Fall Issue: September 2022

WESTERN PENSION & BENEFITS COUNCIL
Orange County

NEWSLETTER

President's Message:

Tom Drosky

Regional VP,
PenChecks Trust

As your newly appointed chapter president, I want to thank Shannon Main for serving as our president for the last two years. Despite all the COVID concerns and restrictions, her capable leadership kept our chapter thriving during these difficult times. We went from virtual monthly mornings meetings to our in-person breakfast meetings at Andrei's Restaurant in September 2021. COVID concerns remain, but it appears the worst is behind us.

Through it all our membership has remained strong and our sponsors continued to support us, for which we are all thankful. Shannon continues to be actively involved with Western Pension, and is now the president elect for WP&BC Governing Board. Some may say she has jumped from the frying pan into the fire.

Our Chapter has been in existence for over 25 years, yet our statement of purpose remains unchanged: The Orange County Chapter of Western Benefits Council promotes an exchange of information and ideas among employee benefit professionals.

My goal as president is to ensure our chapter continues to provide value to all members through educational promotion of information and ideas at our breakfast meeting presentations, technical luncheons, webinars and networking events.

The Orange County chapter board of directors, officers and committee members come from a variety of professional backgrounds. The board and committee members are made up of TPAs, CPAs, ERISA attorneys, investment advisors, and other related service providers. Our membership has the same composition of professionals.

This coming fiscal year we have lined up a host of excellent speakers on a variety of important employee benefit topics to keep us up to date on what's happening in our constantly changing industry. I look forward to seeing all of you in September.

Warm Regards,
Tom Drosky, PenChecks Trust,
Orange County Chapter President

this issue

ASK THE EXPERT!

Selecting, Evaluating, and Monitoring Investments in DC Plans: A Legal Perspective by Alison V. Douglass, Esq. & Christina Hennecken, Esq. - Goodwin LLP

Introduction

Plan sponsors today have unprecedented options available to them when making investment selection decisions for their plans. At the same time, plan sponsors face increasingly complex fiduciary requirements, as well as pressure to provide an optimal plan experience for participants at a reasonable cost. Making investment selection decisions under these conditions can prove challenging.

These challenges are compounded by the fact that defined contribution plans are increasingly the target of class action litigation. Claims are often brought by current or former employee-participants who have been recruited by plaintiff law firms to assert claims on behalf of the plan. Alleged claims are often based on little more than publicly available information about a plan's investments and lack the benefit of any insight into the fiduciaries' selection and oversight process.

Nonetheless, the specter of a lawsuit has many fiduciaries reevaluating how they select and monitor their plan investments.

After more than a decade of litigation, a body of decisional law is emerging that can offer plan fiduciaries insights into how courts analyze claims concerning plan investments. This white paper aims to help fiduciaries navigate the waters of plan investment evaluation, selection, and monitoring processes by:

- Decoding the legal standards in recent court decisions that apply to fiduciaries who are responsible for choosing investment options for their plans.
- Identifying some key takeaways from legal authorities that may assist fiduciaries assessing investments for their plan lineup.
- Emphasizing the importance of process as the most important factor in fiduciary decision-making.

Decoding ERISA's Fiduciary Standards

ERISA holds plan fiduciaries to certain standards of care that the courts regard as the highest standards known to law. Namely:

- Fiduciaries owe a ***duty of loyalty***[1] to plan participants and beneficiaries. This means that the fiduciaries must act solely in the interests of the plan's participants and beneficiaries and for the exclusive purpose of providing benefits and paying only reasonable plan expenses. This standard is often referred to as the "exclusive benefit rule." Fiduciary decisions must be made with an eye single to the interests of participants. Of course, when it comes to investment selection, ensuring that the plan pays only reasonable expenses can also take into account the total costs of participation to participants-inclusive of investments and plan administration, whether paid for separately or through revenue generated by plan investments.

