CAPTRUST

Fiduciary Update | August 2026

This is the opening sentence in a recent decision from the U.S. Court of Appeals for the Third Circuit. Fiduciaries of Questâ??s 401(k) plan were sued for retaining allegedly underperforming investmentsâ??target-date funds and a global real-estate fund. Plaintiffs contended that the underperformance was so severe that retaining these investments demonstrated a failed process and was a fiduciary breach. Affirming the district court decision in favor of the planâ??s fiduciaries, the court of appeals made key overarching observations:

- ERISA mandates prudence, not perfection.
- ERISA is most concerned with the process fiduciaries follow, not the outcomes achieved.
- Fiduciaries do not need crystal balls to do their jobs well.
- A fundâ??s poor performance alone does not mandate drastic or sudden action.
- Passive index funds and actively managed funds have different investment strategies and cannot be used as comparators.
- ERISA fiduciaries need not pick the best-performing investment to satisfy their duty of prudence.

Reviewing the facts of the Quest situation and finding the fiduciaries not liable, the court found the following to be important aspects of their process:

- The fiduciary committee met quarterly.
- The fiduciaries were supported in their work by professional investment advisors.
- The fiduciaries adopted and followed an investment policy statement, establishing a framework for judging investments and deciding whether to make changes.
- The fiduciaries periodically received relevant training.
- The fiduciaries received and reviewed their investment advisorsâ?? work in a thoughtful and engaged manner, rather than mindlessly accepting and following the advisorâ??s advice.

In Re: Quest Diagnostics ERISA Litigation (3rd Cir. 2026). This decision confirms the critical importance of having a good fiduciary process and following it. Even bad outcomes that are the product of a good process should not result in liability for plan fiduciaries.

Not Considering Indirect Recordkeeper Revenue Is a Fiduciary Breach

It is widely understood that plan fiduciaries must periodically ensure they are paying reasonable fees for recordkeeping services. We previously reported on a court of appeals decision mandating that plan fiduciaries consider *all* compensation received by plan recordkeepersâ??including indirect compensationâ??when evaluating the reasonableness of fees. *Bugielski v. AT&T Services, Inc.* (9th Cir. 2023). In this case, it was alleged that the planâ??s fiduciaries did not consider indirect revenue received by Fidelity from managed accounts and from a self-directed brokerage program.

In *Bugielski*, the court of appeals remanded the case to the district court to evaluate whether the AT&T fiduciaries considered all the recordkeeperâ??s revenue when deciding whether the fees charged were reasonable. On remand, the district court concluded that:

- The AT&T plan fiduciaries breached their fiduciary duty to plan participants by failing to consider indirect revenue received by Fidelity from their managed account provider, Edleman Financial Engines. Fidelity received approximately 50 percent of the managed account fees. Even though Fidelity disclosed that they received a portion of the managed account fees, they did not disclose the amount.
- The AT&T plan fiduciaries breached their fiduciary duty to plan participants by not considering the indirect revenue received by Fidelity from the self-directed brokerage program included in the AT&T 401(k) plan.

Alas v. AT&T Inc., (C.D. Cal. 2026).

The case will proceed for a trial on the reasonableness of the fees paid to Fidelity in the aggregate, taking into consideration indirect compensation from the self-directed brokerage and managed account programs as well as the costs of the services provided.

This case from the Ninth Circuit is the first we are aware of focusing on indirect fees received by plan recordkeepers. We will track whether other courts align on this. This is a reminder that plan fiduciaries are obligated to ensure the reasonableness of fees for underlying services as well as the overall fees paid to service providers.

Individual Committee Members are Fiduciariesâ??Not Just the Committee

Mitsubishi Chemical America, Inc. and its administrative committee were sued alleging fiduciary breaches in the selection and retention of overpriced plan investments and overpayment of plan administration fees. After the case was filed, the plaintiff sought court permission to amend his complaint to individually name 16 members of the administrative committee as defendants. Mitsubishi objected to adding committee members as individually named defendants.

Mitsubishi argued that its plan document vested fiduciary authority exclusively in the administrative committee, so the committee members could not be liable as individuals. The court was unpersuaded, noting that defendants were ignoring ERISAâ??s provision that anyone who exercises authority or control over plan assets is a fiduciary, even if that authority is not specifically granted to them. Individual committee members are functional fiduciaries, regardless of what plan documents may say. The court also cited several other court decisions from around the country where individual committee members were found to be fiduciaries. *Humphries v. Mitsubishi Chemical America, Inc.* (S.D. N.Y. 2026). The case was reported to have been settled in June.

Supreme Court Agrees to Hear Meaningful Benchmark Case: *Anderson v. Intel Corp. Investment Policy Committee*

After the great financial crisis of 2008-2009, Intel Corp. adjusted its custom target-date funds to include hedge funds and private equity to dampen future volatility of those funds. Investment results of the adjusted target-date funds lagged the investment performance of other available target-date funds, and disappointed plan participants sued the Intel plan fiduciaries. The case was dismissed by the district court because the complaint did not identify a meaningful investment benchmark that the challenged funds could be compared with in order to demonstrate underperformance.

