En Banc Ninth Circuit Applies Ongoing Duty to Monitor Investments Standard in Tibble

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The U.S. Court of Appeals for the Ninth Circuit, sitting en banc, recently held that plaintiffs?ÃÃ breach of fiduciary duty claims were not barred by ERISA?ÃÃs six year limitations period, even when the retirement plan investments in question were selected by the plan?ÃÃs fiduciary more than six years prior to plaintiffs?ÃÃ suit. The Ninth Circuit applied the U.S. Supreme Court?ÃÃs recent decision in this case, which confirmed that fiduciaries have an ongoing fiduciary duty to monitor investments in retirement plans and to remove imprudent ones. (For additional information on the Supreme Court?ÃÃs decision, please see our **prior post**.) The Ninth Circuit distinguished between a fiduciary?ÃÃs duty to prudently select investment alternatives from the fiduciary?ÃÃs duty to prudently monitor them. Consequently, a fiduciary?ÃÃs ongoing duty to monitor plan investments could result in a series of breaches as an investment alternative is retained over time. The Ninth Circuit remanded the case back to the district court to permit plaintiffs to present evidence on their claims relating to a failure to monitor investment alternatives added to the plan more than six years prior to plaintiffs?ÃÃ suit. **View the Ninth Circuit?ÃÃs opinion in *Tibble v. Edison International***.