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1 £RISA§ 404(a)(l)(A), 29 U.S.C. § 1104(a)(l)(A). Additional detail regarding the duty of loyalty and the obligation to focus on financial factors in selecting investments can be found in the Department of Labor's proposed rule, "Prudence and Loyalty in Selecting Plan Investments and Exercising Shareholder Rights;' which proposes amendments to the Investment Duties regulation under Title I of £RISA, to clarify the application of ERISA's fiduciary duties of prudence and loyalty to selecting investments and investment courses of action. 86 FR 57272.

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- Fiduciaries owe a ***duty of care***[2] to plan participants and beneficiaries. This means that when the fiduciaries act for the plan, they must act "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 a like character and with like aims. "This standard is known as the "prudent person rule."
- Fiduciaries also must act ***consistent with the documents***[3] that govern the plan and must ***diversify***[4] the plan's investments so as to minimize the risk of investment losses.

When it comes to a plan's investments, most defined contribution plans are set up so that the participants themselves can decide how to invest their plan accounts. Plans typically make available a range of options from which a participant can construct a diversified portfolio. These options can include a qualified default investment alternative into which a participant's account will be invested in the absence of participant direction.

Notwithstanding the role of participant-directed investing, plan fiduciaries do have the responsibility to select and to monitor the designated investment alternatives that will be made available to participants. Meeting these responsibilities requires an informed and thorough evaluation, and can include consideration of the particular needs of their plan. Here, the focus is on the inputs to the fiduciary's decision-making, and not on the investment outcomes achieved. In other words, employing a good investment selection process is a key to meeting fiduciary obligations, while also acting with exclusively participants' interests in mind.

A good fiduciary investment selection process may include:

- Understanding the documents that govern the plan, which may set forth investment objectives or mandates for the plan. Remember, following the plan documents is a key fiduciary obligation.
- Meeting regularly to discuss and review the plan's investment options. Again, the focus here is on process. It is important to have a decision-making process that is thorough, consistently applied, and documented.
- Considering key attributes of the investment options (such as performance, expenses, and the spectrum of risks and corresponding trade-offs) when considering available options and monitoring those investments chosen for the plan.
- Accounting for the interests of participants in their retirement income.

Three Key Takeaways Regarding Fiduciary Investment Evaluation, Selection, and Monitoring

Courts are frequently called upon to consider whether a fiduciary's selection of an investment for the plan was consistent with ERISA's standards. The cases reflect key takeaways that may be helpful to plan sponsors as they consider the role that active management can play in their plan's investment lineup.

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2 £RISA§ 404(a)(l)(B), 29 U.S.C. § 1104(a)(l)(B).
3 £RISA§ 404(a)(l)(D), 29 U.S. C. § 1104(a)(l)(D).
4 £RISA§ 404(a)(l)(C), 29 U.S.C. § I 104(a)(l)(C).

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Key Takeaway 1: Fiduciary prudence focuses on the process by which investments are selected and monitored for the plan, and not on investment outcomes.

ERISA's prudent person standard is not concerned with results.[5] Time and again, courts have said that that test of prudence focuses on the fiduciary's decision-making process, not on investment outcomes.[6] In particular, the fiduciary must give appropriate consideration to the facts and circumstances that are relevant to the particular investment under consideration, and act accordingly.[7] Relevant factors may include the sponsor's purpose in offering the plan, the risk of loss and the opportunity for gain (or other return) associated with the investment being considered, and the role the investment will play in the plan's investment lineup.

In short, ERISA's fiduciary prudence standards are satisfied by an informed decision-making process. For this reason, courts are not inclined to hold liable a plan fiduciary who engaged in a reasoned decision-making process and took into account all relevant information in carrying out its fiduciary duties.[8] For example, one court recently determined fiduciaries had used appropriate methods of investigation and review of its investment options when they met quarterly and made reasoned decisions, balancing relevant factors such as "historic performance, short - term performance, interests of stability," and other information available.[9] Relevant information can also include the macroeconomic environment at the time of the decision and the long-term investment strategy utilized.[10] An informed decision-making process does not require removing investment options "at the first indication of underperformance"-instead, taking a longer-term view and evaluating investments over a "full market cycle" can be app ropriate.[11] Finally, courts have also approved of plan fiduciaries considering information from third-party consultants when they evaluate and review such third-party recommendations before adopting them.[12]

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5 Roth v. Sawyer-Cleator Lumber Co., 16 F.3d 915, 918 (8th Cir. 1994) (prudence is "a test of how the fiduciary acted viewed from the perspective of the time of the challenged decision rather than from the vantage point of hindsight").

