

Wood Group Prevails In ERISA Fight Over Target-Date Funds

By Kellie Mejdrich

Law360 (February 26, 2024, 7:28 PM EST) -- A California federal judge ruled in favor of an engineering firm and its retirement plan investment manager in a class action from employee 401(k) participants alleging mismanagement, concluding after a nine-day bench trial that a suite of in-house target-date funds offered to retirees were properly selected and monitored.

U.S. District Judge James V. Selna entered a 70-page finding of facts and conclusions of law Friday in the Employee Retirement Income Security Act suit outlining the win for Wood Group U.S. Holdings Inc. and the engineering firm's investment manager, flexPATH Strategies LLC. The court held a bench trial from March 21 to March 29, 2023, and Sept. 5 to Sept. 6, 2023. Before trial, the court trimmed claims from the suit in February 2022 and also certified a class of approximately 18,000 401(k) plan participants later that month.

A group of ex-workers for Wood Group first sued in February 2021, alleging Wood Group and flexPATH breached their fiduciary duties to retirees under ERISA by allowing a suite of flexPATH target-date funds, or TDFs, to be offered in the plan. The class claimed that the funds, which vary investment risk over time depending on proximity to retirement, were imprudent in violation of ERISA because they underperformed their own style-specific benchmarks used by plan managers for monitoring.

The class also alleged that the plan's ultimate decision to remove the target-date funds from the offering slate in 2018 was a sign they were a bad deal for the plan.

The original suit also named NFP Retirement Inc. as a defendant related to its recommendation of appointing flexPATH as investment manager, but NFP is no longer a defendant in the case.

Judge Selna in his Friday decision found in favor of the defendants on the three remaining ERISA claims in the case: a breach of fiduciary duty claim against flexPATH, a failure to monitor claim against Wood Group and a prohibited transaction claim against flexPATH. The prohibited transaction claim was based on an argument from the class that flexPATH disloyally offered in-house funds to Wood Group for its own benefit, but Judge Selna said that the facts proved that wasn't the case.

"The objective facts support the decision to use flexPATH's own funds," Judge Selna's findings and conclusions said.

Judge Selna said the class hadn't proved that flexPATH funds — even if they did underperform for a period in 2017 — were a bad option for the plan. Judge Selna was also incredulous of allegations from

the class that a limited performance history was evidence of an imprudent offering, pointing out in his decision that the U.S. Department of Labor recommends fiduciaries "consider using plan-specific custom TDFs, which by definition have no performance history."

Judge Selna also pointed out that an expert for the class conceded at trial that custom funds, despite their lack of a track record as distinct investment vehicles before being offered to the plan, "are commonly and appropriately offered in large defined contribution plans," according to his decision.

Moreover, flexPATH had carefully demonstrated at trial the processes used to design and manage the funds — which Judge Selna complimented in his findings and conclusions.

"The court finds that this type of extensive analysis and diligence in designing proprietary funds supports finding a prudent process in selecting those funds," Judge Selna said.

The Wood 401(k) plan committee's choice not to remove the funds after observing a period of underperformance in 2017 also wasn't misguided, Judge Selna said, given that even an expert from the class at trial "conceded that a fiduciary should wait at least two years in most circumstances before removing a fund based on performance issues."

Those performance issues also stemmed from how the flexPATH funds were designed to insulate retirees against inflation whereas other target-date funds were not, which was something the plan saw as a beneficial aspect of the investment, Judge Selna said. Judge Selna concluded that "in selecting funds for a retirement plan, it is objectively reasonable for fiduciaries to select a fund that, among its other attributes, is expected to reduce the risk of severe loss in down markets."

"Though it would have been possible to select funds expected to provide higher returns, doing so would have resulted in taking on more risk, subjecting participants to higher volatility and a higher likelihood of losses as their retirement dates approached," Judge Selna said.

Regarding the prohibited transaction claim against flexPATH, Judge Selna also rejected arguments from the class that statements by flexPATH referring to how the business would increase assets under management if it earned a contract with Wood Group didn't support an interference of disloyalty under ERISA.

"Where a business has competed fairly and ethically, it cannot be faulted for succeeding," Judge Selna said.

He also pointed out how flexPATH showed at trial that it didn't financially benefit or receive additional compensation from the Wood Group's decision to retain them in the plan.

"There is nothing disloyal about an investment manager trying to obtain new business," Judge Selna said.

Ian Morrison, an attorney for flexPATH, said in a statement Monday: "We are pleased the court validated our belief that the allegations of fiduciary misconduct and prohibited transactions asserted against flexPATH Strategies were without merit."

Representatives of the class and Wood Group did not immediately respond to requests for comment Monday.

The class is represented by Jerome J. Schlichter, Sean E. Soyars, Nathan D. Stump and Kurt C. Struckhoff of Schlichter Bogard LLP and William H. Edmonson of the Law Office of Will Edmonson.

FlexPATH Strategies LLC is represented by Joshua A. Rodine, Jules A. Levenson and Ian H. Morrison of Seyfarth Shaw LLP and Sean M. Murphy and Matthew Laroche of Milbank LLP.

Wood Group U.S. Holdings Inc., Wood Group Management Services Inc. and the Committee of the Wood 401(k) Plan and its members are represented by Nancy G. Ross, Alex C. Lakatos, Brantley Webb, William D. Sinnott and John Nadolenco of Mayer Brown LLP.

The case is Robert Lauderdale et al. v. NFP Retirement Inc. et al., case number 8:21-cv-00301, in U.S. District Court for the Central District of California.

--Editing by Bruce Goldman.

All Content © 2003-2024, Portfolio Media, Inc.