District Court Dismisses Investment and Recordkeeping Claims Against 401(k) Plan Fiduciaries

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A Kentucky federal district court ruled that a participant in CommonSpirit Health's 401(k) plan failed to state plausible claims for breach of fiduciary duty related to the fees and performance of actively managed target date funds and recordkeeping fees.

The court first rejected plaintiff's claim that the plan fiduciaries should have offered a passively managed target date suite in lieu of a more expensive and underperforming actively managed target date suite because "actively managed funds and passively managed funds are not ideal comparators." The court also concluded that, even if the index funds were a viable comparator, there was no reason to infer a breach on account of the fact that: (i) the actively managed funds underperformed by less than 1%; and (ii) plaintiff's reliance on a five-year "snapshot" of the actively managed funds' underperformance was "relatively short" and excluded the funds' later outperformance of the chosen benchmark. Similarly, the court dismissed plaintiff's claims that two other actively managed funds underperformed for failure to provide meaningful benchmarks. Lastly, the court also disposed of plaintiff's claims that, as a whole, the plan's investment options were too expensive and that the plan's recordkeeping fees were too high. In so ruling, the court explained that the plaintiff failed to provide an accurate calculation of the expenses and failed to identify another recordkeeper that would have been willing to conduct the same services for a lesser amount.

Before addressing the plaintiff's allegations, the court rejected defendant's argument that the plaintiff lacked Article III standing to bring claims related to investment options in which she did not invest because, in the court's view, the claims were brought on behalf of the plan participants and alleged similar misconduct.

The case is *Smith v. CommonSpirit Health*, No. 20-cv-95, 2021 WL 4097052 (E.D. Ky. Sept. 8, 2021).

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