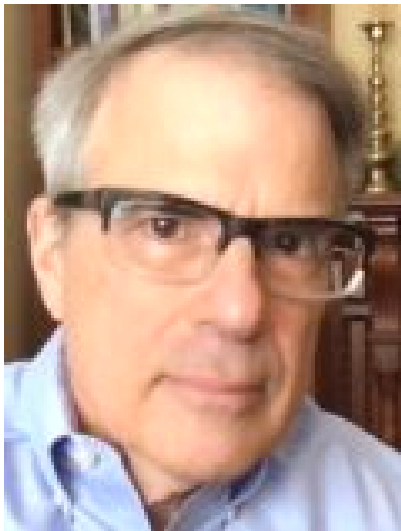


The Animus behind DOL's 'Amicus Briefs'

By Kerry Pechter Mon, Aug 3, 2026

By filing 'amicus briefs' on behalf of the corporate plan sponsors—the defendants—in several participant-led, ERISA-based class action suits, the Trump DOL signals its alignment with the corporations.



A human resources manager was once asked why the participants in her company's 401(k) plan didn't have a seat on the plan's investment policy committee. "What do you mean?" she said. "Everyone on the committee is a participant."

There's an ambiguity in the regulation of 401(k) plans under the Employee Retirement Income Security Act of 1974 (ERISA). Where's the line between plan sponsors and plan participants? And which side of the line does, or should, the Department of Labor (DOL) stand on?

Is there a contradiction between a plan sponsor's duty to act solely in the participants' best interests and an employer's option not to sponsor a plan at all if the duties seem too onerous... in terms of litigation costs?

Different administrations in Washington appear to answer differently. By filing so-called "amicus briefs" on behalf of the corporate plan sponsors—the defendants—in several participant-led, ERISA-based class action suits, the Trump DOL has signaled its friendship with, logically, the corporations.

For example:

- On July 10, a DOL amicus brief urged the U.S. Supreme Court to affirm a lower court's dismissal a participant-led suit contending that in *Anderson v. Intel*, Intel Corp. acted imprudently by investing its 401(k) plan funds in hedge funds, private equity and other "non-traditional," "allegedly risky" assets.
- On July 21, a DOL amicus brief in *Doherty v. Bristol-Myers Squibb* asked the Second Circuit (Southern New York) to clarify the business requirements for corporate decisions to execute pension risk transfers (PRTs). This suit challenged Bristol-Myers Squibb's decision to exchange its defined benefit plan assets for a group annuity issued by life insurers in Athene Holding, a segment of Apollo Global Management.
- On July 24, a DOL amicus brief urged the U.S. Court of Appeals for the 4th Circuit

(Eastern North Carolina) to affirm a district court's decision to dismiss the claims in *Stana v. SAS Institute Inc.*, that the employer breached its fiduciary obligations by not using forfeited funds (i.e., employer "matching contributions" forfeited by employees who separate from the employer before their contributions vest) for plan expenses.

It's a truism that corporations' biggest fear in sponsoring 401(k) plans, in picking service providers, and signing off on investment menus, is getting hit with federal class-action suits where participants question their decisions and demand tens of millions of dollars in compensation for alleged violations of ERISA's requirement that sponsors act prudently and "solely" in the interests of participants.

In its amicus briefs, the Trump DOL addresses that fear, and leans in on behalf of the plan sponsors. Besides supporting the plan sponsors' legal positions, the DOL warns that participant-led ERISA lawsuits, and the plaintiffs' attorneys who bring them, threaten to discourage corporations from sponsoring plans at all. That reverses the Obama DOL's approach.

These cases have other implications—pertaining to a plan sponsor's choice of a "Bermuda Triangle" annuity issuer (in *Doherty v. Bristol-Myers Squibb*) and a 401(k) plan sponsors right to put alternative investments in its plan (*Anderson v. Intel*). But let's look first at the Trump DOL's shot-across-the-bow at participant-led suits in general.

'Disincentivizing employers'

In its press releases, the Trump DOL gets right to the point. Its interventions in these cases aren't just tactical but also strategic: to discourage future participant-led federal class-action suits against 401(k) plan sponsors.

A DOL's press release called its amicus brief in *Anderson v. Intel* "one in a series filed by the DOL focused on ending the overuse of litigation against ERISA retirement plans and those who manage them." The department's press release about *Stana v. SAS Institute* said, "Continued litigation of this type could have the unintended effect of disincentivizing employers from creating retirement plans."

