CAPTRUST

Fiduciary Update | November 2025

Forfeiture Cases: A More Consistent Trend

401(k) plan fiduciaries have been challenged in approximately 75 class action suits alleging they improperly used participant forfeitures to offset employer contributions rather than to pay plan expenses that were eventually paid by plan participants.

Forfeitures occur when a plan participant leaves employment before the plan sponsor's contributions to the participant's account have vested. As reported last quarter, the U.S. Department of Labor (DOL) has provided in an amicus ("friend of the court") brief its non-binding opinion that these cases are meritless. It has been a long-accepted practice for 401(k) plan sponsors to use forfeitures to offset employer contributions rather than to pay plan expenses when the plan allows either. This also has been the long-held understanding of Congress and the Treasury Department.

This quarter, a number of reported cases have followed what is becoming a relatively consistent pattern of these claims being dismissed, although one case was allowed to proceed. Here are examples:

- *Becerra v. Bank of America Corp.* (W.D. N.C. 8.13.25)—Dismissal denied
- *Polanco v. WPP Group USA, Inc.* (S.D. N.Y. 10.24.25)—Dismissed
- *Middleton v. Amentum Parent Holdings, LLC* (D. Kans. 8.5.25)—Dismissed
- *Armenta v. WillScot Mobile Mini Holdings Corporation* (D. Ariz. 9.15.25)—Dismissed
- *Fumich v. Novo Nordisk, Inc.* (D. N.J. 8.19.25)—Dismissed
- *Barragan v. Honeywell International, Inc.* (D N.J. 8.18.25)—Dismissed
- *Cain v. Siemens Corp.* (D. N.J. 7.31.25)—Dismissed
- *Cano v. Home Depot, Inc.* (N.D. Ga. 8.26.25)—Dismissed
- *Estay v. Ochsner Clinic Foundation* (E.D. La. 9.15.25)—Dismissed
- *Dimou v. Thermo Fisher Scientific, Inc.* (S.D. Calif 9.9.25)—Dismissed

American Airlines Loyalty Breach Remedy: No Payout, but Future Restrictions on Plan Fiduciaries

As previously reported, American Airlines and its 401(k) plan fiduciaries were found to be liable for breaching ERISA's duty of loyalty to plan participants. The plan fiduciaries prioritized American Airlines' business relationship with BlackRock, one of the plan's investment managers, over prudently managing the plan's investments for the benefit of plan participants. As the judge observed, BlackRock actively supported environmental, social, and governance (ESG) efforts and social change by making investment decisions and voting proxies on this basis, which the American Airlines fiduciaries did not challenge.

BlackRock was a significant investor in American Airlines, holding more than 5 percent of American Airlines' stock and approximately $400 million of its corporate debt. The judge found that American Airlines' "incestuous relationship with BlackRock and its own corporate goals disloyally influenced administration of the plans." *Spence v. American Airlines, Inc.* (N.D. Tex. 2025). A decision on remedies was delayed.

The judge has now issued his decision on remedies, first finding that the plaintiff did not establish any financial losses to the plan from the breach. As a result, no monetary relief could be awarded. *Spence v. American Airlines, Inc.* (N.D. Tex. 9.30.25). The judge went on to observe that it was necessary for him to award equitable relief to ensure that the plan's fiduciaries act "solely for the pecuniary benefit of the plan." He ordered the following, with no end dates except as noted.

- There must be no proxy voting or other activities on behalf of the plan that are motivated by or directed toward non-pecuniary ends—in other words, nothing that is not in the exclusive best financial interest of plan participants and beneficiaries.
- The fiduciary committee must have at least two members who are independent from—having no connection or relationship with—any service provider or investment manager to the plan, for 5 years.
- The fiduciary committee or its successor must annually:
    - Report to each plan participant on all transactions and financial relationships between American Airlines and all plan service providers and investment managers.
    - Certify to each plan participant that the committee and each service provider and investment manager will pursue only investment objectives based on provable financial performance, not diversity, equity, and inclusion (DEI), ESG, sustainability or any other non-financial criteria. This applies also to the voting of proxies.
- American Airlines must publish on its corporate website its membership in organizations dedicated to achieving DEI, ESG, climate-focused, or stewardship objectives. It must also publish the memberships of the plan's service providers and investment managers in those same organizations.
- The plan may not use BlackRock or any other investment manager that owns more than 3 percent of American Airlines stock or any of its fixed debt, unless corporate executives

responsible for the business relationships are excluded from being plan fiduciaries or managing the plan.

Cases Alleging Fee Overpayment and Investment Underperformance Continue

The flow of cases alleging that plan fiduciaries have overpaid for services and retained underperforming funds continues. In cases where details of the fiduciaries' process was evaluated, good fiduciary process was imperative.

Any plan can be sued and be forced to defend itself—that is a cost of doing business. Winning is the result of having and executing a good process. The importance of this cannot be overstated.

Here are some highlights of this quarter's decisions.

