Former Fidelity employee sues over offerings in Fidelity’s own 401(k) plan

By Editor Test *Wed, Apr 24, 2013*

The lawsuit charges that Fidelity should have offered cheaper, better-performing funds--like Vanguard's--to the participants in its own plan. Fidelity denies the charge and says it contributes up to 17% of pay to participants each year.

Retirement plan leader Fidelity has been sued for breach of fiduciary duty under ERISA by one its former employees, who claims that Fidelity offered high-cost, underperforming mutual fund options to participants in the company’s own 401(k) plan.

The federal class-action lawsuit was filed March 19 by former Fidelity employee Lori Bilewicz, of Milton, Mass., on behalf of the FMR LLC Profit Sharing Plan, against Fidelity Investments and unnamed members of the FMR Investment Committee who oversaw Fidelity’s plan.

The suit charges that Fidelity failed to fulfill its responsibility to choose investment options objectively. The plan investments, the suit says, were limited to Fidelity funds that were more expensive than comparable funds available from the Vanguard Group—a direct competitor of Fidelity—and also more expensive than certain other Fidelity funds or low-cost institutionally-priced funds readily available from Fidelity unit Pyramis Global Advisors.

A Fidelity spokesperson, Vincent Loporchio, told *RIJ* that Fidelity’s 401(k) plan includes low-cost index fund options, and that employee contributions to the plan are supplemented by a combination of annual matching employer contributions (dollar-for-dollar up to 7%) and corporate profit-sharing distributions (as high as 10% of salary per year).

“The benefits far and away exceed any fee revenue that Fidelity receives from employee assets,” he said.

The Bilewicz suit follows earlier lawsuits over Fidelity’s handling of “float” in the defined contribution plans they administer. These suits are *Kelley v. Fidelity Management and Trust Co.*; *Boudreau v. Fidelity Management and Trust Co.*; *and Columbia Air Services, Inc. v. Fidelity Management and Trust Co.*

All of those suits claim that Fidelity earned interest (“float income”) on contributions to or distributions from its 401(k) plans during the brief periods when they were held in interest-bearing accounts before they were invested in Fidelity funds or before they were disbursed to the participants. The suits say that the interest should have accrued to the plans.

These cases make claims similar to those made by the plaintiffs in *Tussey v. ABB, Inc.*, in which Fidelity was found in 2012 to have violated ERISA in its handling of the float. Fidelity has appealed that decision.