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Supreme Court Confirms Duty to Monitor Plan Investments

On May 18, 2015, the Supreme Court issued its opinion in *Tibble v. Edison International*, reinforcing that fiduciaries have a continuing duty to monitor the prudence of plan investments.

Tibble overturned the Ninth Circuit's holding that fiduciary breach claims involving certain funds were time-barred under ERISA's six-year statute of limitations. Under ERISA Section 413, the statute of limitations for fiduciary breach claims runs from "the last action which constituted part of the breach or violation." The Ninth Circuit found the "last action" would generally have been when funds were first offered under the plan unless a significant change in circumstance warranted a further review.

The Supreme Court unanimously rejected this view, recognizing that under trust law (the foundation of ERISA's fiduciary scheme), a fiduciary is "required to conduct a regular review of its investment with the nature and timing of the review contingent on the circumstances." Accordingly, a fiduciary "has a continuing duty to monitor trust investments and remove imprudent ones," a duty which is separate from the duty to prudently select investment options for inclusion in the plan.

The result is not surprising – the fiduciary standards under ERISA are process-driven – and ERISA fiduciaries generally understand that prudently monitoring funds is as important as prudently selecting funds. *Tibble* merely confirms that this concept applies in the context of the statute of limitations.

With this decision, the Supreme Court remands the case back to the Ninth Circuit to consider the merits of claims that a fiduciary breach resulted from offering retail-class mutual funds rather than institutional-class funds, which carry lower fees. The Supreme Court's decision was limited to the statute of limitations issue and does not provide any guidance on the merits of fee litigation claims.

A copy of the Supreme Court's decision is available here.