Publications

401(k) Fee Litigation September 2010

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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.