

Summary of Litigation Claims Related to 401(k) Plan Fees

Lawsuits Involving Define Contribution Plan Sponsors and Service Providers					
Suits Filed Against Plan Sponsors ¹					
Case Information	Recent History	Revenue-Sharing Allegations	Mutual Fund Allegations	Employer Stock Fund Allegations	ERISA Section 404(c) Allegations
<i>Anthony Abbott, et al v. Lockheed Martin Corp., et al.</i> (S.D. Ill. 3:06-cv-701-MJR-DGW). Filed on September 11, 2006.	Defendants' Motion to Dismiss filed November 2, 2006. Defendants' Motion to Change Venue denied on March 20, 2007. Plaintiffs' response to Defendants' Motion to Dismiss and Motion to Strike Jury Demand due by April 20, 2007.	The defendants failed to account for revenue-sharing payments when negotiating fees with plan service providers or disclosing to plan participants and the federal government the fees paid by the plan. These actions violated the defendants' ERISA-imposed fiduciary obligations by allowing the plan to pay excessive fees that were not used for the benefit of plan participants.	The defendants failed to offer institutional share classes of mutual funds as plan investment options when only offering retail share classes which caused the plan and participants to pay excessive fees which violated the defendants' fiduciary obligations.	The defendants allowed an excessive amount of cash to be held by the company stock fund investment option and allowed investment management fees to be charged to the fund. These actions violated the defendants' prudent investment fiduciary obligations.	The use of a master trust distorted the actual fees incurred on account of the plans sponsored by the defendant plan sponsor. By failing to disclose the revenue-sharing payments to participants and distorting the actual amount of fees paid, the fiduciary liability protection contained in ERISA § 404(c) is not available to the defendants.
<i>Pat Beesley, et al v. International Paper Company, et al.</i> (S.D. Ill. 3:06-cv-00703-DRH-CJP). Filed on September 11, 2006.	Plaintiffs' Motion for Class Certification filed on November 22, 2006, with the Defendants responding on December 26, 2006. Defendants' Amended Motion to Dismiss (based on improper venue with a request to transfer the case to W.D. Tenn.) filed on March 14, 2007.	Same	Same	Same	Same

¹ In addition to the cases listed herein, one complaint, *Shelby Waldbuesser, et al v. Northrop Grumman Corporation, et al.* (N.D. Ill. 1:06-cv-04897), was voluntarily dismissed on September 21, 2006.

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<i>Beverly Kanami, et al v. Bechtel Corporation, et al.</i> (N.D. Cal. 3:06-cv-05566CRB). Filed on September 11, 2006.	Plaintiffs' Amended Complaint filed November 9, 2006, and Defendants' Motion to Dismiss filed December 11, 2006. Plaintiffs' Motion for Class Certification filed December 14, 2006. Defendants' Memorandum in Opposition to Motion for Class Certification filed on February 9, 2007.	Same	The complaint does not contain an allegation regarding the use of retail verses institutional share classes.	The complaint does not contain an allegation regarding a company stock investment option.	Same
<i>Brian Loomis, et al v. Exelon Corporation, et al.</i> (N.D. Ill. 1:06-cv-04900). Filed on September 11, 2006.	Defendants' Motion to Dismiss and Motion to Strike Jury Demand filed November 7, 2006. On February 21, 2007, Defendants' Motions to Strike Jury Demand and to strike the Plaintiffs' prayer for investment losses were granted. Plaintiffs' Motion for Class Certification filed March 7, 2007 (with response due April 10, 2007).	Same	Same	The complaint does not contain an allegation regarding a company stock investment option.	By failing to disclose the revenue-sharing payments to participants and distorting the actual amount of fees paid, the fiduciary liability protection contained in ERISA § 404(c) is not available to the defendants.

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<i>Steve Martin, et al v. Caterpillar, Inc., et al.</i> (C.D. Ill. 1:07-cv-01009-JBM-JAG). Initially filed on September 11, 2006 in Missouri, then transferred to the Central District of Illinois.	Defendants' Motion to Dismiss filed November 16, 2006. Plaintiffs' Motion for Class Certification filed on December 7, 2006. Case transferred to the Central District of Illinois on January 11, 2007. Defendants' Motion to Strike Plaintiffs' Jury Demand filed on March 14, 2007.	Same	The complaint does not contain an allegation regarding the use of retail verses institutional share classes.	Same	Same
<i>Eric Will, et al v. General Dynamics Corporation.</i> (S.D. Ill. 3:06-cv-00698-WDS-CJP). Filed on September 11, 2006.	Defendants' Answer and Motion to Strike Jury Demand filed November 2, 2006. Order dismissing the complaint against John Schwartz entered November 8, 2006. Bench trial set for a presumptive month of August 2008. Plaintiffs' Motion for Class Certification filed November 22, 2006, with the Defendants' response filed February 28, 2007.	Same	The complaint does not contain an allegation regarding the use of retail verses institutional share classes.	Same	By failing to disclose the revenue-sharing payments to participants and distorting the actual amount of fees paid, the fiduciary liability protection contained in ERISA § 404(c) is not available to the defendants.

