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Massachusetts District Court Grants Motion to Dismiss 401(k) Fiduciary Breach and Prohibited Transaction Claims

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A federal district court in Massachusetts dismissed ERISA fiduciary breach and prohibited transaction claims against 401(k) plan fiduciaries, ruling that the prohibited transaction claims were time-barred and the fiduciary breach claims—once limited by a settlement agreement in an earlier class action against MassMutual involving similar allegations ("*Gordan*")—failed to plausibly state a claim. The case is *Lalonde v. Massachusetts Mutual Insurance Co.*, No. 22-cv-30147, 2024 WL 1346027 (D. Mass. Mar. 29, 2024).

Plaintiff, a former employee of Massachusetts Mutual Insurance Co. ("MassMutual"), sued the company and fiduciaries of its 401(k) plan on behalf of a putative class, alleging that defendants breached their fiduciary duties of prudence and loyalty by retaining costly and poorly performing proprietary investment funds in the plan and causing the plan to pay excessive recordkeeping fees. Plaintiff also claimed that defendants engaged in prohibited transactions by including proprietary funds in the plan's investment menu and causing the plan to contract with MassMutual-affiliated service providers. The suit was brought notwithstanding a November 2016 class action settlement of fiduciary breach and prohibited transaction claims in *Gordan*, pursuant to which the "class agreed not to bring any further actions related to or arising out of the plan." The court dismissed the complaint in its entirety.

As a threshold matter, the court held that ERISA's statute of limitations barred some of plaintiff's claims. The court found that plaintiff's fiduciary breach claims were not barred by ERISA's three-year limitations period—which starts to run when plaintiff had "actual knowledge" of the alleged breach—because these claims were "necessarily confined to a period commencing approximately two years before this suit was filed" pursuant to the *Gordan* settlement agreement. Nonetheless, the court held that plaintiff's prohibited transaction claims were barred by the three-year rule, which was triggered by "[p]laintiff's knowledge [that] the proprietary funds were in the plan portfolio." The court found plaintiff had actual knowledge of the funds' inclusion in the plan as far back as 2016 because the complaint expressly alleged the proprietary funds were part of the plan by that time (labeled as MassMutual funds), and plaintiff "knew this to be true" because she invested in them. The court also noted that plaintiff's membership in the *Gordan* settlement class made it "it even more implausible that she was unaware the plan contained proprietary funds" by late 2016 when that case was settled.

The court ruled that the remaining allegations were limited to those arising after December 3, 2020, pursuant to a provision in the Gordan settlement. But even as so limited, the court held that these allegations failed to state a claim under ERISA. At bottom, the court concluded that the allegations either failed to compare the funds' performance and fees to "meaningful benchmarks," failed to otherwise support an inference of fiduciary breach, or were conclusory. For example, although plaintiff alleged the plan's proprietary mutual funds and stable value fund underperformed, the court found plaintiff failed "to demonstrate the existence of an imprudent process" with respect to the mutual funds because she relied merely on hindsight comparisons that showed only a "modest differential in performance." With respect to the stable value fund, the court concluded that "to survive a motion to dismiss the underperformance must be substantial for a court to plausibly infer the challenged fund's retention was imprudent." The court also held that plaintiff's investment fee claims failed because for certain investments, plaintiff did not compare the fees to "apples-to-apples" comparators, and her comparisons of other investments to "industry average ratios" were insufficient to state a claim because "the mere fact that a fund charges an expense ratio higher than the mean or median . . . does not imply that the cost was excessive . . . [o]therwise, by definition, half of all funds would charge excessive fees." Lastly, the court rejected plaintiff's imprudence claims based on the plan's recordkeeping fees as lacking allegations that the fees were excessive relative to the services provided to the plan.

Proskauer's Perspective

As discussed in our previous blog posts (such as here), district courts have reached varied decisions on motions to dismiss fiduciary breach and prohibited transaction claims against 401(k) plan fiduciaries, even where they purport to apply the same pleading standards. This decision is an encouraging example of a court finding the factual allegations insufficient to meet these pleading standards. It also serves as a reminder to ERISA defendants to be on the lookout for statute of limitations defenses, particularly when facing prohibited transactions similar to those asserted here.

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