

Fiduciaries Prevail Due to Participants’ “Apples-to-Oranges” Comparison of Investment Options

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Cutrone v. Allstate Corp., 2025 WL 306179 (N.D. Ill. 2025)

A group of 401(k) plan participants sued the employer and three committees responsible for plan governance (including individual committee members), claiming that they breached their fiduciary duty of prudence, engaged in a prohibited transaction under ERISA § 406(a)(1), and failed to monitor plan service providers. The prudence claim focused on two main issues: (1) the prolonged retention of specific target date funds (TDFs), attributed to delays in exploring alternative investments due to the COVID-19 pandemic and the death of the plan administrator, and (2) higher-than-average fees for advisory services offered to participants. The prohibited transaction claim related to the relationship (and related fees) among the plan, its advisory services provider, and its recordkeeper.

The court ruled in favor of the employer and committees. According to the court, the central question in determining whether the fiduciaries acted prudently was whether the decision to retain the TDFs during the applicable period fell within a “range of reasonable judgments.” The fiduciaries presented evidence that the TDFs were “economically reasonable” investments and that switching strategies may have been ill-advised. The participants’ evidence that the TDFs were underperforming was generally deemed insufficient, as it relied on comparisons between plans and services with dissimilar investment offerings, management styles, investment goals, and fee structures, which the court described as an inappropriate “apples-to-oranges” comparison. The court also found no imprudence regarding the advisory fees, concluding that the fiduciaries sufficiently demonstrated that the fees were generally in line with those paid by other plans. The court emphasized that procedural prudence violations without evidence of harm or objective imprudence do not justify a finding of a breach of fiduciary duty. With respect to the prohibited transaction claim, the court explained that routine payments for services do not violate ERISA’s prohibited transaction rules. Lastly, the court explained that there was no liability for failure to monitor the plan’s service providers absent any underlying breach of fiduciary duty.

EBIA Comment: As explained by the court, the fiduciary duty of prudence is both procedural and objective—that is, procedural prudence does not excuse an objectively imprudent investment, and procedural imprudence is not fatal if the investment was objectively prudent. The court also highlighted the flawed notion that there is only one prudent choice for fiduciaries in selecting services and providers to achieve plan goals. Comparing plans with different features and goals to argue imprudence was not successful in this case and may not be in others. A prudent fiduciary is not always required to choose the lowest-cost service if it doesn’t align with the plan’s investment strategies, and multiple prudent decisions may exist among different fiduciaries. For more information, see EBIA’s 401(k) Plans manual at Sections XXIV.G (“Fiduciary Duty #2: Procedural Prudence”), XXIV.M (“Exemptions to Prohibited Transactions”), and XXV.F.2 (“Revenue Sharing”). See also EBIA’s ERISA Compliance manual at Section XXVIII.D (“Prohibited Transactions Under ERISA § 406”).

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