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Balancing the Books: The Second Circuit's Take on Administrative Fees in *Singh v. Deloitte*

By Pratik K. Raj Ghosh

The administration of employee benefit plans is an essential, though often overlooked, function in corporate governance. The mismanagement of these plans can have significant implications for employees and employers alike. The Second Circuit's recent decision in *Singh v. Deloitte LLP* offers important insights for those responsible for overseeing employee benefits plans.[1] The ruling underscores the importance of vigilance in fiduciary responsibilities under the Employee Retirement Income Security Act (ERISA), which governs many of those plans, and highlights the legal consequences of failing to prudently monitor plan fees and service arrangements.

I. The Duty of Prudence Under ERISA

ERISA § 404(a) imposes a duty of prudence requiring plan fiduciaries to 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."[2] ERISA's legislative history shows that Congress expected that courts would interpret the duty of prudence "bearing in mind the special nature and purpose of employee benefit plans."[3] In recent years, benefit plans and their fiduciaries have been experiencing a rapid rise in ERISA retirement plan excessive fee claims.[4] These ERISA claims arise when fiduciaries cause or permit the plan to incur unreasonably high fees relative to the services rendered, or fail to monitor service providers. A plan fiduciary is anyone who exercises discretionary control over an ERISA plan's management, assets, or administration, whereas an employer is the entity sponsoring the plan and is not automatically a fiduciary unless it performs fiduciary functions. Fiduciary functions include selecting and monitoring plan investments, administering plan benefits, ensuring compliance with plan documents and ERISA, managing plan assets, and providing investment advice for a fee. *Singh* comes after the Supreme Court weighed in on the pleading standard for such claims in *Hughes v. Northwestern University*.[5] *Hughes*, like *Singh*, involved allegations that a retirement plan's fiduciaries violated their duty of prudence by paying excessive recordkeeping fees. Recordkeeping fees are the payments employers make to third-party administrators for maintaining plan records, participant accounts, and ensuring regulatory compliance. The Supreme Court held in *Hughes* that the extent of the duty of prudence "turns on the circumstances prevailing at the time the fiduciary acts" and that "courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise."[6]

II. The Facts of the Case

Singh involved a putative class action filed by participants in Deloitte LLP's defined-contribution 401(k) retirement plan (the "plan"). The plaintiffs alleged that Deloitte and other plan fiduciaries breached their duty of prudence under ERISA by failing to control the plan's administrative fees.[7] The plaintiffs alleged that the plan's fees were excessive compared to similar plans and that Deloitte failed to negotiate favorable rates or conduct regular benchmarking through requests for proposals.[8] The plaintiffs alleged that the plan's recordkeeping fees ranged from $59.58 to $70.31 per participant, significantly higher than comparable plans, which had fees between $21 and $34 per participant in 2019.[9] They claimed these fees were unjustified, particularly given that the same recordkeeper, Vanguard, had been in place since 2004.[10] Additionally, the plaintiffs alleged that the plan fiduciaries did not adequately monitor or re-negotiate these fees in light of the competitive market for recordkeeping services.[11] Central to the plaintiffs' allegations was their assertion that there are "essential recordkeeping services provided by all national recordkeepers for large plans" offered at a uniform cost, irrespective of variations in service quality.[12] They argued that Deloitte's failure to periodically review or renegotiate the plan's fees constituted a breach of fiduciary duty under ERISA.[13] Despite these allegations, the district court dismissed the original complaint, concluding that the plaintiffs failed to provide an apples-to-apples comparison of services and fees to establish that the plan's costs were excessive relative to services rendered.[14]

III. Holding

The Second Circuit affirmed the district court's dismissal of the case, holding that the plaintiffs failed to plausibly allege a breach of fiduciary duty under ERISA. The court emphasized the need for "context-sensitive scrutiny" in evaluating claims of excessive fees and imprudent fiduciary conduct. Specifically, the court reached the following conclusions.

1. Insufficient Allegations on Fee Comparisons

The plaintiffs failed to provide meaningful benchmarks for use in assessing the reasonableness of the plan's recordkeeping fees over the course of the relevant time period. While they compared the plan's fees to those of other large plans, they did not sufficiently address whether the services provided were comparable. The court highlighted the importance of "apples-to-apples" comparisons, noting that variations in indirect costs and service quality could explain differences in fees.

2. Lack of Contextual Detail

The complaint lacked specific allegations regarding the type and quality of services provided to the plan compared to its alleged comparators. Merely asserting that most recordkeepers offer similar services was deemed insufficient without details on the actual services rendered.

