CARLTON FIELDS

Individual Inquiries Predominate in 401(k) Litigation

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In denying class certification in an action against Transamerica Life Insurance Company (TLIC), the Central District of California noted that the "sheer number of participants and plans" potentially involved in this litigation meant that "any difference in facts or legal posture among plans is potentially multiplied by a thousandfold[.]" The plaintiffs in *Santomenno v. Transamerica Life Ins. Co.* – three 401(k) plan participants from two different retirement plans – sought to represent a class of "about 300,000 participants in about 7,400 plans" serviced by TLIC. TLIC offers 401(k) products consisting of investment options and administrative services to small and midsize employers, operating about 15,500 such plans and managing approximately $19.5 billion in plan assets. Plaintiffs alleged that TLIC's fees on its retirement accounts were excessive and constituted a breach of its fiduciary duty under ERISA. Specifically, plaintiffs alleged that "TLIC's fees on separate accounts that invest in publicly available mutual funds are excessive because TLIC provides no services on such accounts[.]" In addition, plaintiffs alleged that TLIC did not use its institutional leverage to invest their money in the lowest price share class of mutual funds, and that TLIC's affiliates made transactions prohibited under ERISA. The nail in the certification coffin turned out to be predominance: the court concluded that individual questions regarding the investment management/administrative management charges and lower-cost share classes would predominate over the common questions in this case. Even though the Central District denied certification, it noted that its holding was limited and that "[i]f the question of evaluation of total plan expenses against total plan fees were more directly presented, or if the class more narrowly drawn (so that individualized inquiries, even if present, would not overwhelm common questions), the holding might well be different."

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