

Fourth Circuit Remands Fiduciary Breach Case to District Court to Determine Damages

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The United States Court of Appeals for the Fourth Circuit recently remanded a case to the district court, after the district court found that the trustees of a multiemployer pension plan were liable for a breach of fiduciary duty to investigate investment alternatives. On appeal, the trustees argued that the district court erred in holding them liable for a breach of fiduciary duty because, although the court found a breach of the duty to investigate, it made no finding that the trustees held imprudent investments, and ERISA fiduciaries are not liable for damages for a fiduciary breach in the absence of losses arising from the breach. The Fourth Circuit agreed, ruling that simply finding a failure to investigate or diversify does not automatically equate to causation of loss and liability. On remand, the district court must determine whether the trustees' failure to investigate alternatives caused them to make imprudent investments that resulted in a loss to the plan. *Plasterers' Local Union No. 96 Pension Plan v. Pepper*, No. 10-1364 (4th Cir. Dec. 1, 2011).