

Seventh Circuit Denies Breach of Fiduciary Duty Claim Against Plan Offering Retail Funds

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In keeping with its previous decision in *Hecker v Deere & Co.*, 556 F.3d 575 (7th Cir. 2009) and a recent Third Circuit decision, the U.S. Court of Appeals for the Seventh Circuit held that the plan administrator did not violate its fiduciary duty by allowing the plan to offer retail-share class mutual funds instead of investor-share class mutual funds. The court considered that there was a sufficient mix of funds, and that the retail funds that were offered each had an expense ratio between 0.03 percent and 0.96 percent, which is less than the 1.09 percent average expense ratio for institutional-share classes in 2009. The court also considered that participants were educated regarding the various investment funds risk and return characteristics and operating expenses. Finally, the court noted that participants would benefit from increased liquidity in retail funds rather than the potentially lower cost of institutional funds. The court also affirmed the district court's award to Exelon of its costs in the litigation. *Loomis v. Exelon Corp.*, Nos. 09-4081 & 10-1755 (7th Cir. Sept. 6, 2011).