GROOM LAW GROUP

Publications 401(k) Fee Litigation September 2009

ATTORNEYS & PROFESSIONALS Jason Lee jlee@groom.com 202-861-6649

Michael Prame mprame@groom.com 202-861-6633

PUBLISHED 09/09/2009

SERVICES

Over the past several years, more than two dozen lawsuits have been filed relating to 401(k) plan fees and, more specifically, "revenue sharing" arrangements with plan service providers. Initially, the lawsuits were brought by plan participants against plan sponsors and alleged that, by allowing plan service providers to receive revenue sharing payments, the plan sponsors caused the participants to pay excessive fees, in breach of the sponsors' fiduciary duties to the participants. The focus of these lawsuits against the plan sponsors has evolved over time to include broader challenges to, among other things, the plan sponsors' selection of actively managed mutual funds as plan investment options.

In addition to the lawsuits against plan sponsors, lawsuits have been brought against 401(k) plan service providers. These cases typically are based on allegations that the service providers are "functional fiduciaries" under ERISA. The plaintiffs claim that, in negotiating for and receiving revenue sharing, the service providers breached fiduciary duties and engaged in "prohibited transactions" under ERISA. Some of the lawsuits similarly challenge the use of actively managed mutual funds as investment options.

Groom Law Group is involved in several of these cases, and we're continuing to monitor developments in the area. To learn more about these cases, please see the attached materials.

View the OutlineDownload

View the ChartDownload

Groom Law Group, Chartered | 1701 Pennsylvania Ave., N.W. | Washington, D.C. 20006-5811 | 202-857-0620 | Fax: 202-659-4503 | www.groom.com

This publication is provided for educational and informational purposes only and does not contain legal advice. The information should in no way be taken as an indication of future legal results. Accordingly, you should not act on any information provided without consulting legal counsel. To comply with U.S. Treasury Regulations, we also inform you that, unless expressly stated otherwise, any tax advice contained in this communication is not intended to be used and cannot be used by any taxpayer to avoid penalties under the Internal Revenue Code, and such advice cannot be quoted or referenced to promote or market to another party any transaction or matter addressed in this communication.