- In one case that went to trial, the plan fiduciaries demonstrated that they prudently monitored recordkeeping fees and the share classes of the plan's investments. The fiduciaries' thorough process and diligence won the day. *McDonald v. Laboratory Corporation of America Holdings* (M.D N.C. 2025)
- One case that was initially dismissed for failing to state a claim was resurrected by the court of appeals based on the Supreme Court's decision in *Cunningham v. Cornell University,* which provides an avenue for virtually any plan to be sued and not win a motion to dismiss*. Collins v. Northeast Grocery, Inc.* (2nd Cir. 2025)
- Claims challenging the retention of underperforming stable-value funds are becoming more common. A suit has been filed against Molson Coors alleging imprudent retention of Fidelity's stable-value fund. *Hensley v. Molson Coors Beverage* (E.D. Wis. filed 9.9.25)
- As part of settling a different employment-based claim, one plaintiff signed an agreement not to sue the employer under ERISA. As a result, a subsequent suit challenging retention of a stable-value fund was dismissed. *Gonzalez v. JPMorgan Chase Bank, NA* (D. N.J. 2025)
- A case alleging fiduciary breaches in the retention of an allegedly underperforming stable-value fund survived dismissal. The complaint alleged that, along with underperformance, the plan's fiduciary committee did not have a process to evaluate the fund. *Carter v. Sentara Healthcare Fiduciary Committee* (E.D. Va. 2025)
- A motion to dismiss was denied on a claim alleging payment of excessive recordkeeping fees. The plaintiffs' recordkeeper data showing lower fees appeared—at least initially—to be an apples-to-apples comparison. *Cina v. CEMEX, Inc.* (S.D. Tex. 2025)
- A motion to dismiss was granted where plaintiffs did not provide apples-to-apples recordkeeper comparisons. *Gosse v. Dover Corporation* (N.D. Ill. 2025)
- A case alleging overpayment of recordkeeping fees was settled for $750,000. *Cure v. Factory Mutual Insurance Company* (D. Mass. 2025)
- A separate case alleging overpayment of recordkeeping fees was settled for $1.25 million. In the process of approving the settlement, the judge reduced the attorney's fees from the requested 35 percent to 30 percent. *Coppel v. Seaworld Parks & Entertainment, Inc.* (S.D. Calif. 2025)

- A case alleging improper selection and retention of a target-date-fund series was dismissed. The court would not substitute the plaintiffs' preferences for the plan fiduciaries'. *Phillips v. Cobham Advanced Electronic Solutions, Inc.* (N.D. Calif. 2025)

These cases illustrate the wide range of suits being filed against plan fiduciaries and demonstrate the importance of having a sound and thorough process to prudently evaluate investments and recordkeeper fees.

Fiduciary Committee and Discretionary Investment Consultant Sued: Fiduciary Committee Wins, Discretionary Investment Consultant Must Proceed

Caesars Holdings hired Russell Investments to be the discretionary investment manager for their 401(k) plan. Soon after, Russell replaced many of the plan's investments with Russell's investments, including their target-date funds. The Russell target-date funds underperformed the funds they replaced, as well as Russell's own internal benchmarks.

Disappointed participants sued both the Caesars fiduciaries and Russell. After conducting discovery, both Caesars and Russell moved for summary judgment. (Unlike a motion to dismiss, which contends at the outset that there is no basis for a claim, a motion for summary judgment contends that, based on the evidentiary record that has been developed through discovery, a trial is not needed, and the filer wins.)

Caesars undertook a careful process with the assistance of an independent third party to evaluate providers when they retained Russell. Then, the Caesars committee met quarterly and received reporting from Russell on investment performance. With little fanfare, based on this record of diligence, the court found no disputed facts on this front and granted Caesars' motion for summary judgment.

The court then turned to Russell. It detailed several apparent conflicts of interest in Russell's decision to use its own target-date funds. The court noted the complaint's allegations that Russell's self-serving swap of the target-date funds was a life preserver for its struggling funds, bringing in $1.4 billion, while other plan sponsors were leaving Russell's funds. At the end of 2019, the Caesars plan held 74 percent of the reported assets in Russell's target-date funds. An internal Russell report identified low assets under management as a reason other plans had left the Russell target-date funds. The judge viewed this as a material issue in dispute to be addressed at trial on whether Russell breached ERISA's duty of loyalty.

Russell argued that its agreement with Caesars was a cost-plus arrangement, concluding that there was no reason for it to favor its own funds. The judge discounted this assertion, noting that it fails to address other incentives that motivated Russell to use its own funds.

With respect to breach of prudence allegations, the judge noted that, based on internal Russell documents, Caesars received advantageous pricing based on the assumption that Russell could use the Russell target-date funds. Also, Russell was unwilling to serve as a discretionary fiduciary on non-

Russell target-date funds, because “the economics don’t support it.” These facts suggested that the decision to use the Russell target-date funds—and not consider competitors—demonstrate a lack of prudence by Russell in fund selection. This issue will also proceed to trial. *Wanek v. Russell Investments Trust Company* (D. Nev. 2025)

This case demonstrates the fiduciary committee risk mitigation that can flow from retaining a discretionary investment advisor—and the risk discretionary investment managers take on. It is also a reminder that discretionary investment advisors are subject to the full range of ERISA’s fiduciary responsibilities and must make prudent, evenhanded decisions, putting participants’ interests ahead of their own.

Legal Notice