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Legal Sidebar

Supreme Court to Examine ERISA Pleading Standards

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In January 2026, the Supreme Court agreed to hear *Anderson v. Intel Corp. Investment Policy Committee*, a case about what retirement plan participants and other plaintiffs must allege in a complaint to sue plan fiduciaries under the Employee Retirement Income Security Act (ERISA), particularly as part of claims that fiduciaries imprudently selected or retained underperforming plan investments. The case involves whether such complaints must include a "meaningful benchmark," an appropriate comparator investment that allows the court to determine whether plaintiffs have alleged plausible claims to survive a motion to dismiss. The case may capture the attention of congressional court watchers, as it could impact the ability of plaintiffs to bring these types of fiduciary duty claims and carry out enforcement related to their retirement benefits. This Legal Sidebar provides background on ERISA's fiduciary duty requirements and federal civil pleading standards, discusses the *Anderson* case, and concludes with select considerations for Congress.

Background

ERISA Fiduciary Responsibility Requirements

ERISA is a key federal statute that establishes a comprehensive federal regulatory regime for private-sector employee benefit plans. The Act governs roughly 837,000 retirement plans that contain more than $12 trillion in plan assets. ERISA does not require employers to offer retirement benefits, but those that do must comply with the Act's requirements.

One of ERISA's central goals is to "protect . . . the interests of participants and . . . beneficiaries" of employee benefit plans. To this end, ERISA imposes certain obligations on plan fiduciaries—persons who generally have discretionary authority or control over the management and operation of employee benefit plans. Among these obligations, ERISA imposes a so-called duty of prudence, which requires fiduciaries to act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man . . . would use in the conduct of an enterprise of a like character and with like aims." The Supreme Court has declared that "[b]ecause the content of the duty of prudence turns on the circumstances . . . prevailing at the time the fiduciary acts, the appropriate inquiry will necessarily be context specific."

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Participants and government entities can bring various civil actions to enforce the Act's fiduciary requirements. Among other provisions, the Act authorizes plan participants and others to bring a civil action to redress a breach of fiduciary duty. ERISA makes a plan fiduciary personally liable for breaches against a plan. Litigation over the duty of prudence frequently arises in the context of plan investments that plan fiduciaries choose for retirement plans.

Civil Pleading Requirements

The Federal Rules of Civil Procedure set standards that govern federal civil cases. Civil cases are commenced by filing a complaint with a court. Under Rule 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." A related rule, Rule 12(b)(6), permits a defendant to bring a motion to dismiss a plaintiff's claim for failure to satisfy this pleading requirement (i.e., a failure to state a claim upon which relief can be granted). If a court grants a defendant's Rule 12(b)(6) motion, the court may dismiss the case, the relevant claim(s) in the case, or allow the plaintiff an opportunity to amend the complaint. If any claim in a complaint survives the Rule 12(b)(6) motion to dismiss, then the litigation may proceed, typically into the discovery process, where the parties would gain access to documents and information in the possession of the other parties.

A pair of Supreme Court cases, *Bell Atlantic Corporation v. Twombly* and *Ashcroft v. Iqbal*, addressed civil pleading standards that govern whether a complaint filed in federal court will survive a Rule 12(b)(6) motion to dismiss for failure to state a claim. As the Court indicated in these cases, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" Following these decisions, federal courts deciding a motion to dismiss for failure to state a claim must make a determination regarding the "plausibility" of claims based on the allegations made in the complaint. Such a determination, the Court observed in *Iqbal*, is a "context-specific task that requires the reviewing court to draw on its judicial experience and common sense," and that "while legal conclusions can provide the framework of a complaint, they must be supported by factual allegations."

In an ERISA case that reached the Supreme Court, *Hughes v. Northwestern University*, the Supreme Court generally affirmed that courts should apply the plausibility pleading standard articulated in *Twombly* and *Iqbal* to ERISA cases involving a breach of fiduciary duty. The Court maintained that as part of this task, "the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." However, the Court in *Hughes* did not speak to what plaintiffs must allege in a pleading to meet the "plausibility" threshold and survive a motion to dismiss. After *Hughes*, many lower courts have confronted questions regarding the necessary elements for pleading plausible ERISA fiduciary claims.

The "Meaningful Benchmark" Pleading Standard

In instances in which plaintiffs claim a breach of ERISA's duty of prudence relating to investment underperformance or excessive plan fees, some courts have concluded that the "key" to stating a plausible claim is "a sound basis for comparison—a meaningful benchmark." As generally described by some courts, for an investment benchmark to be meaningful, it must generally have similar "aims, risks, and potential rewards" as compared to the challenged investments. Several courts have addressed use of the meaningful benchmark standard in assessing ERISA imprudent-investment pleading.

A few U.S. Courts of Appeals have expressly adopted the meaningful benchmark standard (or, at least arguably, have relied on cases that adopted this standard in determining whether or not a plaintiff plausibly alleged an ERISA imprudent investment or an excessive plan fees claim). One frequently cited federal appellate case employing the meaningful benchmark standard is *Meiners v. Wells Fargo Co.* In

Meiners, a former Wells Fargo employee and participant in the company's retirement plan filed a class action lawsuit against his former employer and company executives for breach of fiduciary duty under ERISA. The alleged breach involved the inclusion of the company's own Wells Fargo Dow Jones Target Date Funds among the plan's investment options. The former employee argued that Wells Fargo funds were underperforming and were inordinately expensive. In concluding that the former employee failed to state a plausible claim, the U.S. Court of Appeals for the Eighth Circuit determined that the plaintiff failed to allege sufficient similarities between the Wells Fargo funds and any alternative investments. For instance, the court observed that the plaintiff did not plead sufficient facts showing the Wells Fargo funds were underperforming funds, as he only pled that one Vanguard fund performed better than the Wells Fargo fund. The court reasoned that "[t]he fact that one fund with a different investment strategy ultimately performed better does not establish anything about whether the Wells Fargo [funds] were an imprudent choice at the outset."