The Ninth Circuit Court of Appeals affirmed the dismissal, saying that when an ERISA plaintiff alleges imprudence based on relative underperformance of a specific investment, an inference of imprudence is plausible â??only if the complaint identifies a sound basis for comparisonâ??a meaningful benchmark.â?• *Anderson v. Intel Corporation Investment Policy Committee* (9th Cir. 2025). Plan participants appealed to the Supreme Court, which accepted the case to address a split in the courts below. The question before the court is whether a fiduciary breach claim based on alleged underperformance of a specific investment requires allegations that the investment underperformed relative to an identified benchmark that is a sound comparator for the challenged fund.

This case is expected to be argued and decided in the Supreme Courtâ??s next term, which begins in October. The U.S. Department of Labor has filed an amicus brief in support of the Intel plan fiduciaries, supporting the position that a meaningful benchmark is required at the initial pleading stage of litigation.

A Supreme Court decision that meaningful benchmarks must be alleged would not break new ground. Some, but not all, courts already take this position. For instance, fiduciaries of the Molson Coors Beverage Company LLC Retirement Savings Plan were sued alleging that their plan held a chronically underperforming stable-value fund. The court observed that to warrant an inference of imprudence in selecting or retaining a particular fund, a plaintiff must identify other funds that provide a sound basis for comparison and constitute a â??meaningful benchmark.â?• Dismissing the case, the court said that a plaintiff citing a rotating cast of funds with higher crediting rates in different years is blatant cherry-picking and cannot support a claim of imprudence. *Hensley v. Molson Coors Beverage Company USA LLC Governance Committee* (E.D Wis. 2026).

Challenge to Plan Use of Collective Investment Trusts Dismissedâ??No Concrete Injury Alleged

Fiduciaries in the Centene Management Corporation Retirement Plan were sued alleging that it was a fiduciary breach for them to use collective investment trusts (CITs) in their 401(k) plan. CITs are frequently used by plan fiduciaries to reduce investment expenses. The case was dismissed by the district court, which observed that the plaintiff had not plausibly alleged that she was harmed. To survive a motion to dismiss, her complaint would have to allege an injury such as higher fees. The court went on to note that just because CITs operate differently than mutual funds, it is not reasonable to infer that higher fees were incurred or that the investment will expose plan participants to unmonitored liquidity risks. *Clark v. Centene Corporation* (N.D. Ca. 2026).

Reasonable Assumptions in Calculating Actuarially Equivalent Pension Benefitsâ??Current Developments

In the last Fiduciary Update, we reported on court decisions reaching opposite conclusions about whether plan fiduciaries are required to use reasonable assumptions when calculating alternate forms of pension benefits. Alternate forms of benefit typically include early retirement benefits or joint and several benefits for a married couple. ERISA requires that the alternate form of benefit have an actuarially equivalent financial value to that of a planâ??s standard single life annuity benefit. Many plans include specific interest rate and mortality assumptions to be used in calculating alternate benefits. In some instances, the required mortality assumptions are 70 or more years old, and the interest-rate assumptions bear little relationship to todayâ??s interest-rate environment.

One of the previously reported decisions was from the Sixth Circuit Court of Appeals, which concluded that reasonable assumptions are required, albeit in a two-to-one decision. *Reichert v. Kellogg* (6th Cir. 2026). Following that decision in March 2026, in May, the Eleventh Circuit Court of Appeals unanimously decided *Drummond v. Southern Company Services, Inc.* (11th Cir. 2026), holding that calculation of actuarially equivalent benefits requires the use of reasonable actuarial assumptions. This was also a reversal of a lower court decision. In a detailed and well-reasoned opinion, the court noted that the purpose of the calculation was to determine the present value equivalent of the standard benefit, which requires the use of reasonable current assumptions.

One of the many lawsuits challenging the use of outdated actuarial assumptions was filed against AT&T in 2020. *Scott v. AT&T Inc.* (N.D. Cal., filed 10-12-20). A proposed settlement was noted in court filings filed on July 9, 2026. AT&T will pay $184.1 million to resolve the case, with $149 million going to current and future retirees. $35 million will be applied to attorneyâ??s fees and litigation costs. AT&T will update actuarial assumptions for these calculations every 10 years. Court approval of the proposed settlement is pending.

Reichert v. Kellogg and *Drummond v. Southern Company Services, Inc.* appear to be the only reported court of appeals decisions on this issue, both holding that reasonable assumptions must be used when calculating actuarially equivalent benefits. Although, several district court cases have decided that reasonableness is not required. If any other courts of appeal decide reasonableness is not required, the issue may find it way to the Supreme Court. In the meantime, in view of the current trend toward requiring reasonable assumptions, more settlements may be coming.

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