Simpson Thacher

Securities Law Alert

KEY DEVELOPMENT IN ERISA LITIGATION

Third Circuit: Weighing "Novel Argument" That Violating 401(k) Plan Policy Statements Is a Breach of Fiduciary Duty, Concludes Statements Not Violated

November 9, 2026

On June 22, 2026, the Third Circuit affirmed a district court's grant of summary judgment in favor of a company and its 401(k) plan administrators that were alleged to have violated their fiduciary duty under ERISA by failing to remove two underperforming funds from the plan's investment options. *In re Quest Diags. ERISA Litig.*, 179 F.4th 217 (3d Cir. 2026) (Bibas, J.). As to plaintiffs' "novel argument" that violating a policy statement breaches a fiduciary duty under ERISA, the Third Circuit stated that it has never held this. The Third Circuit concluded that even if the policy statements were covered by § 1104(a)(1)(D) of ERISA, they were "full of permissive language" so the committee had the discretion to deviate from them and, therefore, the statements were never violated.

Background and Procedural History

Plaintiffs alleged that the plan and its managers breached their fiduciary duty by imprudently continuing to offer an actively managed mutual fund and actively managed target-date funds as investment options because the mutual fund underperformed comparable funds and the target-date funds performed worse than passively managed alternatives. Plaintiffs alleged that continuing to offer the funds, violated the company's fiduciary duty under 29 U.S.C. § 1104(a), and also violated the fiduciaries' duty to monitor the plan adequately under §§ 1105(a) and 1109(a). The district court denied the company's motion to dismiss but, after discovery, granted it summary judgment finding no breach of fiduciary duty.

The Company's Process Was Prudent

Noting that under *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011), "if the fiduciary's process was prudent, that ends the inquiry and plaintiffs lose," the Third Circuit held that plaintiffs' breach-of-duty claim failed at this step because the company's process was prudent, noting that "ERISA is mostly concerned with process, not outcomes." Referring to *In re Unisys Savings Plan Litigation,* 74 F.3d 420 (3d Cir. 1996) to rate the company's performance in this case, the Third Circuit concluded that the company reviewed its financial advisor's data and sought more where needed, understood its financial advisor's methodology and the bases underlying its opinions, and that the company otherwise followed generally accepted practices of plan management. The Third Circuit further noted

that the investment committee regularly met with its investment advisor, met with fund sponsors, had its advisor review specific investments, including the challenged funds, repeatedly revised the plan's menu, and during the years at issue replaced certain funds and put funds on a watch list, including one of the challenged funds.

Policy Statements "Full of Permissive Language" Were Never Violated

As to plaintiffs' argument that a plan's investment policy statements are binding under § 1104(a)(1)(D)[1], the Third Circuit labeled this a novel argument in this circuit and stated that it has never held that violating a policy statement breaches a fiduciary duty. The Third Circuit then stated that it need not decide the question because even assuming that the policy statements were covered by § 1104(a)(1)(D), the statements gave the committee discretion to deviate from them, so they were never violated. The court pointed out that the policy statements "were full of permissive language." For example, they provided that the investment committee "may" place an investment on a watch list or remove it from the menu, and while they listed "common factors that may cause the Investment Committee to lose confidence in a fund," they also noted that "no single factor" is dispositive.

Acknowledging that there is no law directly on point, the Third Circuit stated that background principles of trust law favor deferring to trustees' judgment such that the exercise of a trustee's discretion is subject to the deferential abuse of discretion standard of review. Concluding that there was no abuse of discretion in this case, the Third Circuit pointed out that the investment committee considered the target-date funds' increased stock allocation and through-retirement glide path, as well as the target-date funds' underperformance and alternatives, investigating active versus passive index funds as well as funds with various glide paths. The committee also considered alternatives to the mutual fund "but had a good reason to keep it on the menu because of the protection it offered during bear markets."

[1] Under § 1104(a)(1)(D), ERISA fiduciaries must discharge their duties "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with" ERISA.

For further information regarding this Securities Law Alert, please contact one of the following:

CONTACTS

Martin S. Bell
+1-212-455-2542
martin.bell@stblaw.com

Stephen P. Blake
+1-650-251-5153
sblake@stblaw.com

Michael J. Garvey
+1-212-455-7358
mgarvey@stblaw.com

Nicholas S. Goldin
+1-212-455-3685
ngoldin@stblaw.com

Meredith Karp
+1-212-455-3074
meredith.karp@stblaw.com

Peter E. Kazanoff
+1-212-455-3525
pkazanoff@stblaw.com

Meaghan A. Kelly
+1-202-636-5542
mkelly@stblaw.com

Jeffrey H. Knox
+1-202-636-5532
jeffrey.knox@stblaw.com

Chet A. Kronenberg
+1-310-407-7557
ckronenberg@stblaw.com

Laura Lin
+1-650-251-5160
laura.lin@stblaw.com

Linton Mann III
+1-212-455-2654
lmann@stblaw.com

Lynn K. Neuner
+1-212-455-2696
lneuner@stblaw.com

Michael J. Osnato, Jr.
+1-212-455-3252
michael.osnato@stblaw.com

Joshua Polster
+1-212-455-2266
joshua.polster@stblaw.com

Karen Porter
+1-202-636-5539
karen.porter@stblaw.com

Alan C. Turner
+1-212-455-2472
aturner@stblaw.com

Craig S. Waldman
+1-212-455-2881
cwaldman@stblaw.com

George S. Wang
+1-212-455-2228
gwang@stblaw.com

Jonathan K. Youngwood
+1-212-455-3539
jyoungwood@stblaw.com

Janet A. Gochman
+1-212-455-2815
jgochman@stblaw.com

Simona G. Strauss
+1-650-251-5203
sstrauss@stblaw.com

The contents of this publication are for informational purposes only. Neither this publication nor the lawyers who authored it are rendering legal or other professional advice or opinions on specific facts or matters, nor does the distribution of this publication to any person constitute the establishment of an attorney-client relationship. Simpson Thacher & Bartlett LLP assumes no liability in connection with the use of this publication. Please contact your relationship partner if we can be of assistance regarding these important developments. The names and office locations of all of our partners, as well as our recent memoranda, can be obtained from our website, www.simpsonthacher.com.