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<p><i>David Taylor, et al v. United Technologies, et al.</i> (D. Conn. 3:06-cv-01494-WWE). Filed on September 22, 2006.</p>	<p>Plaintiffs' Motion for Class Certification filed on November 20, 2006, and Defendants' Motion to Dismiss filed December 4, 2006. Plaintiffs' Memorandum in Opposition to the Defendants' Motion to Dismiss filed on January 11, 2007, with Defendants' response filed January 26, 2007.</p>	<p>Same</p>	<p>The complaint does not contain an allegation regarding the use of retail verses institutional share classes.</p>	<p>Same</p>	<p>Same</p>
<p><i>Gary Spano, et al v. The Boeing Company, et al.</i> (S.D. Ill. 3:06-00743-DRH-DGW). Filed on September 28, 2006.</p>	<p>Plaintiffs' Motion for Class Certification filed November 22, 2006. Defendants' Answer, Motion to Dismiss and Motion to Strike Jury Demand filed December 1, 2006. Bench trial set for presumption month of March 2008. Settlement conference set for January 24, 2008. Defendants' response to Plaintiffs' Motion for Class Certification due by April 9, 2007.</p>	<p>Same</p>	<p>Same</p>	<p>Same</p>	<p>Same</p>

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<i>Gerald George, et al v. Kraft Foods Global, Inc., et al.</i> (S.D. Ill. 3:06-cv-00798-DRH-PMF). Filed on October 16, 2006.	Plaintiffs' Motion for Class Certification filed November 22, 2006. Defendants' Motions to Dismiss and Transfer Venue filed December 8, 2006, with Plaintiffs' response filed on February 23, 2007. Jury trial set for presumption month of October 2008. On March 16, 2007, Motion to Transfer Venue granted (case transferred to N.D. Ill.) and Motion to Dismiss denied.	Same	The complaint does not contain an allegation regarding the use of retail verses institutional share classes.	Same	Same
<i>Dennis Hecker, et al v. Deere & Company, et al.</i> (W.D. Wis. 06-c-0719-S). ² Filed on December 8, 2006.	Amended Complaint filed December 28, 2006, with the Defendants Deere responding on February 1, 2007. Plaintiffs' Second Amended Complaint filed March 5, 2007, with Deere's response filed on March 19, 2007.	Same	Same	The complaint does not contain an allegation regarding a company stock investment option.	By failing to disclose the revenue-sharing payments to participants and distorting the actual amount of fees paid, the fiduciary liability protection contained in ERISA § 404(c) is not available to the defendants.

² The complaint against Deere includes Fidelity Management Trust Company and Fidelity Management and Research Company among the defendants. So far, this is the only case in which plaintiffs simultaneously sue the plan sponsor and plan service providers. See, *Infra*, for a discussion of the complaint solely involving Fidelity as a plan service provider.

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<i>Kim Nolte, et al v. Cigna Corporation, et al.</i> (C.D. Ill. 2:07-cv-02046-HAB-DGB)	Complaint filed with Defendants' Answer due by April 9, 2007.	Same	The complaint does not contain an allegation regarding the use of retail verses institutional share classes.	The complaint does not contain an allegation regarding a company stock investment option.	By failing to disclose the revenue-sharing payments to participants and distorting the actual amount of fees paid, the fiduciary liability protection contained in ERISA § 404(c) is not available to the defendants.

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Suits Filed Against Plan Service Providers

Case Information	Recent History	Fiduciary Allegations	Prohibited Transaction Allegations	Alleged Disclosure Violations	Other Claims
<i>Lou Haddock, et al v. Nationwide Financial Services, Inc. et al.</i> (D.Conn. 3:01-cv-01552-SRU). Filed on August 18, 2001.	Defendants' Motion for Summary Judgment was denied on March 7, 2006 (2006 WL 616629). ³ Plaintiffs' Fifth Amended Complaint filed March 21, 2006. Defendants' Motion to Dismiss was filed on April 20, 2006, with Plaintiffs' Memorandum in Opposition filed May 22, 2006.	Nationwide is a fiduciary to the plaintiff plans because it holds plan assets and exercises authority or control over the management or disposition of plan investment options and revenue-sharing payments. Nationwide violated ERISA by not discharging its duties solely for the benefit of plan participants.	Nationwide negotiated for and received revenue-sharing payments from the mutual fund providers based on the amount of assets and plan participants invested in the different funds. Nationwide created an artificially high administrative charge that was used to make it appear the revenue-sharing payments were used for the benefit of participants. Nationwide's arranging for and retention of revenue-sharing payments constitutes prohibited self-dealing.	This complaint does not make any additional allegations with respect to disclosures to participants.	Nationwide Financial Services controlled and directed Nationwide in the described actions and should be jointly and severally liable for these fiduciary breaches which also should give rise to piercing the corporate veil.
<i>Joseph Ruppert, et al v. Principal Life Insurance Co.</i> (S.D. Ill. 3:06-cv-00903-DRH-PMF). Filed on November 8, 2006.	Bench trial set for presumptive month of August 2008. Defendants' Answer and Motion to Transfer Case filed on December 22, 2006. Plaintiffs' Memorandum in Opposition filed March 6, 2007, with Defendant's reply filed on March 19, 2007.	Defendant is a full-service service provider that makes available 401(k) plans and administrative services to plan sponsors. Defendant is a fiduciary with respect to the plan by virtue of its providing investment advice to the plan participants.	Defendant committed a self-dealing prohibited transaction by using plan assets to generate revenue-sharing payments to itself. These actions also constitute a prohibited transaction under ERISA § 406(b)(3) because the defendant received the revenue-sharing payments from the mutual fund providers.	When negotiating with mutual fund providers, the defendant negotiated a revenue-sharing payment that was made by the mutual fund provider to the defendant. By failing to disclose the presence of revenue-sharing payments to the plan and participants and keeping the revenue-sharing payments for its own use instead of for the benefit of plan participants, the defendant violated its ERISA-imposed fiduciary obligations.	The complaint does not make any additional allegations.

