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Views Fee litigation hits higher education

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Nearly identical class action lawsuits were filed last week against eight private universities sponsoring defined contribution Code Section 403(b) and 401(a) retirement plans. Each suit contends that the university paid excessive recordkeeping, administrative, and investment fees and failed to remove expensive, underperforming investments from the plan's menu of investment options in favor of lower-cost investments. The lawsuits argue that these actions/failures to act breached the university's fiduciary duties under the Employee Retirement Income Security Act of 1974. ERISA requires plan fiduciaries to discharge their duties with respect to a plan solely in the interest plan participants and "with the care, skill, prudence, and diligence ... that a prudent man acting in like capacity and familiar with such matters would use...." This standard of care is sometimes referred to as the "prudent expert" standard.

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