COMPLIANCE January 15, 2019

Plaintiffs Agree to Drop Empower ERISA Revenue-Sharing Lawsuit

Both parties agreed to dismiss the litigation under Federal Rule of Civil Procedure 41(a), and each party will bear its own attorneys' fees and expenses.

By John Manganaro

The U.S. District Court for the District of Colorado has dismissed an Employee Retirement Income Security Act (ERISA) lawsuit targeting Great-West, now doing business as Empower Retirement.

The decision notes that this outcome was reached voluntarily by the plaintiffs and defendants. Both parties agreed to dismiss this action pursuant to Federal Rule of Civil Procedure 41(a), with each party to bear its own attorneys' fees, costs and other expenses of litigation.

The underlying lawsuit alleged that Empower Retirement entered into revenue-sharing agreements and similar arrangements with various mutual funds (and other investment advisers, instruments or vehicles), leading it to receive revenue-sharing payments for its own benefit in violation of ERISA. Plaintiffs suggested in the lawsuit that the revenue-sharing represented "kickback payments" and that they were part of a "pay-to-play scheme" in which Empower received payments from mutual funds in the form of 12b-1 fees, administration fees, service fees, sub-transfer agent fees and/or similar fees in return for providing the mutual funds with access to its retirement plan customers.

While little detail is included in the text of the dismissal notice, Empower shared the following statement regarding the dismissal: "Yesterday the court officially ended the case by approving a dismissal motion jointly filed by the parties. Great-West paid nothing to the plaintiff or his attorneys to achieve this result. Rather, plaintiff chose to voluntarily dismiss the case. It's important to point out that the lawsuit was NOT filed by a plan sponsor or an adviser. In this situation, a single investor who was a participant in one of our plans filed the lawsuit. Great-West believed the case was without merit and we are pleased with this result. Our products comply with the law and our fees are reasonable and consistent with the rest of the industry. We believe our innovative offerings help our clients reach their retirement goals."

The U.S. District Court for the Northern District of Illinois last year dismissed a similar lawsuit filed against Morningstar and Prudential.

Tagged: ERISA, Fees, Fiduciary, retirement plan lawsuits, revenue sharing

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Board	Mtg Date	Item #
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