3. Failure To Establish a Plausible Inference of Imprudence

The court reiterated that fiduciaries are not required to choose the cheapest service providers but must demonstrate prudence in their decision-making. The plaintiffs did not allege facts suggesting that Deloitte's retention of Vanguard or its recordkeeping arrangements fell outside the range of reasonable fiduciary judgments. Ultimately, the Second Circuit concluded that the plaintiffs' claims were based on speculative comparisons and conclusory allegations, which are insufficient to survive a motion to dismiss. District courts in the Second Circuit have denied motions to dismss claims for breach of the duty of prudence in similar cases where plaintiffs – in contrast with the plaintiffs in *Singh* – do more than merely allege that the fees and costs incurred were unreasonably high, but instead allege that the decision-making process that the fiduciaries engaged in was deficient.[15] The liability exposure with respect to ERISA's duty of prudence to employers, therefore, is focused squarely on the sufficiency of the plan fiduciary's decision-making process.

IV. ERISA Considerations for Employers After *Singh*

For employers and plan fiduciaries, the *Singh* decision offers valuable guidance on how to mitigate the risk of litigation and ensure compliance with ERISA's fiduciary standards. The following considerations highlight proactive measures and best practices that fiduciaries can implement to uphold their duties and avoid potential pitfalls.

1. Regular Benchmarking

Employers should ensure that service providers' fees and performance are periodically reviewed through requests for proposals or benchmarking studies to confirm competitiveness. Failure to benchmark fees regularly can lead to excessive costs, which may be challenged by plan participants. Employers can benchmark fees by conducting market research, issuing requests for proposals to multiple service providers, and analyzing cost-performance metrics against industry standards.

2. Documentation of Decision-Making

Employers should maintain detailed records of fiduciary decisions, including the rationale for retaining specific service providers and fee structures. Thorough documentation can serve as evidence of prudent decision-making and compliance with fiduciary duties if the plan's practices are challenged. This includes documenting justifications for selecting or retaining vendors.

3. Engagement With Experts

Employers should consider consulting third-party experts to evaluate the appropriateness of plan fees and to identify potential cost-saving opportunities. Engaging independent advisors can provide fiduciaries with an unbiased perspective and ensure that decisions are well-informed and defensible.

4. Proactive Fiduciary Training

Employers should provide ongoing training to fiduciaries on their responsibilities under ERISA, emphasizing prudence and diligence. Training should include updates on legal standards and best practices in plan management. This helps fiduciaries stay informed and reduces the likelihood of unintentional breaches.

5. Monitor Market Trends

Employers should stay informed about industry trends, innovations in plan management, and changes in regulatory requirements. Understanding how peer organizations manage their plans can provide valuable insights and prevent the organization from falling behind in implementing best practices.

6. Transparency With Participants

Employers should communicate clearly with plan participants, such as employees, about fees, service providers, and changes to the plan. Transparency fosters trust and demonstrates the organization's commitment to acting in participants' best interests. *Singh* underscores the necessity of adopting proactive strategies in managing employee benefits plans to ensure compliance with fiduciary obligations while mitigating legal risks. By prioritizing due diligence and fostering a culture of accountability, corporate counsel can safeguard both their organizations and plan participants from potential pitfalls. Moreover, implementing regular reviews, transparent communication, and a commitment to staying aligned with industry best practices can not only reduce exposure to litigation but also reinforce the trust of plan participants.

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Endnotes

1. *Singh v. Deloitte LLP*, 123 F.4th 88 (2d Cir. 2024).
2. 29 U.S.C. § 1104(a)(1)(B).
3. *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996) (citing H.R. Rep. No. 93-533, pp. 3-5, 11-13 (1973); H.R. Conf. Rep. No. 93-1280, pp. 295, 302 (1974)).
4. Allison Barrett & Joel Townsend, *Understanding the Rapid Rise in Excessive Fee Claims,* AIG Whitepaper (2021), available at https://www.aig.com/content/dam/aig/america-canada/us/documents/business/management-liability/pension-trustee-excess-fees-fiduciary-whitepaper.pdf.coredownload.pdf.
5. *Hughes v. Northwestern Univ*., 595 U.S. 170 (2022).
6. *Id.* at 177.
7. *Singh,* 123 F.4th at 91.
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.* at 91-92.
12. *Id.* at 91.
13. *Id.* at 92.
14. *Id.*
15. *See e.g., Vellali v. Yale Univ*., 308 F. Supp. 3d 673 (D. Conn. 2018) ("The plaintiffs have certainly alleged unreasonably high fees . . . but they have also alleged more: a decision-making process that was deficient in terms of monitoring, soliciting competitive bids, negotiating, and selecting a reasonably priced recordkeeper."); *Khan v. Bd. of Directors of Pentegra Defined Contribution Plan*, No. 20-CV-07561, 2022 WL 861640 (S.D.N.Y. Mar. 23, 2022) (denying a motion to dismiss where "[p]laintiffs alleged that Defendants failed to monitor and calculate the sum of PSI's asset-based charges and determine whether they corresponded to PSI's actual costs, failed to solicit competitive bids, and failed to use the Plan's size to negotiate lower fees.").