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Court Allows Lawsuit to Proceed Against 401(k) Plan Fiduciaries Alleged to Have "Hand in the Cookie Jar"

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Snyder v. UnitedHealth Group, 2024 WL 1076515 (D. Minn. 2024)

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A group of participants accused their employer of violating ERISA by failing to properly oversee and manage their 401(k) plan. They claimed that the employer breached its fiduciary duties of prudence and loyalty by offering poorly performing investment options with high fees and not adequately monitoring the plan's administrative expenses. During the period at issue, an equal weighted target date fund was the default investment option. As a search for a new, enhanced target date fund ramped up, an outside consultant presented analyses showing that other funds were superior to those offered by the current provider, and that the provider's funds should be removed due to low performance. The plan's primary fiduciary appointed an investment committee to act as named fiduciary with a duty to select, monitor, and when necessary, remove, the plan's investments. The committee eventually selected three finalists; the current fund provider was not one of them. However, the employer awarded a new contract to the current provider, indicating that it was impressed with the provider's recent restructuring of its investment team and leadership. The employer also stated that the other finalists' strategies were too aggressive, and the fees were too high.

The participants alleged that the employer had waited too long to drop the underperforming equal weighted target date funds and that the selection of the new funds was also imprudent. They claimed that the employer's corporate interests influenced the investment committee and ultimately prevailed over the best outcome for participants. Furthermore, the business relationship between the employer and the current fund provider was so significant that there were conflicts of interest. For example, the employer had received over $50 million in revenue in 2014–2017 from the fund provider, which had provided the employer with substantial banking services. The participants also asserted that when the committee advised the employer's CFO that the current provider would be removed, the CFO raised business considerations as to why it should be retained. And contrary to past practice, the employer did not keep contemporaneous minutes of certain fund selection meetings and had abandoned the scorecards that had reflected poorly on the provider.

The court allowed the participants' claims to proceed, holding that there were genuine disputes of material fact as to whether the employer had breached its duties under ERISA by investing its employees' 401(k) savings in underperforming funds for more than a decade and allowing its business relationship with the fund provider to influence the retention. The court also held that there was a genuine dispute as to whether fund fees were reasonable, and thus whether the employer had engaged in a prohibited

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transaction. However, the court dismissed the employer's board of directors from the lawsuit because they were not functional fiduciaries and had no duty to monitor the plan.

EBIA Comment: This case serves as a significant reminder of employers' legal obligations in managing 401(k) plans. Plan fiduciaries must act in participants' and beneficiaries' best interests and ensure that plans are administered prudently and effectively—which includes closely monitoring investment options, fees, and administrative expenses to protect participants' financial interests. For more information, see EBIA's 401(k) Plans manual at Sections XXIV.B ("Who Is an ERISA Fiduciary?"), XXIV.E ("ERISA Fiduciary Duties"), XXIV.L ("Prohibited Transactions"), and XXV.D. ("Selecting the Plan's Investment Funds").

Contributing Editors: EBIA Staff.

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