



COMPLIANCE | May 29, 2019

## Supreme Court Denies Chevron Stable Value ERISA Litigation Review

Specifically, the petition for writ of certiorari asked the Supreme Court to answer the question: “In pleading a breach of fiduciary duty under ERISA, is it sufficient for a plaintiff to allege a deficient decision-making process indirectly through inferences from the facts known to her?”

Reported by [JOHN MANGANARO](#)

The U.S. Supreme Court will not review an appellate court ruling in *White v. Chevron*, a case that alleged, among other things, that defendants breached their fiduciary duties by offering a money market fund rather than a stable value fund as a capital preservation option.

The plaintiffs/appellants argued in their Supreme Court appeal that the 9th U.S. Circuit Court of Appeals, in affirming a lower court’s dismissal of the lawsuit, imposed overly strict pleading standards that conflicted with its own decisions as well as those of other circuits.

In its earlier ruling, the 9th Circuit agreed with a federal district court that plaintiffs in this case did not allege sufficient facts to support a plausible Employee Retirement Income Security Act (ERISA) fiduciary breach claim against Chevron. The 9th Circuit said the complaint must allege “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged,” and where there are “two possible explanations, only one of which can be true and only one of which results in liability, plaintiff cannot offer allegations that are ‘merely consistent with’ [its] favored explanation but are also consistent with the alternative explanation.”

Using these standards, [the appellate court found](#) that the facts alleged are insufficient to support a plausible inference of breach of the duty of loyalty, breach of the duty of prudence, or that a prohibited transaction took place. “Rather, as to each count, the allegations showed only that Chevron could have chosen different vehicles for investment that performed better during the relevant period, or sought lower fees for administration of the fund. None of the allegations made it more plausible than not that any breach of a fiduciary duty had occurred,” the Circuit Court’s memorandum stated.

The plaintiffs/appellants’ [petition with the U.S. Supreme Court](#) asked for clarification around the question: “In pleading a breach of fiduciary duty under ERISA, is it sufficient for a plaintiff to allege a deficient decision-making process indirectly through inferences from the facts known to her?”

[In a recent interview with PLANSPONSOR](#), Marcia Wagner, founding and managing partner of the Wagner Law Group, said that of the four recently filed Supreme Court appeals of ERISA cases, this case was the one in which the Supreme Court is least likely to grant certiorari, at least at the present time, if for no other reason that the three-page 9th Circuit decision is marked “Not For Publication,” which means it does not have precedential value.

“Even if the 9th Circuit opinion were of precedential value, it is not clear that it imposes a stricter pleading standard on plaintiffs than other circuit decisions,” Wagner said.

According to Wagner, uniformity in all aspects of ERISA litigation is an important objective.

“But this does not appear to be the appropriate case to present the issue of inconsistent pleading standards,” Wagner said. “However, the recent decision by the Court of Appeals for the 3rd Circuit in the University of Pennsylvania case indicates that there is likely to be a clear split between the circuits at some point. The pleading issue is a difficult one. The law is clear that prudence is measured by process rather than outcome, so poor investment results does not indicate that the process is flawed. However, prior to discovery, plaintiffs will have no knowledge of a committee’s process. The Supreme Court precedents with respect to motions for summary judgment do not clearly address this issue.”

### Tags

[ERISA](#), [money market fund](#), [retirement plan litigation](#), [stable value fund](#)

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