



Fiduciaries and Excessive Fee Litigation

As a retirement plan fiduciary, it's your responsibility to ensure that fees associated with your plan are reasonable relative to the services rendered. In recent years, there have been a number of lawsuits by plan participants claiming a breach of fiduciary duty for issues surrounding excessive fees, so it's important that every employer that sponsors a retirement plan be cognizant of the liability that could be experienced through potential fiduciary breach litigation.

Excessive fee claims grew widespread in the early 2000s, mostly targeting very large organizations with tens of thousands of participants and billions of dollars in assets. Recently, though, there's been an increasing number of cases involving smaller plans with fewer than 1,000 participants and less than \$100 million in assets. One reason for the rise could be due to new entrants in the ERISA litigation space who are likely leveraging many of the same precedents created by more experienced firms from cases brought against larger plans. Access to the public information found in Form 5500 filings has dramatically helped to identify potential red flags for lawsuit as well.

It's important to note that plan fiduciaries can be held personally liable for a breach of fiduciary duty. While some believe they can avoid liability by hiring a professional, plan fiduciaries always maintain the overarching responsibility to oversee service providers and determine that their fees are reasonable.

That said, there are steps one can take to reduce the risk of potential litigation. First, a plan fiduciary needs to always act in the participants' best interest by following their duties with prudence and care. Further,

a plan sponsor should always seek out experts in their respective areas to assist with fiduciary decision-making. Finally, when a decision is reached, the process of consideration and conclusion should be well documented.

To assist with mitigating the potential loss that could stem from a lawsuit, plan fiduciaries might also want to consider having fiduciary liability insurance, which would cover legal costs to defend against claims of errors and a breach of fiduciary duty.

In summary, as a plan fiduciary, it's important to understand your duties and responsibilities, and certainly the risks associated with them. It's also important to review how decisions are made and make sure they're well documented. Lastly, one should consider fiduciary liability insurance from an experienced carrier to help mitigate potential liability exposure.

If you'd like to discuss your individual situation, feel free to contact one of our experts at Schneider Downs Wealth Management Advisors.

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