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Our Quibble With Tibble

Tibble v. Edison International

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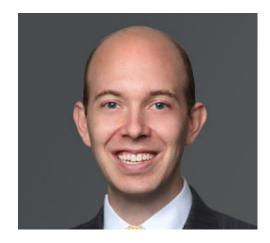
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Background: Key Statutes

ERISA's Duty of Prudence (§ 404(a)(1)(B))

"a fiduciary shall discharge his duties ... with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims"

Background: Key Statutes

ERISA's Period of Repose (§ 413(1))

No action may be commenced under this subchapter with respect to a fiduciary's breach of any responsibility, duty, or obligation under this part, or with respect to a violation of this part, after the earlier of—

- (1) six years after
 - (A) the date of the last action which constituted a part of the breach or violation, or
 - **(B)** in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, or
- (2) three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation;

except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.

Background: The Facts & Arguments

- Edison International offered mutual funds within its
 401(k) plan
 - Retail Class with higher fees than Institutional Class
 - Some had been in the plan for more than 6 years when the complaint was filed
 - Some were added more recently
 - Plaintiffs argued Edison plan fiduciaries breached their fiduciary duty by not offering the funds at the lower cost
 - Defendants argued that plaintiffs' claims were stale, and that nothing changed since time of selection, so no duty to remove the funds from the plan within the 6-year period

Background: Trial Proceedings

Older Funds

- Summary judgment for Edison
- Claims barred by 6-year period because funds selected more than 6 years before lawsuit filed

Newer Funds

- Bench trial
- Edison found liable after evidence showing what a reasonable fiduciary would have done in similar circumstances

Ninth Circuit affirmed

 As to older funds, agreed that claims were barred by ERISA's 6year limitations period

Supreme Court Proceedings

- Issue for Court was whether ERISA's statute of repose barred plaintiffs' claim when the challenged funds were selected more than 6 years ago (also a question as to standard of review which was not certified)
- Call for the View of the Solicitor General
- Oral Argument
- Decision
 - 9-0 reversed and remanded
 - Court agreed there is a duty to monitor and remanded to lower courts to determine whether plaintiffs presented that argument and if so, the appropriate contours of that duty

Implications

- Open Questions after Tibble
 - What does duty to monitor entail?
 - Are there general principles which courts will instruct apply to all fiduciaries
 - Does the ruling apply to monitoring of other decisions made in course of plan administration?
 - Does Tibble impact ERISA's 3-year statute of limitations running from actual knowledge?
- Increase in Litigation?
- Best Practices for Fiduciaries

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Questions?

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