6 Meiners v. Wells Fargo & Co., 2017 WL 2303968, at *2 (D. Minn. May 25, 2017), aff'd, 898 F.3d 820 (8th Cir. 2018) (stating that the "rate ofreturn" of the challenged funds "are only relevant insofar as they suggest that [the fiduciaries'] decision making process was flawed").

7 29 C.F.R. § 2550.404a- l.

8 Bunch v. WR. Grace & Co., 555 F.3d 1, 7 (1st Cir. 2009) (no liability for plan fiduciary who engaged in "thorough investigative and decisional process"); DiFelice v. U.S. Airways Inc., 497 F.3d 410,420 (4th Cir. 2007) (no liability for plan fiduciary whose decision-making process used "appropriate methods to investigate the merits" of the challenged investment).

9 Ramos v. Banner Health, 461 F. Supp. 3d 1067, 1130 (D. Colo. 2020) (rejecting challenge to plan's inclusion of certain target date funds when fiduciaries "look[ed] at returns over a market cycle" and "regularly discussed the performance of the [TDFs] at its quarterly meetings").

10 Wildman v. Am. Century Servs., LLC, 362 F. Supp. 3d 685, 707 (W.D. Mo. 2019) (rejecting claims of imprudence when record showed the fiduciaries continually monitored the challenged funds and "came to a reasoned decision to allow them to remain in the Plan"); Cunningham v. Cornell Univ., 2019 WL 4735876, at *14 (S.D.N.Y. Sept. 27, 2019) (rejecting imprudence claims based on underperformance when fiduciaries discussed and monitored the challenged funds: "Evidence of 'discussions about the pros and cons' of investment alternatives is 'fatal to' plaintiffs' claims:'), reconsideration denied, 2020 WL 1165778 (S.D.N.Y. Mar. 11, 2020). See also Taylor v. United Techs. Corp., 2009 WL 535779, at *10 (D. Conn. Mar. 3, 2009), aff'd 2009 WL 535779 (2d Cir. Dec. 1, 2009) (rejecting attack on the use of actively managed funds in a large defined contribution plan where the fiduciaries' selection process included "appropriate consideration" of the fees and the returns of funds).

11 Ramos, 461 F. Supp. 3d at 1098; Davis v. Salesforce.com, Inc., 2020 WL 5893405, at *4 (N.D. Cal. Oct. 5, 2020) (rejecting allegations based on five-year returns as "not sufficiently long-term to state a plausible claim of imprudence"); Dorman v. Charles Schwab Corp., 2019 WL 580785, at *6 (N.D. Cal. Feb. 8, 2019) (rejecting allegation of “persistent" underperformance based on only "three to five years [of returns], which are still considered relatively short periods of underperformance").

12 Ramos, 461 F. Supp. 3d at 1130 (observing that the fiduciaries "did not uncritically adopt Slocum's recommendations. Rather, the [committee] engaged with Slocum representatives at the [committee] meetings to understand Slocum's reports, and to make informed decisions about the plan's target date solutions:'); Cunningham, 2019 WL 4735876, at *14 (noting that the defendants did not "passively accept" a third party's proposal, pointing to evidence that the defendants reviewed presentations, and asked relevant questions).

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Key Takeaway 2: Appropriate evaluation, selection, and monitoring of plan investments requires an understanding of the basis for comparison.

