of Section 3(21) of ERISA if such assets are held to be "plan assets" within the meaning of ERISA and the accompanying DOL regulations.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Establish, maintain, and periodically review formal, documented procedures regarding the plan fiduciary's prudent selection and monitoring of plan service providers, including, but not limited to,

any metrics or benchmarks used by plan fiduciaries to determine the reasonableness of any such service provider's fees.

- Consider including additional information regarding the fiduciary status of the service provider, where appropriate and applicable, and the service provider's process related to plan investment decisions to provide transparency as to the decision-making process and fiduciary status of the service provider as a potential mitigant to claims alleging a service provider breached its fiduciary duties to the plan with respect to a particular investment decision.

VII. Actuarial Equivalence

Since 2018, over 30 lawsuits have been filed against defined benefit plan sponsors alleging that “outdated” actuarial assumptions were used to determine the “actuarial equivalent” of any retirement benefit that is not a single life annuity (and that are used when a single life annuity is converted into another form of benefit) in violation of ERISA. District court rulings have been mixed, and significant appellate developments have occurred this quarter, widening the circuit split on the meaning of “actuarial equivalent” and whether it imposes a reasonableness standard.

A defined benefit plan converting a single life annuity to another benefit form must use actuarial assumptions that ensure actuarial equivalence. Defined benefit plans generally provide benefits in the form of a single life annuity commencing at the participant's normal retirement age set forth in the plan (typically age 65). Under ERISA, any retirement benefit that is not a single life annuity must be the “actuarial equivalent” of a single life annuity. Further, when such a plan converts a single life annuity into another form of retirement benefit, it must use certain actuarial assumptions (interest rates and mortality tables) to ensure the participant receives the same total value as they would receive with a single life annuity. The results in these cases at the district court level have generally been mixed, with some lawsuits dismissed and others resulting in settlements.

The Eleventh Circuit revived one of these challenges in *Drummond v. Southern Company Services, Inc.* On May 26, the panel held that ERISA requires a plan to use the actuarial assumptions a reasonable actuary would use, making the Eleventh Circuit the second federal court of appeals to read a reasonableness requirement into the statute's pension calculation rules. The court reversed a district court ruling in *Southern* and reinstated plaintiff's claims alleging that the plan's adjustment for survivor protection caused the joint-and-survivor annuity to be less than actuarially equivalent to the single life annuity.

The Sixth Circuit left its earlier revival of these theories in place. In *Reichert v. Kellogg Co.* and *Watt v. FedEx Corp.*, the court denied the defendants' petitions for rehearing, declining to revisit the March 16 panel opinion that adopted a reasonableness requirement and reversed the dismissals from the lower courts. In this case, plaintiffs challenged the mortality tables used to convert their benefits to joint and survivor annuities, arguing that the plans' use of outdated mortality tables impermissibly reduced their benefits, violating ERISA. The District Courts granted the defendants' motions to dismiss, finding that ERISA does not impose a subjective “reasonableness” standard on actuarial assumptions, reasoning that when drafting the statute, Congress deliberately omitted a reasonableness requirement for purposes of “actuarial equivalent” determinations. The Sixth Circuit overturned the District Courts' dismissal, ruling that ERISA implicitly imposes a reasonableness requirement on plans' actuarial assumptions, a conclusion the Circuit Court found necessary to fulfill the statute's purpose and Congressional intent.

While the Sixth Circuit and Eleventh Circuit are aligned on the reasonableness standard, district courts remain divided. In April, the Northern District of California granted Intel summary judgment in *Berkley v. Intel Corp.* The court held that ERISA requires converted benefits to be actuarially equivalent to one another and carries no implied reasonableness standard.

Expert proof remains a separate obstacle for plaintiffs. In *Adams v. U.S. Bancorp*, the district court excluded plaintiffs' actuarial expert as unreliable and granted summary judgment in the lawsuit. On appeal, defendants urged the Eighth Circuit to affirm the lower court's findings, contending that exclusion of the plaintiffs' expert left them without evidence to support their claims and that ERISA does not independently require reasonableness of actuarial assumptions. Plaintiffs voluntarily dismissed the appeal.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Consider reviewing all aspects of the relevant defined benefit plan, including the actuarial assumptions being used, to ensure such assumptions are reasonable and up to date.
- Plan fiduciaries should keep records of the decision made to, and also the rationale, when vetting potential expert witnesses to use in ERISA-related litigation to ensure such expert has the necessary expertise on the subject matter and is reliable in a court setting.

