

# PUBLICATION

---

## SCOTUS Reinforces ERISA Fiduciaries' Continuing Duty To Monitor Plan Investments

June 15, 2015

Recently, in *Tibble v Edison International*, 575 U.S. \_\_\_\_\_ (2015), the United States Supreme Court addressed the application of the Employment Retirement Income Security Act (ERISA) statute of limitations for violations of fiduciary duties as they relate to selection and monitoring of benefit plan investment options. In *Tibble*, beneficiaries of the Edison International 401(k) Savings Plan sued Edison International and other defendants alleging that the selection of certain mutual fund investment options for the Plan constituted a breach of ERISA fiduciary duties because the mutual funds charged higher fees than other equivalent investment products available in the market. The defendants countered that some of the mutual funds at issue had been selected more than six years prior to the initiation of the beneficiaries' lawsuit and, therefore, the beneficiaries' claims as to those funds were barred by ERISA's six-year statute of limitations for claims of breach of fiduciary duties.

Both the district court and the United States Court of Appeals for the Ninth Circuit agreed with the defendants. Those courts held that, because the beneficiaries had not shown a change in circumstances that could trigger an obligation for the defendants to review the propriety of the mutual funds selected more than six years previously, the beneficiaries' claims were time-barred.

The Supreme Court disagreed. In a unanimous decision, the Court decided that the lower courts had failed to consider the full scope of the defendants' fiduciary duties with respect to the mutual fund investment options. Citing to the law of trusts, the Supreme Court concluded that the defendants had "a continuing duty to monitor . . . investments and remove imprudent ones." The Court further held that the "continuing duty exists separate and apart from the . . . duty to exercise prudence in selecting investment options at the outset." Accordingly, the Court found that "so long as [an] alleged breach of the continuing duty occurred within six years of suit, the claim is timely."

The Supreme Court offered no guidance on the particular scope of the defendants' fiduciary duties under the specific facts presented, citing only to the statutory requirement under ERISA for fiduciaries to "discharge [their] responsibilities 'with the care, skill, prudence, and diligence' that a prudent person 'acting in a like capacity and familiar with such matters' would use." The Court then remanded the lawsuit for further proceedings in light of its holding.

The *Tibble* decision may result in more numerous claims for breach of fiduciary duties premised on monitoring of investment options, including such claims based on allegedly-excessive investment option fees. Further, *Tibble* could result in beneficiaries asserting that the Supreme Court's silence regarding the specifics of the fiduciary duties of the defendants before the Court means those duties are generally "ill-defined," all in an attempt to have lower courts issue opinions broadening ERISA's fiduciary duties with respect to monitoring plan investments.