CLASS ACTION LAWSUIT SPOTLIGHT

TUSSEY V. ABB, INC.

On March 31, 2012, the U.S. District Court for the Western District of Missouri ordered ABB and its service provider to pay a combined $36.9 million in damages for breaching their fiduciary duties. The bulk of the damages, $35.2 million, was assessed against ABB for the following fiduciary violations:

- Failure to follow the plan's Investment Policy Statement (IPS)
- Failure to monitor recordkeeping costs and revenue sharing
- Failure to negotiate rebates for the plans
- Failure to prudently deliberate prior to removing and replacing investments
- Selecting expensive share classes when less expensive classes were available
- Using plan revenue sharing to subsidize other corporate services

In November 2013, the court ordered ABB and its service provider to pay $13.4 million in legal fees and other costs. On March 19, 2014, the Eighth Circuit Court of Appeals affirmed a $13.4 million award for excessive recordkeeping fees against ABB but vacated a $21.8 million award regarding investment selection and mapping and remanded the issues back to the District Court. In addition, the appellate court vacated all attorney fee awards.

On November 11, 2014, the Supreme Court denied petitions to review the case. Then on July 9, 2015, the U.S. District Court ruled in favor of ABB and reversed its earlier 2012 decision that awarded the plaintiffs $21.8 million. In the court's opinion the plaintiffs failed to provide calculations for damages consistent with the mandate the Eighth Circuit Court set out.

Rulings continued in 2017. On March 9, 2017, the Eighth Circuit Court of Appeals vacated the July 9, 2015, ruling (which was in favor of ABB). Then, in October 2017, the Supreme Court declined to hear the plaintiffs' case.

$35.2

MILLION IN DAMAGES FOR BREACHING THEIR FIDUCIARY DUTIES

5

YEARS IN COURT

The information contained herein was sourced from "RECENT CASE STUDIES IN FIDUCIARY FAILURES" by Janus Henderson published in June 2018.

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CLASS ACTION LAWSUIT SPOTLIGHT

TIBBLE V. EDISON INTERNATIONAL

On March 21, 2013, the Ninth Circuit Court affirmed the district court's decision in which participants alleged that 401(k) plan fiduciaries breached their duties of loyalty and prudence. Damages of $370,000 were awarded. Although the damages were relatively nominal, this case is important because of the court's findings. The case held that the plan sponsor and other fiduciaries had imprudently selected more expensive retail mutual fund share classes for certain funds over less expensive institutional share classes of the same funds. This was the only issue to be decided by the Federal Court of Appeals.

The U.S. Supreme Court announced on October 2, 2014, that it would consider whether claims fell within a six-year statute of limitations. At issue were the funds the district court did not consider for damages because the six-year statute of limitations had elapsed. The plaintiff's position was because sponsors have a fiduciary duty to regularly monitor plan investments, that statute of limitations regarding the funds in question had not elapsed. On May 18, 2015, the Supreme Court ruled unanimously that Edison had a "continuing duty" to monitor and remove imprudent investments from its 401(k). In April 2016, the 9th U.S. Circuit Court of Appeals dismissed the suit saying that while the Supreme Court ruled that federal law imposes an ongoing duty to monitor investments on fiduciaries like Edison, the workers failed to raise that argument in lower courts.

The rulings continued on August 16, 2017, as the U.S. District Court for the Central District of California ruled that Edison breached its fiduciary obligations of prudence and monitoring in the selection of all 17 mutual funds at issue.
The court determined that a prudent fiduciary would have invested in lower-cost, institutional-class shares, or should have "immediately" changed share classes as soon as they had knowledge to their availability. Total damages amounted to $18.9 million.

$18.9

MILLION IN TOTAL DAMAGES

4

YEARS IN COURT

HR REP FOUND LIABLE IN 401K LAWSUIT

HR representatives are responsible for a number of duties, but one important task they should never overlook is the management of 401(k) plans. Although it might seem like a secondary role, it is their fiduciary duty to ensure that decisions regarding retirement plans are always made in the employees' best interests. Turning a blind eye or missing a small detail may result in significant legal consequences and personal liability—potentially exposing their personal assets. One such example is the case Tibble v. Edison International. Through a series of unlikely events, this case eventually made its way to the U.S. Supreme Court, where the VP of human resources was found liable of a fiduciary breach.

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