Plan investments cannot be evaluated in a vacuum. Part of a fiduciary's responsibility in selecting investment options is to consider reasonably available alternatives. In evaluating the available options, the fiduciary needs to understand certain key dimensions of investments, such as investment type (e.g., mutual fund or collective or common trust), asset class, management strategy, and cost. While a broad range of options along each such dimension are available in the market, once an investment has been chosen for a plan, any evaluation of such plan investment should be subject to appropriate comparisons. For instance, critics of active management often base their after-the-fact critique on a comparison between the fees of active and passive investment products. But such comparisons are not apples to apples. Actively managed investment products are typically more expensive than passively managed investment products because they require different levels of services. There are costs associated with active strategies. The courts have recognized this and have rejected claims based exclusively on inapt fee comparisons.[13]

Similarly, fiduciaries who choose mutual funds for their plans may have the option of selecting share classes that make available a portion of revenue that can be used to fund plan administration. Upon proper consideration, a fiduciary may determine that the fees associated with such share class are reasonable and in the best interest of participants in light of the total cost to participants. When evaluating such investments options, however, it would be inapt to compare the fees of such a share class with the fees of a share class that does not pay any revenue to fund plan administration.

Moreover, courts have consistently recognized that fees are just one dimension to a plan's investments and should not alone be the basis upon which an investment selection decision is judged. For example, some courts have considered the availability of cheaper options to be "beside the point" because nothing in ERISA requires every fiduciary to "scour the market" for the cheapest possible funds.[14] Not only do plan fiduciaries have latitude to value investment features other than price, they are required to do so.[15] This is consistent with any common sense approach to purchasing. For instance, no professional would advise a person who is looking to buy a house or a car to only consider the listing or sticker price.

> “it is important to note that the selection of passive investments does not insulate a fiduciary from their duties of loyalty and care under ERISA."

Instead, courts have observed that assessing and evaluating investment options requires considering, in addition to fees, the investment strategy and risk of the investment options. For example, courts have rejected comparisons between investment options with "different aims, different risks, and different potential rewards" as apples and oranges and "not a way to show that one is better or worse than the other."[16] Similarly, while it is possible that an index fund could serve as a suitable comparison to an actively managed fund,[17] some courts have rejected comparisons between actively managed and passively managed funds as unsuitable because of their dissimilar investment app roaches.[18] Lastly, it is important to note that the selection of passive investments does not insulate a fiduciary from their duties of loyalty and care under ERISA. Recent court cases alleging abuses in cases where passive investments were used affirm the importance of a fiduciary using the same level of diligence with respect to passive investments, and that ERISA does not take sides with respect to the use of active or passive strategies.[19]

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13 Loomis v. Exelon Corp., 658 F.3d 667, 672 (7th Cir. 2011) (rejecting challenge to inclusion of actively managed funds in plan lineup and noting costs associated with active strategies).
1 4 Hecker v. Deere & Co., 556 F.3d 575,586 (7th Cir. 2009) (rejecting claims that cheaper alternatives were available). The Department of Labor agrees, noting in its participant fee disclosure rule-making that "fees and expenses are only one of several factors" in making investment decisions. 29 C.F.R. § 2550.404a-5(d)(l)
(iv)(A)(4). See also Meeting Your Fiduciary Responsibilities, September 2020, available at http://www.dol.gov/ebsa/pdf/meetingyourfiduciaryresponsibilities.pdf ("Fees are just one of several factors fiduciaries need to consider in deciding on service providers and plan investments'.').
15 White v. Chevron Corp., 2016 WL 4502808, at *11 (N.D. Cal. Aug. 29, 2016) (rejecting claims that cheaper alternatives were available).
16 Davis v. Washington Univ. in St. Louis, 960 F.3d 478,485 (8th Cir. 2020) (finding a REIT was not a proper benchmark to a real estate mutual fund because the actively managed mutual fund invested directly in real estate assets like office, industrial, retail, and multi-family properties, whereas the passive REIT invested in stocks of publicly traded equity real estate investment trusts); Sacerdote v. New York Univ., 328 F. Supp. 3d 273,312 (S.D.N.Y. 2018) (rejecting comparison between actively managed real estate fund and passive REIT, and also rejecting comparison between investment options with different asset allocations); Sulyma v. Intel Corp. Inv. Policy Comm., 2021 WL 229235, at *8 (N.D. Cal. Jan. 21, 2021) (rejecting allegations based on comparisons to funds that are not "adequate benchmarks").
17 Brotherston v. Putnam Invs., LLC, 907 F.3d 17, 34 (1st Cir. 2018), cert. denied, 140 S. Ct. 911, 205 L. Ed. 2d 455 (2020) (recognizing possibility that active funds could be compared to passive funds if shown to be plausible and "suitable benchmarks").
18 Wildman, 362 F. Supp. 3d at 710 (finding index funds unsuitable for comparison with challenged actively managed fimds because "investment strategy was so dissimilar").
19 See, e.g., Andrus v. New York Life Ins. Co., et al., No. 16-05698 (S.D.N.Y. filed July 18, 2016) (challenging retention of an S&P 500 Index fund); Garcia v. Alticor, Inc., No. 20-01078 (W.D. Mich. filed Nov. 9, 2020) (challenging fees associated with plan's small-cap growth index funds).