In another case, *Johnson v. Parker-Hannifin Corp*., plan participants sued the Parker-Hannifin Corporation and others, claiming that plan fiduciaries breached their duty of prudence in several ways, including failing to monitor and improperly retaining in the plan the Northern Trust Focus Funds, a suite of target date funds that generally have "index or passive strategies." Participants argued, in part, that the plan fiduciaries retained the investments despite high turnover rates in the fund's investment allocations and underperformance as compared to the S&P target date fund benchmark and other investment options. Defendants claimed, among other things, that such factors were not meaningful benchmarks.

In a 2-1 panel decision concluding that the plaintiffs adequately stated a claim for imprudence under ERISA, the U.S. Court of Appeals for the Sixth Circuit declared "that a plaintiff is permitted to point to a higher-performing fund—in conjunction with additional context-specific evidence—to demonstrate imprudence, does not mean that a plaintiff is required to point to a higher-performing fund to demonstrate imprudence." The court further explained that prudence is a "process-driven dut[y]" and that to state a claim of imprudence involves a showing of insufficient process. "A meaningful benchmark," the court declared, "may sometimes be one part of an imprudence pleading, but it is not required." However, the court in *Parker-Hannifin* also determined that the plan participants had successfully pled a meaningful benchmark in the case, the S&P target date fund benchmark. By alleging that the Focus Funds were structured to mimic the S&P target date fund, the court concluded that this demonstrated that the Focus Funds could serve as a meaningful comparison that could be further evaluated as the litigation moved forward. The defendant company appealed the case to the Supreme Court, and the petition is currently pending.

Anderson, et al. v. Intel Corporation Investment Policy Committee

In *Anderson*, participants of Intel Corporation's retirement plans filed a class action lawsuit against plan trustees, alleging that trustees imprudently invested plan assets in risky hedge funds and private-equity investments and retained these investments after it was demonstrated that the investments yielded lower returns than stocks, bonds, or other "traditional" investments. The district court dismissed the participants' complaint, in part because the participants did not identify a meaningful benchmark for comparing the Intel investments. The U.S. Court of Appeals for the Ninth Circuit affirmed this decision.

In its opinion, the Ninth Circuit declared that in ERISA fiduciary breach cases in which a plaintiff alleges that a prudent fiduciary would have selected a different plan investment because of a certain investment's cost or performance, the plaintiff "must provide a sound basis for comparison." The court further clarified that a plaintiff "must [not] always identify a comparator when relying on circumstantial allegations of a breach of the duty of prudence. But to the extent a plaintiff asks a court to infer that a fiduciary used improper methods based on the performance of the investments . . . he must compare that performance to funds or investments that are meaningfully similar."

In *Anderson*, the appeals court determined that the participants failed to allege an appropriate comparator. While the participants had made comparisons between the Intel Funds and certain mutual funds and target-date fund benchmarks published by Dow Jones, S&P, and Morningstar, the court disagreed with the use of these "equity-heavy retail funds," contending that the Intel Funds had a different stated objective (i.e., in general, reduction in investment risk by focusing on assets less tied to equity markets). The court also rejected the participants' argument that no meaningful benchmark existed for these investments, because the investment approach was "unusual, if not unparalleled." The court maintained that this argument improperly conflated the risk-minimization objective of Intel's overall investment strategy with the implementation of this objective through the selection of the particular hedge funds and private-equity investments. In October 2025, the participants filed a petition for Supreme Court review of the decision, and the Court granted review. The question presented to the Court in *Anderson* is "whether, for claims predicated on fund underperformance, pleading that an ERISA fiduciary . . . breached ERISA's duty of prudence when investing plan assets requires alleging a 'meaningful benchmark.'"

Considerations for Congress

In *Anderson*, the Supreme Court may clarify whether a meaningful benchmark is a necessary component for pleading an ERISA imprudent investment claim based on a plan investment's underperformance, or whether these claims may survive a motion to dismiss if supported only by other "context-specific" information without such a "meaningful" investment comparison. Underlying this issue is a related question of whether a court's evaluation of any investment benchmark in these cases is appropriate at the motion to dismiss stage, or whether it should be examined in the later stages of litigation, after plaintiffs have received additional plan-related information as part of discovery. The lawsuit may be of interest to federal lawmakers, as a requirement to include a meaningful benchmark as part of a complaint in these kinds of cases may, at least arguably, make it more difficult to allege a violation of ERISA's fiduciary responsibilities. While the petitioners in *Anderson* have asserted that this case is important for participants and the protection of their ability to sue under ERISA, particularly in cases in which fiduciaries allegedly select "outlier" plan investments that lack comparators, respondents have contended that ERISA generally allows plans to adopt such investment strategies. Respondents have further argued that pleading a meaningful benchmark is consistent with ERISA's statutory text and essential for "a plaintiff to plausibly allege that a prudent fiduciary 'acting *in a like capacity*' and 'in the conduct of an enterprise *of a like character and with like aims*'" would have acted differently than the defendants" (emphasis in original).

Aside from legal challenges related to allegedly underperforming investments, some courts have employed the meaningful benchmark standard in cases where a plaintiff claims a fiduciary breach based on the imposition of excessive recordkeeping or investment-management fees (claims regarding allegedly excessive plan fees are fairly common in ERISA litigation). It is possible that any forthcoming decision in *Anderson* may impact the pleading standard applied in these cases. Congress may choose to monitor developments in the *Anderson* case, or it may consider legislation that would address pleading requirements for bringing these kinds of ERISA claims.

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