VIII. Withdrawal Liability

With respect to calculating a withdrawing employer's withdrawal liability from an underfunded multiemployer pension plan, the Supreme Court unanimously held in M&K Employee Solutions, LLC vs. Trustees of the IAM National Pension Fund that ERISA does not require an actuary to formally adopt those assumptions by the statutory measurement date. Instead, the high court held that actuaries may adopt assumptions after the measurement date as those statutory assumptions are productive tools rather than fixed historical facts.

An employer that withdraws from an underfunded multiemployer pension plan must pay withdrawal liability, reflecting its share of the plan's unfunded vested benefits. The amount is calculated using actuarial assumptions, including a discount rate, which can significantly affect the employer's liability. In *M&K Employee Solutions, LLC v. Trustees of the IAM National Pension Fund*, the Supreme Court unanimously held that ERISA does not require the actuary to have formally adopted the assumptions by the statutory measurement date. Four employers challenged withdrawal liability assessments that used a discount rate adopted after the measurement date, which substantially increased their liability. The Supreme Court asserted that actuaries may adopt assumptions after the measurement date because those assumptions are predictive tools rather than fixed historical facts. The decision gives plans greater flexibility to formalize assumptions after the measurement date, although challenges claiming such assumptions as unreasonable may still occur in arbitration.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Consider reviewing all aspects of the relevant defined benefit plan, including the actuarial assumptions being used to calculate a withdrawing employer's withdrawal liability from an underfunded multiemployer pension plan to ensure such assumptions are reasonable and up to date.

IX. Notable Settlements

April

- Sentara Health agreed to pay \$1.5 million to settle *Carter v. Sentara Healthcare Fiduciary Committee*. Plaintiffs alleged Sentara's failure to prudently monitor and replace the underperforming stable value fund as an investment option in the plan resulted in substantial losses to such plan.
- Wells Fargo received final court approval for an \$84 million settlement in *Randall v. GreatBanc Trust Co.*, resolving claims that it mishandled company stock held in its 401(k) plan. Plaintiffs have characterized it as the largest ever class action settlement of ERISA claims arising from an ESOP.
- MyMichigan Health signed a \$1.9 million class settlement in *Moffit v. MyMichigan Health*. Participants alleged that the health system defendants breached their fiduciary duties by failing to monitor the plan's chronically underperforming stable value fund included in the plan's investment menu.
- AlaTrade Foods reached a settlement worth more than \$4.5 million in *Haynes v. James*. Participants alleged that fiduciaries caused the ESOP to acquire company stock for more than fair market value through a non-exempt prohibited transaction, resulting in losses to the plan and its participants.

- Janus Henderson agreed to pay \$6.5 million to settle *Schissler v. Janus Henderson Us (Holdings) Inc.* Participants alleged that the asset manager retained underperforming proprietary funds in its own 401(k) plan in favor of better-performing alternatives, costing the plan millions of dollars in losses.

May

- The trustees of the Carpenters of Western Washington pension plan reached a settlement with retirees in *Johnson v. Carpenters of Western Washington Board of Trustees*, and reached a settlement in principle to resolve the remaining claims. Plaintiffs alleged that plan fiduciaries imprudently invested plan assets in Allianz Structured Alpha funds and failed to adequately monitor those investments, resulting in substantial losses to the plan.
- NCR agreed to pay nearly \$48 million to settle *Hoak v. Ledford*. Former executives alleged that NCR's termination of its nonqualified retirement plans and use of a 5% discount rate to value promised annuity payments improperly reduced benefits payable to participants and beneficiaries under such plans.
- Long Island Community Hospital reached a settlement in principle in *Jacobsen v. Long Island Community Hospital*. Former employees alleged that plan fiduciaries imprudently retained higher-cost share classes and an underperforming stable value fund, causing losses to the plan and its participants.
- Caliber Collision reached a settlement in principle in *Fordyce v. Wand Newco 3 Inc.* following mediation. The plaintiff alleged that the company used plan forfeitures to offset its own contributions rather than pay plan expenses.

June

- ADP reached a settlement in principle in *Berkelhammer v. ADP TotalSource Group, Inc.*, a 50,000-person class action lawsuit. Participants alleged that the ADP defendants paid themselves from plan assets, caused the plan to pay excessive fees, and offered underperforming investments in the plan's investment menu.