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It is critical for fiduciaries to act in the best interest of their participants, which may take into consideration the profiles of their particular participant base, which can certainly vary from plan to plan. But it is equally critical that fiduciaries avoid actions designed only to avoid their own risk of exposure, as such actions that are not made with an eye single to the interests of participants.

Evaluation of Target Date Strategies

Target date strategies are the most widely used default offering in defined contribution plans. As noted above, the test of prudence focuses on the fiduciary's decision-making process, and the same applies for selection of a target date strategy. For example, the Department of Labor (DOL) has stated that plan fiduciaries should establish a process for comparing and selecting target date strategies and should consider how well the target date strategies' "characteristics align with eligible employees' ages and likely retirement dates" as well as the underlying investments.[20]

If you currently offer or are considering target date strategies for your plan, you may have questions about some of the unique features of those that contain underlying active investment management. Target date strategies are often structured as funds of funds and utilize active investment management underlying components in part or in whole. Similar to the assessment and evaluation of other investment options, fiduciaries can and should consider differences in strategy, asset allocation, and glide path when comparing different suites of target date strategies. Target date strategy managers have faced unfounded criticism for the use of actively managed building blocks because of their fees compared to target date investments that use passively managed building blocks, but courts have recognized in the context of target date strategies that "fees, like performance, cannot be analyzed in a vacuum."[21] Indeed, courts have rejected criticisms of target date strategies that are based on performance comparisons to benchmarks that are not "meaningful" because the benchmarks reflected different investment strategies and/or asset allocations.[22] In addition, in choosing investment strategies for their particular plans, fiduciaries may also take into account that certain strategies are offered by other similar plans. Indeed, under ERISA's prudent person standard, fiduciary conduct is judged in part by what a fiduciary "acting in a like capacity" would do with a plan of "like character and with like aims." Accordingly, courts have considered the wide use of certain target date strategies among similarly sized plans a relevant factor in determining whether such fonds were prudent investment options.[23]

Key Takeaway 3: Providing building blocks for participants to build prudent and well-diversified portfolios plays an important role in defined contribution plans and may favor a sponsor's decision to provide a variety of investment options, including active and passive strategies.

" fiduciaries may appropriately provide plan participants with an array of options, including actively managed funds."

20 DOL, Feb. 2013, "Target Date Retirement Funds-Tips for ERISA Plan Fiduciaries:'
21 Meiners, 2017 WL 2303968, at *3 (rejecting a comparison of target date strategies that invest in actively managed funds with those that invest in passive strategies when no showing that the suites offered similar services and funds had different investment strategies).
22 Meiners, 898 F.3d at 822. Other cases challenging TDFs may face similar challenges in court if they fail to account for different glide paths or underlying allocation differences, if any, among the fund suites being compared.
23 Ramos, 461 F. Supp. 3d at 1095 (rejecting argument that a prudent fiduciary would not have retained the plan's target date solutions when numerous other plans did just that during the same time period).