³ In denying the Defendants' Motion for Summary Judgment, Judge Underhill found the defendant service provider (i) might be an ERISA fiduciary to the plan, (ii) the revenue-sharing payments could be considered plan assets and (iii) the revenue-sharing arrangements might be prohibited transactions under ERISA.

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Case Information	Recent History	Fiduciary Allegations	Prohibited Transaction Allegations	Alleged Disclosure Violations	Other Claims
<i>Kevin Beary v. Nationwide Life Insurance Co., et al.</i> ⁴ (S.D. Oh. 02:06-cv-00967-EAS-MRA). Filed on November 15, 2006.	Defendants' Motion to Dismiss filed on January 25, 2007, with Plaintiffs' response in opposition filed on March 2, 2007.	As a fiduciary to the plan, the defendants are liable to the plaintiffs for the amount of unjust enrichment that resulted from the receipt of revenue-sharing payments.	Defendants negotiated revenue-sharing payments (allegedly plan assets) with plan investment advisors and received and kept revenue-sharing payments that were not used for the benefit of plan participants and beneficiaries. These actions also constitute a violation of the prohibition against self-dealing by the defendants.	This complaint does not make any additional allegations with respect to disclosures to participants.	The allegations with respect to negotiating, receiving and retention of revenue sharing payments violated the defendants' fiduciary duties by not using plan assets for the benefit of plan participants.
<i>Dennis Hecker, et al v. Deere & Company, et al.</i> (W.D. Wis. 06-c-0719-S). Filed on December 8, 2006.	Plaintiffs' Amended Complaint filed December 28, 2006, with Defendants Fidelity responding on January 23, 2007. Plaintiffs' Second Amended Complaint filed March 5, 2007 with Fidelity's response filed on March 9, 2007.	When the defendant plan service providers negotiated the fees charged to the plans, these fees include amounts that were used for revenue-sharing payments. By retaining the revenue-sharing payments, the defendant service providers violated their fiduciary obligations because the revenue-sharing payments should have been used for the benefit of plan participants or to offset fees that would otherwise have to be paid by the plan.	The revenue-sharing payments were plan assets.	The existence of revenue-sharing payments was not disclosed to plan participants.	The complaint does not make any additional allegations.

⁴ While this case involves a 457(b) plan rather than a 401(k) plan, potential 401(k) plaintiffs could make the same charges and allegations against 401(k) plan service providers. The plaintiff class is made up of public employers who used the prototype 457(b) plan drafted by the defendants. Generally, the plaintiffs contracted with one of the defendants to be the plan administrator who would purchase annuity contracts (to be used as plan investment vehicles) from another related defendant.

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Case Information	Recent History	Fiduciary Allegations	Prohibited Transaction Allegations	Alleged Disclosure Violations	Other Claims
<i>Kevin Beary v. ING Life Insurance and Annuity Co., et al.</i> ⁵ (D. Conn. 3:07-cv-00035-MRK). Filed on January 8, 2007.	Amended Complaint filed on March 9, 2007, with Defendants' Answer due April 12, 2007.	As a fiduciary to the plan, the defendants are liable to the plaintiffs for the amount of unjust enrichment that resulted from the receipt of revenue-sharing payments.	Defendants negotiated revenue-sharing payments (allegedly plan assets) with plan investment advisors and received and kept revenue-sharing payments that were not used for the benefit of plan participants and beneficiaries. These actions also constitute a violation of the prohibition against self-dealing by the defendants.	This complaint does not make any additional allegations with respect to disclosures to participants.	The allegations with respect to negotiating, receiving and retention of revenue sharing payments violated the defendants' fiduciary duties by not using plan assets for the benefit of plan participants.

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⁵ This case also involves a 457(b) plan rather than a 401(k) plan and is substantially similar to the complaint filed in *Beary v. Nationwide*, *See Supra*.