XVI. Table of Authorities

- *Adams v. U.S. Bancorp*, No. 26-1330 (8th Cir. Feb. 25, 2026)
- *Anderson v. Intel Corp. Inv. Pol'y Comm.*, No. 25-498 (U.S. Oct. 20, 2025)
- *Ang v. Franklin Resources, Inc.*, No. 3:25-cv-06130 (N.D. Cal. July 22, 2025)
- *Barragan v. Honeywell Int'l Inc.*, No. 25-2609 (3d Cir. Aug. 22, 2025)
- *Berkelhammer v. ADP TotalSource Grp., Inc.*, No. 2:20-cv-05696 (D.N.J. May 7, 2020)
- *Berkely v. Intel Corp.*, No. 5:23-cv-00343 (N.D. Cal. Jan. 23, 2023)
- *Bolton v. Inland Fresh Seafood Corp. of Am. Inc.*, No. 24-10084 (11th Cir. Jan. 4, 2024)
- *Cain v. Siemens Corp.*, No. 25-2564 (3d Cir. Aug. 9, 2025)
- *Carter v. Sentara Healthcare Fiduciary Comm.*, No. 2:25-cv-00016 (E.D. Va. Jan. 8, 2025)
- *Clayton v. Aon Corp.*, No. 1:26-cv-6026 (N.D. Ill. May 22, 2026)
- *Drummond v. S. Co. Servs. Inc.*, No. 24-12773 (11th Cir. Aug. 28, 2024)
- *East v. Principal Global Invs. Tr. Co.*, No. 3:26-cv-00738 (D. Or. Apr. 14, 2026)
- *Eibensteiner v. EssilorLuxottica USA Inc.*, No. 3:25-cv-02443 (N.D. Tex. Sept. 9, 2025)
- *Fezer v. Lockheed Martin Corp.*, No. 8:25-cv-00908 (D. Md. March 19, 2025)
- *Fordyce v. Wand Newco 3 Inc.*, No. 4:25-cv-00997 (E.D. Tex. Sept. 10, 2025)
- *Fuller v. Ford Motor Co.*, No. 2:26-cv-11541 (E.D. Mich. May 8, 2026)
- *Fumich v. Novo Nordisk Inc.*, No. 3:24-cv-09158, 2026 BL 236793 (D.N.J. June 24, 2026)
- *Gritsavage v. Auto-Owners Insurance Co.*, No. 1:25-cv-00973 (W.D. Mich. Aug. 19, 2025)
- *Haynes v. James*, No. 5:26-cv-00664 (N.D. Ala. Apr. 22, 2026)
- *Hoak v. Ledford*, No. 1:15-cv-03983 (N.D. Ga. Nov. 16, 2015)
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- *Jacobsen v. Long Island Cmty. Hosp.*, No. 2:24-cv-00386 (E.D.N.Y. Jan. 18, 2024)
- *Johnson v. Carpenters of W. Wash. Bd. of Trs.*, No. 2:22-cv-01079 (W.D. Wash. Aug. 2, 2022)
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- *Powell v. Ocwen Fin. Corp.*, No. 23-999 (2d Cir. June 30, 2023)
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- *Reichert v. Kellogg Co.*, No. 24-1442 (6th Cir. May 17, 2024)
- *Schissler v. Janus Henderson US (Holdings) Inc.*, No. 1:22-cv-02326 (D. Colo. Sept. 9, 2022)
- *Stephan v. Trader Joe's Co.*, No. 1:25-cv-10212 (D. Mass. Jan. 28, 2025)
- *Sweeney v. Nationwide Mut. Ins. Co.*, No. 2:20-cv-01569 (S.D. Ohio March 26, 2020)
- *Tedford v. Equitable Fin. Life Ins. Co.*, No. 2:25-cv-02180 (D.N.J. Mar. 31, 2025)
- *Trauernicht v. Genworth Fin., Inc.*, No. 24-1880 (4th Cir. Sept. 13, 2024)
- *Wallace v. Pilgrim's Pride Corp.*, No. 1:26-cv-00371 (D. Colo. Jan. 30, 2026)
- *Watt v. FedEx Corp.*, No. 24-5945 (6th Cir. Oct. 17, 2024)

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