In its amicus brief in *Stana v. SAS Institute*, the DOL took close aim at plaintiffs' attorneys when it wrote, "private-party ERISA litigants (or, more specifically, private-party ERISA litigators) are now trying to contort these well-intentioned shields [i.e., "ERISA-imposed fiduciary duties" on plan sponsors] into cynical swords that often hurt the American

worker.”

In the Bristol-Myers case, the DOL brief “argues that pension risk transfers benefit both employers and beneficiaries when not disrupted and litigating business decisions can hinder or eliminate benefits.” The department added that “continued litigation could deter employers from derisking their plans and ultimately upset the balance Congress established between federal and state regulation.”

The DOL characterizes decisions to trade a defined benefit plan for a group annuity as “business decisions” rather than participant-driven decisions, and characterizes pension risk transfers as a defined benefit (DB) plan sponsor’s effort to “derisk” a DB plan rather than a decision to reduce the sponsor’s costs in operating the plan.

Plaintiffs’ attorneys representing participants feel differently. “The DOL of old would frequently file amicus briefs on behalf of plaintiffs,” said Edward Stone, a Greenwich, CT, ERISA plaintiffs’ attorney. “We are seeing a DOL made in Trump’s image. It has surrendered its ERISA watchdog role and morphed into a big player in the game of regulatory Jenga. It will inevitably lead to huge policyholder losses and get out of jail free cards for those foxes guarding the henhouse of retirement security.”

The future of private market assets in 401(k)s

The DOL’s intervention in *Anderson v. Intel* struck one knowledgeable observer as aligned with the Trump administration’s August 2025 executive order blessing alternative assets, including private equity, private credit, retirement income-generating tools, and even cryptocurrency, in 401(k) investment menus.

In that case, first filed in slightly different form a decade ago, former participants sued Intel for keeping hedge fund and private equity investments in its customized target-date fund series even as these investments hurt the funds’ performance. A federal appellate court has affirmed a lower court’s dismissal of the participant’s suit.

The Circuit Court judge ruled that the plaintiffs hadn’t provided a suitable benchmark against which to measure the performance of the Intel TDFs with private market assets. (The case is a bit unusual: Intel had used alternative investments in its defined benefit plan. When designing the target-date fund for its 401(k), the computer chip maker put alternative assets there as well.)

Mark Fortier was an executive at AllianceBernstein, the asset manager that succeeded Intel

as investment manager of Intel's target-date fund. Alternative asset managers, he said, might try to use the Intel ruling, along with DOL's amicus brief, to show plan sponsors that they can include private market assets in their target date funds as long as they carefully look for and find an appropriate benchmark.

"The [DOL] amicus briefs [in the Intel case] give alternative asset managers marketing material to give sponsors," Fortier told *RIJ*. "The asset managers like that story," he said. "They can say, 'Don't worry, a prudent [due diligence] process will set you free.'"

But the ambiguous nature of private market assets—are they volatility-reducing diversifiers or yield enhancers—might hinder the search for a suitable benchmark for their expected performance in target-date investments that include an allocation to them, Fortier believes.

"This is a subtle issue that the Intel suit doesn't address," he told *RIJ*. "What is the asset class that you're trying to benchmark?" Do private market assets/alternatives deliver a higher return for the same risk as public market assets, as the alt-asset managers say? Or do they deliver the same returns for a lower risk, as the hedge fund managers say?

You can't have it both ways, he said: "The 'no free lunch' advocates like myself don't buy it." And a plan sponsor can't choose an appropriate benchmark until it determines what alternative assets are supposed to do.

Amicus v. animus

ERISA was passed in 1974, near the end of a decade of civil unrest in the U.S. and of new "civil rights" legislation that recognized minority rights and that was aimed at placating, rather than punishing, much of the unrest. That legislation spawned thousands of pages of regulations, which put teeth in the laws.

Champions of a myriad of newly-articulated rights—not only of people of color but of voters, women, the environment, the aged and disabled, animals, tenants, the incarcerated, and pension plan participants—were soon able to wield those regulations as legal weapons against large corporations in class-action suits that organized previously diffuse interests into powerful "interest groups."

From the beginning—no later than the 1968 presidential election—the wave of civil rights reform sparked a counter-reformation from both Democratic and Republican administrations. Their animus was directed at "regulations" and "red tape" in general, but it often included criticism of the litigation targeting politically-influential corporations, filed by

plaintiffs' attorneys whose fees were contingent on victory in court, that the regulations made possible.

The DOL's recent ERISA briefs signal the Trump administration's amicus with that animus.

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