
Fidelity sued again over plan fees

By Kerry Pechter *Thu, Jan 16, 2014*

The same plaintiff's attorneys are after Fidelity again--for overcharging its own plan for recordkeeping. The alleged overcharge--about \$90 million over five years--amounts to less than 20 basis points (about \$300 per participant) per year from the plan.

For the third time this year, Fidelity Investments (FMR LLC) has been the object of a federal class action suit, with the latest two filed by participants of its own \$9.5 billion profit-sharing plan, that charges the giant fund company with using its position as plan sponsor, recordkeeper and asset manager of its own plan for self-dealing.

The most recent suit, filed in the names of Aiden Yeaw, Alex C. Brown, and about 56,000 other Fidelity plan participants on January 7 in U.S. District Court in Boston, claims that Fidelity paid itself about \$85 million from 2008 to 2013 for recordkeeping services when it had told participants the recordkeeping services were free. Recordkeeping should have cost the Fidelity plan no more than \$3.34 million over those five years, the suit said.

In 2012, the recordkeeping fees, which according to the suit came from Fidelity the investment manager paid Fidelity the recordkeeper out of fund fees charged to the participants, amount to an average of \$335 per participant, the suit said. The entire disputed \$85 million represents less than 16 basis points per year of the fund assets.

It was the third federal class action lawsuit against Fidelity for breaches of fiduciary duty and the second filed by participants in Fidelity's own plan.

On February 5, 2013, a participant in a plan sponsored by the Hewlett Packard Company filed a class action suit against Fidelity charging that Fidelity should not have kept the revenue—"float income"—from interest-bearing accounts that held purchases and redemptions in mid-transaction.

On March 19, 2013, Fidelity plan participant Lori Bilewicz led a class action suit charging that Fidelity offered its plan participants only its own proprietary funds when it could have offered participants much less expensive funds.

The cluster of law firms in all three suits included the following firms, as well as others: Schneider Wallace Cottrell Konecky LLP of Scottsdale, Ariz., Levin Papantonia, Thomas, Mitchell, Rafferty & Proctor of Pensacola, Fla., Bailey & Glasser LLP of New York and Washington, D.C., and Peiffer Rosca Abdullah & Carr LLC of New Orleans.

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