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*Tibble v. Edison Int'l*, No. 13–550 (previously described in the October 2, 2014, Docket Report)

The Employee Retirement Income Security Act (ERISA) imposes personal liability on fiduciaries who fail to discharge their duty of prudence. Today, in *Tibble v. Edison Int'l*, the Supreme Court held that—despite ERISA’s six-year limitations period—fiduciaries remain on the hook to correct mistakes made by fiduciaries more than six years earlier, to the extent the evidence shows that a prudent fiduciary monitoring the plan would undertake remedial actions.

Although such a holding may appear to expand fiduciary liability, the decision does little to alter the expectations and obligations of sophisticated companies, which generally engage in routine monitoring of ERISA-governed plans.

In *Tibble*, plan participants in a multi-billion dollar 401(k) plan sued to challenge the inclusion of higher-fee retail-class mutual funds as plan investment options when lower-fee institutional-class funds were available. The district court granted summary judgment to the defendants as to certain funds, holding that ERISA’s six-year statute of limitations barred plaintiffs’ claim because the defendants initially selected the mutual funds more than six years before the complaint was filed. The Ninth Circuit affirmed.

The plaintiffs petitioned for certiorari, arguing that if it was imprudent to include retail-class mutual funds, then it was imprudent to retain them in the plan, as well. The defendant argued that plaintiffs’ theory amounted to the elimination of the six-year time limit and that—absent a material change in circumstances since the original selection—fiduciaries have no duty to revisit and reverse earlier decisions.

In a unanimous opinion authored by Justice Breyer, the Court vacated and remanded the judgment of the Ninth Circuit. The Court recognized the parties’ agreement that fiduciaries have some ongoing responsibility to monitor plan investments and held that a claim addressing the duty to monitor would not be time-barred, if the alleged monitoring failure had occurred within the six-year look-back period. The Court declined to address what a fiduciary must do to engage in prudent monitoring, leaving that issue for remand.

This decision is significant for employers offering ERISA-regulated retirement and welfare benefit plans. As before *Tibble*, such employers are advised to create and follow processes for prudent fiduciary decision-making, and to undertake periodic and systematic reviews of the plans they have a duty to monitor. To reduce litigation risks, plan fiduciaries should document their processes and the results of their monitoring efforts. Fiduciaries should not pick and choose among existing investments to monitor; rather, they should implement a regular, well documented procedure for periodic reviews of every plan investment.

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