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ERISA Litigation Alert

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Third Circuit: ERISA demands prudence, not perfection

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Prudence, not perfection: the Third Circuit affirms that fiduciary process—not investment results—defeats ERISA claims.

What's the impact?

- The Third Circuit confirmed that ERISA's duty of prudence is "largely a process-based inquiry," and that fiduciaries who hire an advisor critically examine its recommendations and data and follow up when needed to satisfy their duty—even if the funds they retain underperform.
- The court provided rare appellate guidance on *when summary judgment is appropriate* on an ERISA prudence claim, distilling a three-part framework from its Unisys precedent for evaluating a fiduciary's process.
- The court addressed—but did not decide—the novel argument that a plan's Investment Policy Statement binds the plan under ERISA, holding that permissive, discretionary language in the statement defeats any claim that the committee was required to remove a fund.

In *In re Quest Diagnostics ERISA Litigation*, No. 24-2866 (3d Cir. June 22, 2026), the Third Circuit affirmed summary judgment for a 401(k)-plan sponsor and its committees, holding that a prudent process—not investment outcomes—controls a fiduciary-breach claim, and that a fund's underperformance alone does not require its removal. The unanimous panel emphasized that even a sound process can sometimes produce disappointing results, reaffirming that ERISA is concerned chiefly with process rather than outcomes.

What plan sponsors should do now

- Confirm that the plan committee meets regularly, obtains fiduciary training, and documents both its process and the reasons for each investment decision.
- Audit Investment Policy Statements for permissive versus mandatory language, so that performance triggers inform committee action.
- Extend the same documented diligence to the plaintiffs' bar's newer targets, including stable value funds and plan forfeitures.
- Position the plan to leverage the DOL's proposed investment-selection safe harbor by aligning current practices with a defined, multi-factor process.

Background

Quest Diagnostics offers its employees a defined-contribution 401(k) plan with a menu of investment options selected by the plan's committees. Plaintiffs, a putative class of Quest employees, alleged that the committees breached their fiduciary duty of prudence by continuing to offer two options: a suite of actively managed target-date funds (which also served as the plan's default investment) and an actively managed global real estate fund. Plaintiffs claimed that the funds underperformed and that the committee's own policy statements obligated them to remove the funds from the menu. The complaint asserted three counts: breach of ERISA's duty of prudence, failure to adequately monitor fiduciaries, and, in the alternative, knowing breach of trust. The District Court (D.N.J.) denied a motion to dismiss but granted summary judgment to Quest after discovery, because Quest employed a prudent process that included hiring an investment advisor, actively monitoring its menu, receiving annual fiduciary training, and taking follow-up steps regarding the challenged funds.

The court's analysis: Process over outcomes

Writing for the panel, Judge Bibas reaffirmed that ERISA fiduciary duties derive from the common law of trusts and that fiduciaries are not liable for mere poor investment performance. As the court memorably put it, "[n]or do fiduciaries need crystal balls"—a fund's poor performance alone does not mandate drastic or sudden action. Under its two-step *Renfro* test, a prudent process ends the inquiry; only if the process was imprudent does a court take the

second step and ask whether a hypothetical prudent investor would have made the same decision anyway. Plaintiffs' claim failed at step one.

Drawing on *In re Unisys Savings Plan Litigation*—its only precedent addressing summary judgment on a prudence claim—the court identified three considerations for rating a fiduciary's process: (1) whether the fiduciaries reviewed their advisor's data and sought more where needed; (2) whether the fiduciaries analyzed and understood the bases for the opinions they relied on; and (3) whether the fiduciaries otherwise used a process reasonable under the circumstances. *Quest* satisfied all three: its Investment Committee met quarterly, received annual training, retained Mercer for advice, commissioned comparative analyses, met with the fund managers, placed the real estate fund on a watch list, and periodically revised the plan's menu.

The court also reinforced several defense-favorable principles:

- Comparisons between actively and passively managed funds are "apples and oranges" and do not show imprudence—a point the court drew from *Smith v. CommonSpirit Health*, a Sixth Circuit decision involving the same target-date funds litigated by the same plaintiffs' firm.
- Short-term underperformance does not prove long-term imprudence, and fiduciaries need not select the best-performing investment to satisfy their duty. As the court cautioned, requiring fiduciaries to cut every below-average fund would create chaos.
- Committee members' inability to recall the advisor's methodology at depositions—taken six to eight years after the fact—did not create a triable issue where the committee collectively understood that methodology when it acted.

Importantly, the court cautioned that *blindly following* an advisor can itself be a breach—fiduciaries must analyze the bases for the advice rather than simply defer to it. And while an isolated email from a fund manager's representative stating that "the committee does not typically review my materials" was a "bad fact," it was only a "scintilla of evidence" insufficient to defeat summary judgment.

A novel question: Are Investment Policy Statements binding?

Plaintiffs advanced an argument the court described as "novel in this circuit"—that ERISA's command to act "in accordance with the documents and instruments governing the plan" made the plan's Investment Policy Statements binding, such that any deviation breached a fiduciary duty. The court declined to resolve whether policy statements are binding, observing that the question remains unsettled—the Ninth Circuit did not reach it, the Second Circuit may permit such claims, and the Eighth Circuit has doubted that such statements are binding in *Tussey v. ABB*. It held the question unnecessary to decide because Quest's policy statements were "full of permissive language"—providing that the committee "may" place a fund on a watch list or

remove it, and that "[n]o single factor" is dispositive—so the committee retained discretion and never violated them. Invoking trust-law deference under *Firestone*, the court found no abuse of discretion. Because there was no breach of the duty of prudence, the failure-to-monitor and knowing-breach-of-trust claims failed as well.

Practical takeaways for plan sponsors and fiduciaries

Quest is a meaningful win for the defense bar and offers helpful, process-oriented guidance for committees seeking to insulate their decisions from second-guessing:

- **Build and document a robust, ongoing process.** The decision rewards committees that meet regularly, obtain training, retain qualified advisors, review and understand the data those advisors provide, meet with fund managers, periodically revisit the menu, and document their deliberations.
- **Engage with—but do not rubber-stamp—your advisors**. The court emphasized that fiduciaries must understand and be able to articulate *why* an advisor's recommendation makes sense and warned that reflexive reliance can itself be imprudent. Committees should ensure members understand the methodology behind the recommendations they adopt.
- **Draft Investment Policy Statements with discretion in mind**. Permissive language ("may") and an express statement that "no single factor" is dispositive preserved the committee's discretion and defeated the argument that underperformance triggered a mandatory removal.
- **Resist knee-jerk reactions to short-term underperformance**. A fund's weaker returns over a short window do not compel removal; what matters is that the committee analyzes the underperformance and evaluates the fund's underlying strategy. Watch lists and continued monitoring—rather than immediate divestment—are defensible responses.
- **Mind the "bad facts."** Even strong processes can generate unhelpful documents, such as the advisor email here that suggests the committee did not review materials. While a single such fact was not enough to defeat summary judgment, committees should be attentive to how their engagement (and their records of it) will read years later in litigation. A practical safeguard is to capture the rationale for each decision in contemporaneous minutes.

The throughline is unmistakable: as Judge Bibas summarized, "[b]ecause ERISA mandates prudence, not perfection," sound process—not perfect results—is the touchstone.

Nixon Peabody's ERISA Litigation team defends plan sponsors, committees, and fiduciaries in excessive-fee and investment-selection class actions nationwide—including taking such cases through summary judgment and trial. We regularly help clients build and document the kind of

defensible governance process that carried the day here and prepare for the plaintiffs' bar's next theories before they arrive.

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