Q4 2025: Lessons from the Litigation Landscape

As 2025 came to a close, we saw emerging clarity – and support – for plan fiduciaries in the ERISA litigation areas of pension risk transfers (PRT) and forfeiture reallocation challenges. But the big news was the Department of Labor's (DOL) decision to weigh in on two key litigation challenges: who bears the burden of proof in an ERISA suit, and what constitutes a "meaningful benchmark" against which a fiduciary breach claim can be supported. Both cases are being considered by the United States Supreme Court, and the DOL's positions will likely have influence.[i]

The vast majority of these cases have not moved past the motion to dismiss stage; the PRT cases mostly finding that in the absence of a clear and immediate injury, the defendants lack standing to sue, while the forfeiture reallocation decisions have largely relied on grounds that the forfeiture reallocation decision was in accordance with the law and, in these cases, the language in the plan document.

That said, while those have been the majority trend, plaintiffs have been successful in moving past the motion to dismiss in several cases in both those genres.

Here's What You Really Need to Know

- Forfeiture reallocation suits continue to be filed, but the fiduciaries in most of those suits have, to date, been successful in dismissing those suits.
- Separate suits involving stable value and target date fund (TDF) selection have questioned the prudent application of the terms in the plans' investment policy statement (IPS).
- An ESG-focused lawsuit has been judged to have no financial damages, but the plan fiduciaries have been saddled with a series of new participant disclosures and changes to the plan committee.
- Shifts in the interest rate environment and strong equity markets have spurred record volumes of PRT activity – corporations looking to move their pension obligations to a third-party insurer. Suits challenging PRTs have, to date, struggled to get past the motion to dismiss phase, largely because the potential risk to pensions has not yet been realized, or viewed as immediate.

Let's Dive In

The DOL Weighs in on "Meaningful Benchmark" Standard

The DOL filed an amicus brief – or friend of the court – backing fiduciaries in a case involving criteria for a "meaningful" benchmark.

In the process, they've supported Supreme Court review of a ruling that a dissenting opinion to the appellate court decision in the Sixth Circuit favoring the plaintiffs said, "weakens an important mechanism" to stop costly litigation over "meritless claims." It also happened to be a different determination than the majority of federal court districts had reached prior to that decision.[ii]

This case, heard on appeal of a motion to dismiss by the United States Circuit Court of Appeals for the Sixth Circuit—involves the Cleveland, Ohio-based $4.3 billion Parker Hannifin 401(k) plan fiduciaries who were accused by a handful of participant-plaintiffs (represented by Schlichter Bogard LLP) of retaining a suite of allegedly unproven underperforming target-date funds from Northern Trust—which the plaintiffs said had "significant and ongoing quantitative deficiencies and turmoil" resulting in losses ranging from $45 million and $73 million, when identical, lower-cost alternatives were available.[iii]

Indeed, the appellate court ruling here – overturning the conclusions of the district court – did draw a different line than what had emerged as something of a review "standard" among district courts following the decision in *Smith v. CommonSpirit*, including the district court decision in this case.

They challenged the appellate court's conclusion otherwise as being incorrect in two essential respects. First, the panel majority erred to the extent that it suggested that "a meaningful benchmark is not required to plead a facially plausible claim of imprudence" predicated on relative underperformance. Second, by characterizing a "market index" as "inherently a meaningful benchmark," the court sidestepped the "careful, context-sensitive scrutiny of a complaint's allegations" required in ERISA cases, and offered plaintiffs an improper shortcut to an inference of imprudent retention whenever a particular investment falls short of general market performance."

"If fiduciaries could be found to violate ERISA whenever they did not select investments that later proved to have the highest returns, most of them could be liable most of the time, because even prudent investors achieve a wide range of results. Moreover, nothing in the statute requires fiduciaries to pursue only the highest returns."

What remains to be seen is if the Supreme Court will take the case – and if so, how the DOL's perspective might influence their decision.

The DOL Drops Defense of Fiduciary Rule

The DOL's Employee Benefits Security Administration (EBSA) has filed a motion withdrawing its appeal of court challenges to the so-called fiduciary rule issued during the Biden administration. The motion to dismiss the appeal filed in the U.S. Court of Appeals for the Fifth Circuit indicated that the other parties do not oppose the motion.

The DOL first asked for an abeyance due to the change in administration on January 20, 2025, as it was now "under new leadership" — something the court granted on April 15, 2025. That filing explained that, "at the end of the day on September 30, 2025, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. The same is true for several other Executive agencies, including the federal appellants." Several other requests for extensions followed, most recently tied to the government shutdown.

The appeal arose in the wake of two separate cases (subsequently combined) filed by the American Council of Life Insurers and the Federation of Americans for Consumer Choice, who had challenged the rule on Administrative Procedure Act grounds, contending it exceeded its regulatory authority under ERISA.[iv] The Trump administration had previously indicated in its regulatory agenda that it planned to rewrite the regulation.