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ERISA does not require fiduciaries to pick any particular mix of investments for their plans. To the contrary, the law gives plan fiduciaries leeway to choose the options that make the most sense for their particular plans.[24] After all, every plan is different, and there is no one-size-fits-all approach to selecting plan investments. In fact, courts have said that plan fiduciaries are entitled to-and indeed should-consider their plan's unique attributes in selecting investments. For example, factors such as the age and level of sophistication of employees participating in the plan may bear on the fiduciary's evaluation of investment options available in the marketplace.[25]

However, nothing in ERISA "forbids plan sponsors to allow participants to make their own choice." [26] Defined contribution plans are unique in that they are designed to allow participants to direct their own investments. Giving participants sufficient variety of options can go a long way toward putting participants in the driver's seat of their retirement savings. Consistent with the role that participant choice plays in defined contribution plans, courts have acknowledged that fiduciaries may appropriately provide plan participants with an array of options, including actively managed funds, as plan that offers a variety of options "has left choice to the people who have the most interest in the outcome."[27]

Of course, participants' ability to choose the investments in their account does not excuse imprudent fiduciary decisions.[28] However, participant choice plays an important role under ERISA's safe harbor provision in § 404(c), as the protections of the safe harbor are only available if a broad range of investment options are offered to participants, among other conditions. Courts have recognized that the safe harbor encourages sponsors to allow choice to participants in defined contribution plans[29], and that in making plan decisions, fiduciaries will be faced with "difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise."' [30]

Conclusion

To sum up, the fiduciary standards and key takeaways previously discussed do not mandate any particular investment lineup. Indeed, courts have recognized the role that different management strategies can play in a plan lineup that provides participants with a broad range of choice. Rather than mandate certain types of investment options for plans, courts instead focus largely on the decision-making process in which the fiduciaries engaged when making and monitoring investment selections for their plans, and whether the fiduciaries were focused on the best interests of participants. The selection of certain investment strategies or plan features based on a deliberative process and participant-centric considerations is entirely appropriate and consistent with ERISA's fiduciary standards.

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24 Id. at 1129 ("ERISA does not require that a fiduciary make the best choice among numerous reasonable choices, only that the investment options that a fiduciary selects are prudent:').
25 See Hecker, 556 F.3d at 586 ("nothing in [ERISA] requires plan fiduciaries to include any particular mix of investment vehicles in their plan"); Whitfield v. Tomasso, 682 F. Supp. 1287, 1304 (E.D.N.Y. 1988) (fiduciary obligation includes consideration of participant needs).
26 Loomis, 658 F.3d at 673 (rejecting claims challenging a plan "that includes high-expense, high-risk, and potentially high-return funds, together with lo w-expense index funds that track the market").
27 Loomis, 658 F.3d at 673-74.
28 Hughes v. Northwestern University, 142 S. Ct. 737 (2022).
29 Loomis, 658 F.3d at 673
30 Hughes, 142 S. Ct. at 742

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ALISON V. DOUGLASS, Esq.

