

Minnesota Sponsor Sues Adviser for True-Up Plan Amendment

The cost of a plan amendment to allow safe harbor and true-up contributions prompted Great Lakes Management Co. to allege USI Consulting Group acted negligently.

Reported by [NOAH ZUSS](#)

Great Lakes Management Co. is suing its retirement plan consultant and retirement plan adviser USI Consulting Group Inc., [alleging the firm negligently counseled](#) the retirement plan to change plan contributions to a safe harbor and true-up that caused it to contribute nearly \$100,000 over two years. Great Lakes Management was advised by USI to amend the plan, according to a March 28 complaint filed in U.S. District Court for the District of Minnesota.

Per the Employee Retirement Income Security Act, Great Lakes Management claims USI Consulting Group owed a duty to advise the plan of the implications—including the cost to the company—of the amendments, particularly the true-up. The company also claims USI breached its duties to the plan by failing to properly advise Great Lakes Management of the implications of the amendments, the complaint argues.

Great Lakes Management “relied on the advice [of USI] when it decided to adopt the amendment,” its attorneys argue in the complaint. “But for defendant’s negligence, the plaintiff would not have suffered damages.”

The lawsuit seeks monetary compensation for damages, which Great Lakes Management claims USI caused the plan to incur—specifically \$98,605 over the years 2022 and 2023.

Great Lakes Management claims the plan was unaware the true-up amendment “contractually required the plan to match an employee’s 401(k) contribution for the entire year” an employee was enrolled, even if an employee only enrolled partway through the year.

According to the amendment, if an employee enrolled in the plan in September 2022, [the true-up required](#) the plan to match the employee’s contribution as if they had enrolled in January 2022.

The strength of Great Lakes Management’s allegations may depend on the vulnerability of the lawsuit to challenges by USI regarding its specific duty to the plan, explains Drew Oringer, a partner in and general counsel at the Wagner Law Group, which is not involved in the litigation.

“While the complaint makes reference to industry standards applicable to professional associations, there’s no apparent contract-based allegation, and so a possible challenge could be to identify what the source of the defendant’s supposed duty is,” he says. “On the ERISA side, I don’t see an allegation that the provider was a fiduciary, so a challenge for the plaintiffs may be to identify an applicable statutory basis for recovery.”

USI has provided professional consultation and advice to the plan since 2018. Great Lakes Management agreed to amend the plan in November 2021. The change took effect January 1, 2022.

Great Lakes Management manages and serves as the trustee of the Great Lakes Management 401(k) Retirement Savings Plan. The plan included about \$6.59 million in retirement assets for 833 participants, as of the plan’s most recent filing to the Department of Labor.

Great Lakes Management Co., based in Plymouth, Minnesota, is in the business of senior living property management.

Representatives of Great Lakes Management Co. did not respond to a request for comment. A representative of USI Consulting Group declined comment. Great Lakes Management is represented by attorneys with the law firm Chestnut Cambronne PA.

Tags

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