Judge rules for participants in ERISA suit

By Editor Test *Wed, Nov 21, 2012*

In an ERISA fiduciary suit brought by 401k plan participants, a Minnesota judge has denied most of the motions by the attorneys for the plan sponsor, Ameriprise Financial, to dismiss the complaint.

A U.S. District Court Judge in Minnesota has denied a request from Ameriprise Financial to dismiss all complaints by participants in its own 401(k) plan, who claim that Ameriprise charged excessive fees and placed them in poorly performing Ameriprise funds, while benefitting at their expense from the operation of the plan.

The case, Krueger et al. v. Ameriprise Financial, Inc., et. al, had been filed on behalf of all Ameriprise Financial employees, former employees, and retirees who are in the 401(k) plan sponsored by Ameriprise. According to Judge Susan Richard Nelson's November 20 opinion:

> "Plaintiffs have plausibly pled that Defendants did not discharge their duties solely in the interest of the participants and beneficiaries of the Plans. Plaintiffs allege that Defendants chose investment options with poor or non-existent performance histories relative to other investment options that were available to the Plan. Plaintiffs have also plausibly claimed that Defendants continued to choose novel or poorly performing affiliated fund investment options for the Plan instead of more established and better performing alternatives.
>
> Plaintiffs have pointed to prudent alternatives to Ameriprise affiliated funds that Defendants could have chosen as investment options for the Plan. It is also plausible that Defendants may have selected higher-cost share classes when lower-cost share classes were available because they received benefits for doing so.
>
> Moreover, based on Plaintiffs' allegations, it is also plausible that the process Defendants used to choose Plan investments was flawed.
>
> The complaint alleges that the Defendant selected certain investment options for the Plan despite the availability of better options. The complaint further alleges that these options were chosen to benefit defendants at the expense of Plaintiffs. If these allegations are substantiated, then the process by which Defendants selected and managed the funds in the Plan would have been tainted "by failure of effort, competence, or loyalty."

The St. Louis law firm representing the plaintiffs, Schlichter, Bogard and Denton, LLP is the same firm that last March won the case of Tussey versus ABB, Inc., in which found a plan sponsor was held responsible for $35.2 million in damages for violation of fiduciary duty to participants.