How Advisers Can Leverage the Recent 401k Litigation

Charles G. Humphrey, Esq.

Brought to you by ERISApedia.com and KnowHow401k.com
Your Presenter Today

• Charles G. Humphrey, JD
Your Hosts Today

• Facilitator: Chuck Gouge

• Question Board Moderator Joanne Pecina
During the webinar

• All attendees lines are muted
• Question board available and monitored
  – Please send in questions
  – We will answer as many submitted questions as possible
• Follow up questions and comments can be sent to:
  • support@erisapedia.com
Introduction/Agenda

• Challenges & opportunities
• Litigation & investigation avoidance
• Adviser role
Adviser Ecosystem

- Marketplace pressures
- Margins
- Fiduciary rule
- Litigation
ERISA Fiduciary Standard

• The problem
• Prudent man standard of care
• Fiduciaries are on their own
ERISA Fiduciary Standard

• Act solely in the interest
• Exclusive purpose of providing benefits
• Pay reasonable expenses
• Care, skill, prudence, diligence
Is your process good enough?

• Key elements
  – Meet regularly
  – Education
  – Use of experts
  – Documentation
Is your process good enough?

• Vulnerabilities surfaced in 2016
  – Leverage
  – Homework
  – Not seeing the future
Leverage Fails

• Use of asset size to lower fees
• Cheap may not be cheap enough
• Key questions for plan sponsors

Bell v. Anthem
Have you done your homework? (Part I)

• Understanding costs & investments
• Excessive fees
• Inexperienced TDF managers

Johnson et. al. v. Fujitsu Technology and Business of America, Inc. et. al.
Have you done your homework? (Part II)

- Deviation of fund investments from typical mix
- Reading labels
- Plan sponsor obligations

*Ellis v. Fidelity Management Trust Company*
Crystal Ball “Fails”

- **Pledger v. Reliance**
- **White v. Chevron**
  - Are plan fiduciaries really required to know the future?
  - Money market v. stable value funds
The Import of the Litigation

• Some will fail
• Process/procedure will be more closely examined
• Play defense
What Can Advisers Do to Help Clients?

• Build on your base, then
  – Refine processes
  – Help clients leverage
  – Document
  – Educate your clients
Conclusion
Questions?
Contact Information

Author of the Fiduciary Responsibility eSource:
Chuck Humphrey
Law Office of Charles G. Humphrey
(716) 465-7505
chumphrey@cghbenefitslaw.com

ERISApedia.com:
Chuck Gouge
(704) 577-3384
cgouge@erisapedia.com