Forfeiture "Forays"

Several suits asserting a fiduciary breach in the use of plan forfeitures to offset employer contributions rather than offsetting plan expenses were dismissed during the quarter, but new ones continued to emerge, and a second one was settled.

During the quarter, new suits were filed against Duke University and Humana, with similar allegations made in both cases. In the former case and admitting that the plan document permitted the choice between offsetting employer contributions or administrative expenses, the suit asserted a conflict of interest on the part of plan fiduciaries. The suit further asserted that "absent any risk that Duke would be unable to satisfy its contribution obligations, using forfeitures to pay administrative expenses would be in the participants' best interest because that option would reduce or eliminate amounts otherwise charged to their accounts to cover such expenses."[v]

The Humana suit made similar allegations – but further asserted that the defendants did not "investigate whether there was a risk that Humana would be unable to satisfy its contribution obligations if forfeitures were used to pay administrative expenses, or evaluate whether there were sufficient forfeitures to eliminate the Plan's expenses charged to participants and still offset a portion or all of Humana's own contribution obligations, as a prudent person would have done."[vi]

Nor, according to the suit, did they consult with "an independent, non-conflicted decisionmaker to advise them in deciding upon the best course of action for allocating the forfeitures in the Plan, as a prudent person would have done."

Notwithstanding those new suits, most of the activity during the quarter consisted of plan fiduciaries successfully having their motions to dismiss the suits granted.

That included suits against AT&T, Peco Foods and WPP Group USA.[vii] While these were all at the motion to dismiss stage, the latter acknowledged the already numerous precedents in that regard, and the recent amicus brief by the DOL in support of HP plan fiduciaries in a similar suit currently under appeal.

Plaintiffs in the Peco Foods case argued that the plan fiduciaries' decision conflicted with the plan document – but the judge noted that while the document said that forfeitures may first be used to pay administrative expenses, that language didn't prohibit their discretion in choosing a different order. "It follows that Peco's use of the forfeitures to offset employer contributions did not violate the terms of the Plan and thus, that plaintiff has failed to state a claim."

Perhaps less significant during the quarter, we saw a second of these suits to be settled (Capital One), while a short-lived one against CommonSpirit was dropped by the plaintiff – less than a month after it was filed, with no explanation provided.[viii]

All told, and while these suits continue to emerge (and in some cases are appended to more traditional excessive fee suits), the federal courts seem inclined to acknowledge the legality of the practice of offsetting employer contributions, so long as the plan document doesn't forestall that option. Meanwhile, the HP case – the only one at this point to proceed past an initial judgment – bears watching, particularly in view of the DOL's support through its amicus brief (or friend of the court brief) which was filed in July 2025.

Bizarre ESG Suit Ends on an Odd Note

A federal judge ruled on a long-running case first challenging ESG investments (which didn't seem to exist), and then ESG-oriented voting practices by investment managers in the American Airlines 401(k) plan. Noting that in January 2025 the court "…found that Plaintiff proved by a preponderance of the evidence that Defendants breached their duty of loyalty by failing to act solely in the Plan's best financial interests — namely, by allowing BlackRock and its focus on [ESG] investing to influence the Plan."[ix]

That said, and "despite evidence of disloyalty, the Court did not find a breach of the duty of prudence because Defendants acted in accordance with prevailing industry practices, which was fatal to Plaintiff's breach of prudence claim," Judge Reed O'Connor deferred ruling on the appropriate remedy pending supplemental briefing from the parties.

That same Judge O'Connor — who last January had said the plan fiduciaries were "blinded" by their employer's focus on ESG factors — ruled that while there were no monetary damages to be awarded to participant-plaintiff (and pilot) Bryan P. Spence in the case, "equitable or remedial relief" was warranted under ERISA section 409(a) "to prevent recurrence of disloyal conduct and to protect participants prospectively."

That "equitable relief" came in the form of a series of additional participant disclosures and certifications, as well as the addition of two independent members of the plan committee for five years that "shall not have any connection or relationship, financial or otherwise, with BlackRock, Aon, or any other administrator, advisor, and/or investment manager of Plan assets, including any of their subsidiaries and/or affiliated entities."

Subsequently, American Airlines has gone back to the court to request some "clarifications" on some of the orders, as well as offering a couple of alternative approaches to produce a similar result. Additionally, the law firm representing the plaintiff – who, in pursuing a class action suit likely expected to get 25-40 percent of any financial judgment or settlement and stood to collect nothing – has filed a request for compensation of nearly $8 million. This request for fees remains outstanding at the time of publication.