Partner, Goodwin LLP

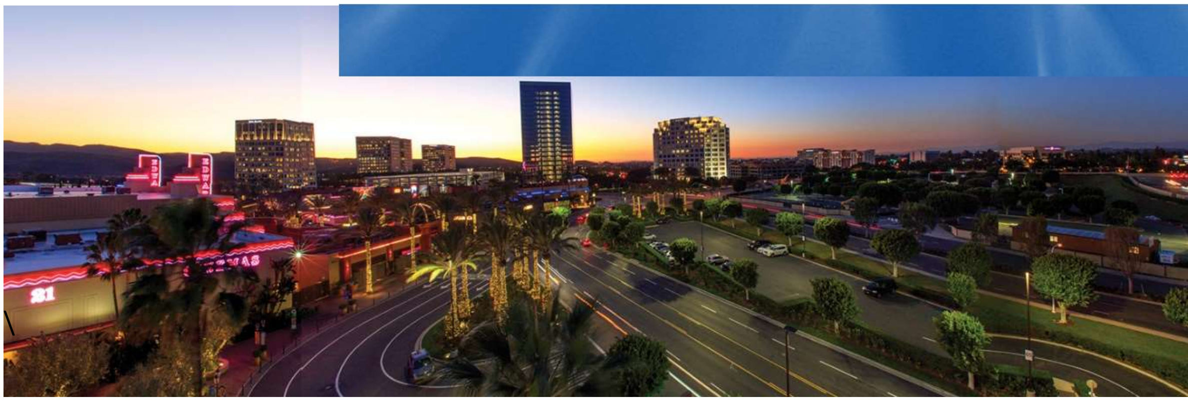
Alison Douglass is a partner in Goodwin's ERJSA Litigation practices. Ms. Douglass represents clients in a wide array of complex commercial litigation, with a focus on financial ser vices and products and class action litigation. She has been named a "Rising Star" by Law & Politics and Boston magazine and has been recognized by The Legal 500. She has also been ranked by Chambers U SA: America's Leading Lawyers for Business as a nationwide "Recognised Practitioner" in ERISA Litigation.

Ms. Douglass's work includes representation of numerous financial service providers regarding the discharge of ERlSA and other fiduciary duties. Currently, she is representing some of the largest financial institutions in so-called excessive fee ERISA litigation. She also represents clients in all phases of litigation, including pre-litigation counseling and trial and appellate matters in federal courts across the country and in regulatory investigations and governmental proceedings, including before the U.S. Department of Labor and the SEC.

CHRISTINA HENNECKEN, Esq.

Associate, Goodwin LLP

Christina Hennecken is an associate in Goodwin Procter's Complex Litigation & Dispute Resolution, ERISA Litigation and Consumer Financial Services Litigation practices. Ms. Hennecken represent, financial institutions in class actions, government enforcement proceedings, and complex civil litigation in a wide range of areas, including the Employee Retirement Income Security Act, the Consumer Financial Protection Act, the Telephone Consumer Protection Act, and the Servicemembers Civil Relief Act.



Member Profile: Katrina Veldkamp

Katrina Veldkamp

Senior Counsel

Boutwell Fay LLP

Years in the Industry: 12

First "real" job: Starbucks Barista

Education: UCLA, B.A., English; UCLA School of Law, J.D.

Business Background

Nature of your work: ERISA Attorney

How you got into the field: My dad ran a TPA firm and I worked there during summers when I was in school. I was interested in tax law and retirement plans, and I was lucky enough to find a job at an ERISA firm in law school.

What you like about the field: There is always something new to learn.

Why did you join the WP&BC? WP&BC is a great way to connect with industry professionals, and has wonderful educational and networking opportunities.

Personal

Ways you spend free time: Singing in and serving on the Board of the Orange County Women's Chorus (we recently sang at Carnegie Hall!), reading, traveling, being a cat lady

Guiding philosophy: Do it the right way the first time

Favorite charity: Orange County Women's Chorus

Last book read: "Scythe" by Neal Schusterman

Restaurant recommendation: Vox Kitchen in Fountain Valley

What will you do when you retire? Take lots of naps with my cats and read all the books I can!

Katrina performing with the Orange County Woman's Choir at Carnegie Hall in New York!

Member Profile: Paul Yossem

Paul Yossem, C(k)P, CPFA

Regional Vice President – SoCal and Hawaii

Nationwide

Describe what services your business provides. Nationwide provides many services, but I support our retirement plan record keeping division. We have been providing record keeping services to financial advisors and their clients for several decades now. We understand service matters and when people matter we win!

