

News

PSNC 2022: Lessons From Litigation

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PUBLISHED

06/15/2022

SOURCE

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Groom principal and co-chair of the firm's Litigation practice [Will Delany](#) was quoted in a recent *PLANSPONSOR* article, "PSNC 2022: Lessons From Litigation," which covered his session at the 2022 *PLANSPONSOR* National Conference in Orlando on June 9, 2022. During his panel, he shared his expertise on the current Employee Retirement Income Security Act ("ERISA") litigation outlook, and discussed the source of the rapid, continuous increase in ERISA excessive fee lawsuits this year so far.

As noted by *PLANSPONSOR*, Delany explained that the Supreme Court ruling *Hughes v. Northwestern University* declares that a retirement plan fiduciary cannot simply put a large number of investments on its menu, some of which may or may not be prudent in terms of cost and/or performance, and thereby assume that the large set of choices insulates the plan sponsor from the duty to monitor and remove bad investments.

"My personal point of view is that the 7th Circuit is likely to kick this back down to the district court," Delany said. "I would say it is an important ruling, for sure, but it is important to remember that it was a narrowly constructed decision. The Supreme Court only focused on the 'inoculation theory,' and decided plan sponsors could not be protected from allegations of imprudent investments simply because they offer a lot of choices" he continued.

According to *PLANSPONSOR*, Delany said he's noticed an increasing frustration amongst employers and defense attorneys regarding the seemingly indiscriminate nature of ERISA lawsuits, and more plan sponsors appear willing to actually fight the litigation at the summary judgement or trial phase.

"In terms of making sure you have a good process and the best funds in place, advocate toward transparency the most that you can," Delany said. "If you have revenue sharing in the plan, for example, get that fact into your meeting minutes and consider what you can do from a disclosure perspective to make it clear why this arrangement makes sense for your plan" he added.

To read the article, [click here](#).