Among the unusual aspects of this case, the January 2025 ruling found a violation of disloyalty distinct from one of prudence that, while plausible, still seems a unique finding in that it suggests that a fiduciary could do what fiduciaries broadly are expected to do in terms of process, and still ignore their obligations to participants. Thus, fiduciaries are reminded of their duties of both prudence and loyalty that must be carried out together. And, while the ruling winds up in a different place than the initial suit, it does remind plan fiduciaries that they do have an obligation to monitor proxy voting as part of their responsibility regarding plan assets; practically speaking, this means that plan sponsors are not voting proxies, but rather, are monitoring the proxy voting practices of their investment managers.

Suit Claims TDF Choice Didn't Match IPS

A recent suit claims the plan fiduciaries and their advisor breached fiduciary duties in retaining an underperforming TDF too long – and that the committee "uncritically relied" on the recommendation of their advisor in doing so.

"Defendants' failure to monitor or remove the American Century TDFs as investment options for the Plans despite the long-term underperformance, high turnover, and loss of market share suggests that Defendants' fiduciary process was imprudent," according to the suit. "These same factors establish that the investment advisor to the Elanco Plan, unreasonably favored retention of the American Century TDFs, even when prudent fiduciaries in similar circumstances would have advised their removal from the Plan" — and that "no reasonably prudent fiduciary would have allowed so much of the Plan participants' retirement savings, as much as 73 percent, to be diverted into manifestly imprudent investment options as the American Century TDFs."[x]

Ultimately, the suit is focused on what are alleged to be inferior returns, though in this case they also assert that the review and replace provisions in their IPS were not adhered to, while explaining that as a function of too great a reliance on the

recommendations of the plan advisor. This case is a reminder to investment advisors that although typically the plan sponsor is the target of lawsuits, there are cases that also name the investment advisory firm in the suit.

Suit Says 401(k) Plan Stable Value Selection Imprudent

Shifts in the interest rate environment and a robust equity market have triggered yet another 401(k) suit involving a stable value fund holding.

This suit was filed by Capozzi Adler PC and DLJ Law Firm PC representing plaintiffs Jessica Lagafuaina, Kailyn Robertson, Khanh Nguyen, Machella Graham and Rabia Razaq on behalf of the Mitchell International, Inc. Savings Plan against Mitchell International, Inc., the Mitchell International, Inc. 401(k) Savings Plan Committee and its members during the Class Period for breaches of their fiduciary duties.

More specifically, the suit alleged that the plan fiduciaries breached the duties it owed to the Plan, to Plaintiffs, and to the other participants of the Plan by failing to "objectively and adequately review the Plan's investment portfolio, initially and on an ongoing basis, with due care to ensure that each investment option was prudent, in terms of performance."[xi]

The suit further claimed that the defendants breached their fiduciary duty of prudence by selecting and/or maintaining a certain guaranteed investment fund with lower crediting rates when compared to available similar or identical investments with higher crediting rates. Specifically, that the defendants "allowed substantial assets in the Plan to be invested in a Guaranteed Income Fund" that the suit asserts "carried significantly more risk and provided a significantly lower rate of return than other comparable stable value funds that Defendants could have made available to Plan participants."

The arguments presented here are typical of several others alleging a fiduciary breach in the selection and retention of stable value options with what are presented as inferior crediting rates and sometimes, as is the case here, with an allegation that the stable value provider's financial status represented a heightened risk to participant interests.

Pension Risk Transfer Progress

Activity continued regarding PRT litigation, with suits involving AT&T, GE, and Allegheny Technologies Inc. (plaintiffs in all those cases represented by Schlichter Bogard LLC) being dismissed, though a similar case filed against Bristol-Myers was allowed to continue.

The grounds in each of these suits basically argue that the shifting of pension obligations to an entity deemed (by the plaintiffs) to be less than the safest possible annuity provider constitutes a fiduciary breach. To date, most of the suits have

targeted subsidiaries of Athene Holding Ltd. and criticized its private equity ownership structure as putting those pension obligations at a higher risk of default.

That said, in the former two cases, federal judges ruled that the alleged injuries were, as yet, unrealized, as no benefit payments had been missed, nor had the firms to which the pension obligations were transferred experienced any financial distress, in the process concurring with the judgements of courts in cases involving Alcoa and GE, which both concluded that the failure to allege a "concrete, impending injury" or to credibly assert that Athene is at a high risk of failure was insufficient.[xii] Of note in the AT&T case, a magistrate judge who recommended that the suit be dismissed – as it subsequently was – noted a distinct factor in their consideration. Specifically, he noted that the PRT arrangement provided for a separate account to be established for these obligations.[xiii] This was a factor outlined as a consideration by the DOL in Interpretive Bulletin 95-1.

