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MARKETS

High Court Ruling Adds Protections for Investors in 401(k) Plans

Supreme Court rules plan administrators must continue 'to monitor trust investments and remove imprudent ones'

The Supreme Court left it to a lower court to review how often the administrator must re-examine the investments and how to calculate the deadline *PHOTO: SUSAN WALSH/ASSOCIATED PRESS*

By JESS BRAVIN and LIZ MOYER

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The Supreme Court on Monday put companies managing 401(k) retirement plans on notice they have a continuing duty to be judicious on plan investment decisions, adding protections for the worker savings plans.

A unanimous court said plan administrators must continue "to monitor trust investments and remove imprudent ones. This continuing duty exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset."

The case involves investors in Edison International 's 401(k) offerings who claimed the Rosemead, Calif., energy holding company violated its fiduciary duties by buying retail mutual funds when nearly identical products were available through less-expensive institutional-class funds. It came to the court on the issue of calculating how long investors had to bring their lawsuit.

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The court's opinion, written by Justice Stephen Breyer, expands the time limit for investors to sue by saying a six-year deadline isn't automatically set the moment the investments are purchased. It also addressed administrator responsibilities, setting standards that legal experts said could reverberate in the retirement-savings industry.

"This will be of tremendous importance in protecting the interests of retirees going forward," said Jerome Schlichter, the St. Louis attorney at Schlichter Bogard & Denton LLP who led the class-action case on behalf of Edison employees.

John Donovan, a partner in Boston for Ropes & Gray LLP who wasn't involved in the case, said the opinion is a clear signal that company plans "can't go on autopilot."

The high court rejected a ruling by the Ninth U.S. Circuit Court of Appeals in San Francisco. The appeals court had thrown out the suit after finding it was filed after a six-year time limit expired. The case goes back to a lower court, which will review how often the administrator must re-examine the investments and how to calculate the deadline.

“We fear the court has invited litigation into an arena that is already rife with regulatory burden and litigation exposure,” Linda Kelly, a senior vice president and general counsel at the National Association of Manufacturers, said in a written statement. The group filed a court brief supporting Edison.

Lauren Bartlett, a spokeswoman for Edison International and Southern California Edison, in a written statement said the ruling “does not find any violation by the companies or plan fiduciaries. The opinion also does not question our loyalty to plan participants.”

More than a dozen companies, including Boeing Co. and Massachusetts Mutual Life Insurance Co., have faced similar claims.

In 13 lawsuits over the years, Mr. Schlichter has pushed large U.S. corporate 401(k) plans to reduce expenses and improve fee disclosures. He has settled eight of those suits, including the largest settlement announced earlier this year, in which Bethesda, Md., defense firm Lockheed Martin Corp. agreed to pay $62 million.

While Monday’s ruling established principles that plan administrators must follow as fiduciaries—to act with “care, skill, prudence and diligence”—the eight-page opinion left lower courts to sort out what they might mean in application.

Still, consumer advocates cheered.

“It gives an added ability to consumers to sue. When plan fiduciaries know that’s a possibility they’ll do what they should have been doing all along,” said Mary Ellen Signorille, a senior attorney with the AARP Foundation, which filed a friend-of-the-court brief supporting the investors.

Separately, the court agreed to consider whether companies can quash potential class-action litigation by offering the lead plaintiffs the full damages they could obtain if they win.

A California man, Jose Gomez, sued marketing agency Campbell Ewald alleging the Interpublic Group unit sent him unwanted text messages in violation of the Telephone Consumer Protection Act.

The lawsuit sought class-action status on behalf others who received the texts, but Campbell Ewald offered Mr. Gomez the maximum the law allowed for each violation, $1,503, and then sought to dismiss the case when he declined. The Ninth Circuit held that the marketer's offer didn't terminate Mr. Gomez's lawsuit.

Campbell Ewald holds a Navy recruiting contract, and the text read, "Destined for something big? Do it in the Navy. Get a career. An education. And a chance to serve a greater cause."

The recruiting campaign targeted people aged 18 to 24, but Mr. Gomez said he was 40 when he received the text.

The case will be heard in the Supreme Court's next term.

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