Case Name and Number: *Hughes v. Northwestern University*, No. 19-1401

Introduction: Today, the Supreme Court held that fiduciaries to ERISA defined-contribution retirement plans have an ongoing duty to monitor the investment options in the plan, and that participants' ability to select the options they prefer does not relieve fiduciaries of that duty.

Background: Participants in Northwestern University's retirement plans sued the University, its Retirement Investment Committee, and several individuals for allegedly breaching their fiduciary duty of prudence under the Employee Retirement Income Security Act (ERISA), specifically 29 U.S.C. § 1104(a). Before the Supreme Court, the plaintiffs focused on three ways in which the fiduciaries supposedly breached their duty: (1) failing to monitor and control plan recordkeeping costs; (2) failing to offer "institutional" class shares of numerous investment options that would have been less expensive than the "retail" class shares the Plan offered; and (3) failing to limit the total number of investment options, supposedly "confusing" participants. The district court dismissed the complaint, and the Seventh Circuit affirmed.

Issue: Whether the plaintiffs plausibly alleged that the defendants breached their statutory duty of prudence under 29 U.S.C. § 1104(a).

Court's Holdings:

The Supreme Court held that the lower courts erred by relying on a "categorical" rule that no fiduciary breach could be shown as long as participants had access to the low-cost investments that the plaintiffs preferred. Instead, the Court explained, under *Tibble v. Edison International*, 575 U.S. 523 (2015), fiduciaries have an obligation to monitor all investments in a plan's investment menu and remove investments within a "reasonable time" if the investments are or become imprudent. However, the Court did not elaborate on the specific scope of the duty to monitor in these circumstances (a question left open in *Tibble* as well).

Finding that the Seventh Circuit had "repeated[ly] reli[ed]" on a participant-choice theory in dismissing the complaint, the Supreme Court remanded the case for the lower court to reevaluate the allegations as a whole to determine if they stated a plausible claim. The Court did not express any opinion on the plausibility of the claims under the appropriate legal standard. It reaffirmed that the duty of prudence was highly contextual, and noted that "[a]t times, the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise."

Mayer Brown filed an *amicus* brief in support of Northwestern University on behalf of the American Council on Education and 17 Other Higher Education Organizations.

Read the opinion here.