Why do you support WP&BC OC? WP&BC OC is where some of the best and brightest minds in the industry come to share and learn. I am a big believer that what happens in the retirement plan space in Southern California happens long before the rest of the nation.

What changes have you seen in the retirement plan marketplace over the past 5-10 years? We have seen so many changes over the past 5-10 years that impact all involved in the retirement plan marketplace, the growth of specialist advisors really helps improve overall plan outcomes. Additionally, the adoption of auto features and increased fiduciary outsourcing has made a great impact on overall plan health.

What new directions do you see the industry taking? We must remember, retirement plans are a complicated mechanism to help employees prepare for and live in retirement. The automation, robo solutions and commoditization of the marketplace is forcing changes to be made. The importance of the human touch, customization and personalized service really makes a significant difference. I believe we will see a shift back to more of a human touch, especially in the small to mid-sized market.

What do you perceive as some of the biggest obstacles to plan sponsors or those servicing plans? Plans are complicated and a big obstacle for many is simply understanding all the moving parts and pieces to their plans. This is where specialists and expert partners can make a significant positive impact on plans.

What do you think we can do as an industry to help overcome those obstacles? The foundation is education. Helping educate plan sponsors and plan fiduciaries on their roles and responsibilities is a good starting point.

What is your favorite restaurant in Orange County? Too many to choose just one.

If you had a day off, what would you like to be doing? Spending time with my family. We love to travel, see MLB games. I love to play golf with my teenage son. And I do think giving back to your community is important and so you may see my volunteering in a variety of ways locally.

Upcoming Events

Thursday, September 22, 2022

8:00 am – 9:45 am PST

Andrei's Irvine, CA

Bradford Campbell, Faegre Drinker

Washington DC is Focused on Retirement Plans: What Retirement Professionals Need to Know about What's Going On

The Hon. Bradford Campbell, a partner at Faegre Drinker and the former Assistant Secretary of Labor for Employee Benefits and head of the Employee Benefits Security Administration, will cover the waterfront of current ERISA retirement plan issues from pending legislation and regulation to new trends in litigation. Topics for discussion will include:

- Whether Congress will pass new retirement legislation combining the House's SECURE Act 2.0 and the Senate's EARN and Rise and Shine bills
- What's next on DOL's Final Rule on ESG and Proxy Voting
- The Current and Possible Future of DOL's Fiduciary Advice Definition and Related Exemptions (and What it Means for Rollovers)
- What DOL's Controversial Cryptocurrency Guidance Did and Didn't Do
- Cybersecurity, Independent Plan Auditors, DOL Enforcement, and Much, Much More!

Click here to register:
https://wpbcorangecounty.org/event-4899773

Thursday, October 20, 2022

8:00 am – 9:45 am PST

Andrei's Irvine, CA

Sherrie Boutwell, Boutwell Fay

Nothing is Certain Except Death and Taxes, but Stranger Things Have Occurred

As Halloween approaches, our thoughts turn to ghosts and ghouls and the always frightening topic of what happens to plan benefits when someone dies. We will cover all manner of spooky death related topics: beneficiary designations (or the lack of same); processing death distributions; disputes among potential death beneficiaries, benefit disclaimers, required minimum distributions (including the current proposed regulations); death related provisions in plan documents; and of critical importance – will there be another Journey cover in the final season of Stranger Things?

Registration will open soon.

On August 11th, dozens of our members and their families gathered on a lovely, warm afternoon, to enjoy the beautiful and amazing creatures at the Santa Ana Zoo, strolling the lush grounds after hours, and socializing over the delicious food from the SoHo Taco truck. A good time was had by all:

If you are a member—keep a look out for our next member appreciation event and join us for a good time!

If you are not a member—consider joining! There are many benefits to membership and getting together with other benefits professionals (occasionally in exotic places!) is one of them.

If you are interested in supporting or exploring the Santa Ana Zoo—go to https://www.santaanazoo.org/

Western Pension & Benefits Council
Orange County Chapter
2022 - 2023 Board of Directors

Tom Drosky:	President
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