

## Publications

# Eastern District of Pennsylvania Rules in Favor of ERISA Defendants After Rare Bench Trial

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Lawsuits bringing fiduciary claims under ERISA continue to surge, but trials remain a rarity. Against that backdrop, *Nunez et al., v. B. Braun Medical Inc. et al.* stands apart. The 63,000-member class action lawsuit alleged that B. Braun Medical Inc. and its retirement committee (“B. Braun” or “the Committee”) violated ERISA’s fiduciary duties with respect to the monitoring and selection of the retirement plan’s investments and recordkeeping fees. After a three-day bench trial, the Eastern District of Pennsylvania found in favor of B. Braun on all counts. Groom Law Group represented B. Braun in the lawsuit and at trial.

## Background

B. Braun is a medical-device and pharmaceutical company headquartered in Pennsylvania. The company sponsors a 401(k) plan to help its employees save for retirement (“the Plan”), and the Committee oversees the Plan. The Committee’s oversight involves, among other things, selecting and monitoring the Plan’s investment options, selecting a Plan recordkeeper, and monitoring the recordkeeper’s fees. During the class period, which ran from 2014 to present, the Plan grew from \$440 million in assets to \$790 million in assets. The Plan’s largest holding was a series of target-date funds (“TDFs”) from T. Rowe Price. For a period of time, the Plan offered higher-fee share classes of the TDF’s that included revenue sharing to offset Plan expenses like recordkeeping fees. In 2019, the Committee transitioned from the mutual fund version of the TDFs to a less expensive collective-investment trust (“CIT”) version. At the same time, the Committee transitioned other investment options from higher-fee share classes to lower-fee classes and implemented a fixed, per-participant recordkeeping fee.

The class plaintiffs alleged that the B. Braun defendants breached their fiduciary obligations under ERISA by failing to investigate or select lower-cost or better performing funds for the company’s retirement plan. Plaintiffs alleged that the Plan should have used lower cost investment alternatives, including replacing certain actively managed funds with less expensive index funds. Plaintiffs also contended that

the Committee failed to monitor or control the Plan’s recordkeeping expenses.

The litigation culminated in a three-day bench trial.

## The Eastern District's Opinion

The Court's discussion began by reciting the standard for duty-of-prudence cases under ERISA—noting that plaintiffs must demonstrate that a plan fiduciary failed to engage in objectively prudent conduct and failed to make decisions that lead to objectively prudent investments. The Court noted that a fiduciary's actions are judged according to a reasonable-person standard and that reasonableness is a question of fact.

Considering the evidence presented at trial, the Court found that the following facts demonstrated the prudent selection and monitoring of investments:

- The Committee regularly met, meeting annually until 2019 and then quarterly thereafter.
- The Committee relied on financial advisors who provided reports that detailed the performance of the investments against various metrics.
- The Committee regularly monitored investment performance and utilized a watch list to scrutinize underperforming investments, and throughout the class period, it voted to remove funds that underperformed.
- The Committee's decision to transition to the CITs and lower-fee share classes was timely and well-informed.
- The Plan's funds performed in the top half of all comparable funds 66% of the time (and in the bottom quartile only 16% of the time), and the TDFs were especially strong performers.

With respect to the Plan's recordkeeping fees, the Court found that the following facts demonstrated a prudent process for selecting recordkeepers and monitoring fees:

- The Committee negotiated lower recordkeeping fees three times.
- The Committee monitored the recordkeeping fees via benchmarking studies, requests for information, and requests for proposals.
- The fees paid were consistent with comparable plans.
- The Committee appropriately utilized revenue sharing to offset recordkeeping and administrative expenses, especially given that revenue sharing was a common practice in the industry during the class period.
- When the Committee transitioned from revenue sharing to a fixed per-participant fee, its decision was well informed and ahead of industry trends.

Together, the Court found that this evidence demonstrated that the Committee had a robust, prudent process for the selection and monitoring of the Plan's investment options, recordkeepers, and recordkeeping fees. The Court also found in favor of the Committee for the independent reason that the results reached by the Committee were reasonable and in line with industry standards.

## Key Takeaways

The Court's ruling is a significant development in the ever-evolving landscape of the prudent management of 401(k) investments and recordkeeping fees. *B. Braun* offers valuable guidance to plan fiduciaries on how to make the case for a prudent process. Evidence of a robust process—such as committee meetings, advisory assistance and materials, and benchmarking and requests for proposals—is useful in countering the allegations of a lack of process. In addition, evidence that the results reached were consistent with industry standards and industry trends provides an independent basis for judgment in favor of a fiduciary.

Although the wave of ERISA fiduciary litigation is unlikely to subside anytime soon, *B. Braun* provides an effective roadmap for obtaining defense verdicts.