

A quarterly publication of Westminster Consulting



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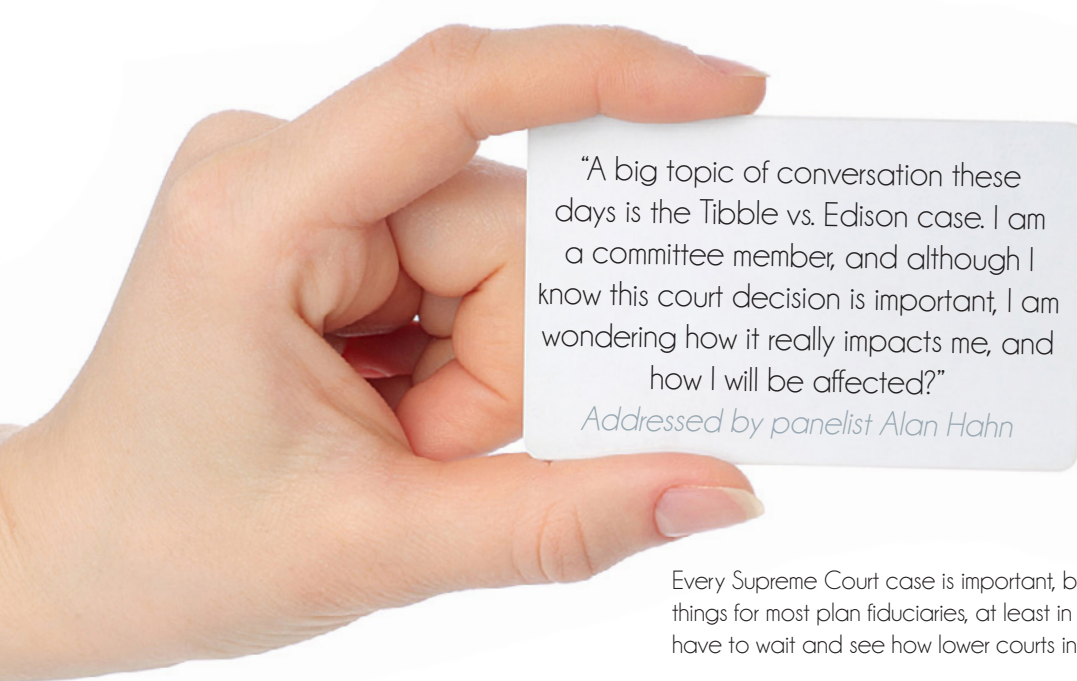
ISSUE NO. 12

We reached out to Plan Sponsors and asked them about challenges they face, problems they approach, and questions they have. Then our panel of experts addressed these concerns with simple, straightforward solutions. Take a look inside for advice from the experts!

you've got
QUESTIONS
we've got
ANSWERS

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“A big topic of conversation these days is the Tibble vs. Edison case. I am a committee member, and although I know this court decision is important, I am wondering how it really impacts me, and how I will be affected?”

Addressed by panelist Alan Hahn



Every Supreme Court case is important, but Tibble doesn't really change things for most plan fiduciaries, at least in the short term. In the longer term, we'll have to wait and see how lower courts interpret this decision.

So, how did we get here and what should Committee members do in the meantime?

The build-up to Tibble was almost unprecedented. Many Committee members were told that Tibble could change their level of responsibility forever. But, the actual ruling was anti-climactic. The Court chose not to speak to many issues that impact plan fiduciaries. Unfortunately, that news did not reach many Committee members, who may now feel like they missed out on what was actually said or whether their fiduciary duties have actually changed. To understand what happened, it's worth considering what the hullabaloo was all about in the first place.

A quick refresher: Former Edison employees brought suit against 401(k) plan fiduciaries alleging breaches of fiduciary duty given the existence of retail class mutual funds in the investment line up that had high fees, when cheaper share classes were available. In their defense, fiduciaries argued that they had no duty to remove the funds since the original decision to choose the funds was made many years earlier. They claimed that the ERISA statute of limitations had already run, so the claims were no longer timely.

The District Court agreed with the fiduciaries, and held that the employees' complaint was untimely. The Ninth Circuit affirmed, concluding that employees had not established a change in circumstances that might trigger an obligation on the part of fiduciaries to conduct a review of the funds. Although the prior decisions were against the plaintiffs, many expected the Supreme Court to side with the plaintiffs anyway. It was hoped that the Supreme Court would use this opportunity to comment on fiduciary duties generally.

Well, the Supreme Court did side with the plaintiffs, unanimously. But the Court did not provide much in the way of comment to help Committees fulfill their responsibilities. Of interest, the Supreme Court criticized the Ninth Circuit for failing to recognize that fiduciaries have a “continuing duty to monitor trust investments and remove imprudent ones” when applying the ERISA statute of limitations. The Supreme Court remanded the case to the Ninth Circuit, asking them to reconsider the case while recognizing the importance of analogous trust law that would apply the continuing duty to monitor.

For most well-functioning Committees, then, Tibble is likely just a reiteration of their responsibility to monitor investments, no matter when the investments were first selected. The hope was that the Court would use this case as an opportunity to further define what this monitoring might look like, but the Court did not do so.

Here is a handy list of things to do in light of Tibble:

- Meeting minutes should include a discussion on how the Committee views its “continuing duty” to monitor plan investments
- Take another look at your Investment Policy Statement—it may need to reflect recent ERISA litigation considerations
- Ask ERISA counsel to explain how the statute of limitations apply to your plan and whether there are opportunities to add plan language or provide additional disclosures to participants that limits the ability of participants to bring claims years down the road
- Continue to monitor Tibble, which has been remanded to the Ninth Circuit

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