

Our Quibble With *Tibble*

Tibble v. Edison International

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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 6-year 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
 - Court gave no guidelines or suggestions as to scope of the duty to monitor

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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