
Fidelity settles suit for \$12 million, revises its own 401(k) plan

By Editorial Staff *Thu, Aug 14, 2014*

"Fidelity's settlement of this case is somewhat surprising as [the firm has] typically vigorously defended itself in other excessive fee litigation," wrote ERISA blogger Thomas E. Clark.

Fidelity has settled two lawsuits filed last year by its own employees over allegations that they violated ERISA in the administration of their own 401(k) plan by charging excessive fees and committing prohibited transactions.

The motion for settlement filed in *Bilewicz v. FMR LLC* and in *Yeaw v. FMR LLC* and the accompanying settlement agreement provides for \$12 million to be paid to the class and for the plan to make available a wide selection of both Fidelity and non-Fidelity mutual funds.

"Fidelity's settlement of this case is somewhat surprising as [the firm has] typically vigorously defended itself in other excessive fee litigation. On the other hand, no substantive decisions had yet been made in the case and the cost of litigating this case through summary judgment had their motion to dismiss been denied, would likely have been multiples of the \$12 million paid to settle the case," wrote Thomas E. Clark of FRA PlanTools on his [blog](#).

"For plan sponsors that have Fidelity, the affirmative relief should be of particular interest, as it may serve as a road map of what kind of services are considered best in class when provided by Fidelity (such as K share classes or offering funds from multiple families)."

Fidelity's plan will continue to offer the Fidelity Freedom Funds-Class K as the qualified default investment alternative and Fidelity's portfolio advisory service, Portfolio Advisory Services at Work (PAS-W), as a free source of guidance.

For eligible employees, Fidelity is increasing the contribution rate upon auto-enrollment to 7% from 3% of eligible compensation, and will default current participants who are currently deferring less than 7% to 7% of eligible compensation. Fidelity will apply its match to those increased contributions.

The Plan shall provide that revenue sharing attributable to non-Fidelity mutual funds shall be credited to participants in the same way as revenue attributable to Fidelity mutual funds and collective trusts pursuant to the 8th amendment to the 2005 restatement of the Plan is credited to participants. This revision to the Plan shall remain in effect for at least three

years.

The lawyers representing the plaintiffs have been appointed as class counsel for the purposes of settlement and will be filing a motion for attorney's fees at a later time. The amount they will be requesting was not disclosed in the settlement agreement.

Each named plaintiff has asked for a specific request of \$5,000 for their work in bringing the case. In exchange for the monetary payment and affirmative relief, the plaintiffs have agreed to an extensive release of claims related to the allegations in the complaint.

However, the claims against Fidelity regarding float interest in "In re Fidelity ERISA Float Litigation" have specifically been carved out and that case will continue to move forward.

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