

September 25, 2006

Plan Fees and Expenses The Next Wave of Lawsuits Has Begun

On September 11, 2006, the plaintiffs' bar initiated the next wave of lawsuits against plan fiduciaries relating to the investments made under their qualified retirement plans. A series of class action lawsuits were filed by a single plaintiff's law firm against six major corporations, as sponsors and fiduciaries of their 401(k)/savings plans, and various other fiduciaries of those plans, including in some cases individual members of the corporation's board of directors. The lawsuits complain of the fees and expenses which were charged against the participants' accounts under those plans. The complaints alleged, among other things, that the fiduciaries breached their fiduciary duties by failing to inform themselves and understand the various forms of compensation being paid by the plan, and by failing to disclose to the participants all the fees and expenses being charged against their accounts. The fees complained of include revenue sharing arrangements among plan service providers and other "soft dollar" fee arrangements.

Recently, qualified retirement plan service provider compensation arrangements have been the subject of increased scrutiny, including significant articles in the popular press, as well as investigations by various government entities. Additionally, the U.S. Department of Labor has (i) placed information on its website regarding plan fiduciaries' responsibilities relating to plan expenses, including a detailed questionnaire to be used to discover the fees and expenses incurred by the plan under different investment alternatives and to assist in analyzing those fees and expenses in relation to alternative arrangements, and (ii) increased its review of plan fees and expenses during its plan audits.

These lawsuits serve to remind plan fiduciaries of the need to examine carefully the compensation arrangements of the service providers under the plan, and to ensure that they adequately undertake and document their assessment of all fees and expenses being paid directly or indirectly by the plan.

If you have any questions, please feel free to contact any of the attorneys listed below.

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