However, the judge in the Bristol-Myers case determined that the plaintiffs "have shown an injury necessary to confer Article III standing at [the motion to dismiss stage] of the case because they have sufficiently alleged that the Athene transaction created a substantial risk that Plaintiffs will not receive their benefits and that the Athene transaction diminished the value of Plaintiffs' benefits."[xiv] This was despite acknowledging the same kind of separate account configuration noted in the AT&T case.

The judge in that case noted that the plaintiffs had specifically addressed that, noting that it was not truly "ring-fenced or insulated from Athene's general liabilities because the assets in that account 'may also be used to support Athene's payment obligations under other, separate group annuity contracts,' and that Athene has the right to, periodically withdraw assets from the separate account and transfer them to its general account." As a result, she concluded that the "extrinsic evidence" provided by the defendants failed to "controvert the material allegations of the complaint."

To date, the fiduciary defendants have largely prevailed in their motions to dismiss these suits. However, as the contrary decision in the Bristol-Myers suit illustrates, different judges can still draw different conclusions even from largely identical fact patterns.

Action Items for Plan Sponsors

Even if you are the fiduciary of a plan that might not be at substantial risk of a significant class-action lawsuit, these back-to-the-basics best practices apply to plans of all sizes. For plan sponsors, consider the following:

1. If forfeitures are used to offset employer contributions, make sure that specific language is in the plan document. Consider changing any language that provides discretion in applying forfeitures to language that directs how they will be used. Also consider which decisions are fiduciary versus settlor in nature and document accordingly.

2. Take steps to ensure that your process for reviewing funds, fees and services is documented (preferably in an IPS), that your committee members are informed on the issues, and that your process is deliberative and documented.

3. If you have, or are contemplating a PRT, remember that while the decision to do so is a corporate/settlor decision, the process of reviewing and selecting the provider is a fiduciary one.

4. Remember that your fiduciary duties require monitoring the proxy voting activity of investment managers hired by the plan.

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[i] As this publication went to print, one of the two cases where the DOL filed an amicus brief in December 2025, was Pizarro v. Home Depot. On January 8, 2026, both parties agreed to bear their own costs and withdrawal – resulting in the case being dismissed without prejudice. The DOL stated that this outcome confirmed the DOL's view that ERISA does not require a special burden-shifting framework.

[ii] Brief for the United States as Amicus Curiae, *Jaime H. Pizarro et al. v. The Home Depot, Inc. et al.,* no. 24-620 (U.S. Supreme Court), petition for a writ of certiorari, filed December 9, 2025, https://www.supremecourt.gov/DocketPDF/24/24-620/386886/20251209163109081_24-620%20%20Pizarro%20v.%20The%20Home%20Depot.pdf

[iii] *Johnson v. Parker-Hannifin Corp.*, no. 24-3014 (U.S. Court of Appeals for the Sixth Circuit).

[iv] *Council of Life Insurers v. Department of Labor,* no. 24-00482 (U.S. District Court for the Northern District of Texas).

[v] *Beroset v. Duke University et al.*, no. 1:25-cv-00919 (U.S. District Court for the Middle District of North Carolina).

[vi] *Smith v. Humana, Inc.*, no. 3:25-cv-00727 (U.S. District Court for the Western District of Kentucky).

[vii] *Hernandez v. AT&T Services, Inc.,* Case No. 2:25-cv-00676-ODW (PVCx) U.S. District Court for the Central District of California), *Brown v. Peco Foods Inc., et al.*, Case No. 3:25-cv-00491 (U.S. District Court for the Southern District of Mississippi), *Polanco v. WPP Group USA Inc. et al.*, no. 1:24-cv-09548 (U.S. District Court for the Southern District of New York).

[viii] *Singh et al. v. Capital One Financial Corporation et al.*, no. 1:24-cv-08538 (U.S. District Court for the Southern District of New York), *Sigala v. CommonSpirit Health*, no. 2:25-cv-00153 (U.S. District Court for the Eastern District of Kentucky).

[ix] *Spence v. American Airlines, Inc., et al.*, no. 4:23-cv-00552 (U.S. District Court for the Northern District of Texas).

[x] *Phillips v. Elanco US, Inc.*, no. 1:25-cv-02159 (U.S. District Court for the Southern District of Indiana).

[xi] *Lagafuaina v. Mitchell Int'l, Inc.*, No. 3:25-cv-03018 (U.S. District Court for the Southern District of California).

[xii] *Camire et al. v. Alcoa USA Corp. et al.*, no. 1:24-cv-01062 (U.S. District Court for the District of Columbia), *Bueno v. General Electric Company*, no. 1:24-cv-00822 (U.S. District Court for the Northern District of New York).

[xiii] *Piercy et al. v. AT&T Inc. et al.*, no. 1:24-cv-10608 (U.S. District Court for the District of Massachusetts).

[xiv] *Doherty v. Bristol-Myers Squibb Co. et al.*, no. 1:24-cv-06628 (U.S. District Court for the Southern District of New York).