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## Managed Accounts in 401(k) Plans: Reducing

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## the Risk of Fiduciary Breach Claims

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*This article examines the complaints in several lawsuits alleging breach of fiduciary duty claims with*

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respect to managed accounts offered in 401(k) plans and discusses several key features of managed account services that would reduce the likelihood of a lawsuit (meritless or otherwise) against plan fiduciaries.

Managed accounts in 401(k) plans can provide participants with an additional opportunity to improve investment outcomes. As we discussed in Part 4 of our Conflicts of Interest series [*Journal of Pension Benefits*, Winter 2026], there are several ways that advisers can avoid a prohibited transaction when offering managed account services. In this article, we examine the complaints in several lawsuits alleging breach of fiduciary duty claims with respect to managed accounts offered in 401(k) plans and discuss ways to reduce the risk of breach of fiduciary duty lawsuits against plan fiduciaries. Specifically, we reviewed the complaints in *Babinski v. Siemens Energy, Inc.* [S.D.Tx. No. 4:25-cv-03381, complaint 7/22/25 (Babinski)]; *Gosse v. Dover Corporation* [N.D. Ill. East Div. No. 1:22-cv-04254, complaint (10/24/25)]; *Hanigan v. Bechtel Global Corporation* [E. Div. Va. No. 1:24-cv-00875, complaint (5/24/24) (Hanigan)]; *Reichert v. Juniper Networks, Inc.* [N. Dist. Cal. San Jose Div. No. 3:21-cv-06213, complaint (8/11/21)]; and *Vaccaro v. Pearson Education, Inc.* [S. Dist. N.Y. No. 1:24-cv-09744, complaint (12/19/24)].

Some of these lawsuits have now been settled or dismissed, while others are pending. However, the substance of the allegations made by plaintiffs in all of these cases is similar and merits consideration. Accordingly, in this article we examine those allegations and discuss several key features of managed account services that would reduce the likelihood of fiduciary breach claims.

### Background—ERISA Fiduciary Obligations

There are three kinds of managed account services. The first two types are investment management services selected and made available to plan participants as an investment service by the plan fiduciary—one type is managed by the plan's investment adviser and the second type is managed by a third-party adviser. The Department of Labor (DOL) refers to these first two types as designated investment managers (DIMs). [See DOL Field Assistance Bulletin (FAB) 2012-02R,

Q&A-4] The third type of managed account services is a wealth manager or other adviser who has no relationship with the plan and is hired directly by an individual plan participant. [See, for example, DOL Interpretive Bulletin 96-1(e).] In this article, we focus on the first two types of services.

Managed accounts offered as an investment alternative in a 401(k) plan are customized investment management services for participant accounts provided by a registered investment adviser (Adviser) selected by the plan fiduciary (for example, the plan sponsor, plan committee, officers). In providing the investment management services, the Adviser is a fiduciary under the Employee Retirement Income Security Act of 1974, as amended (ERISA) Section 3(21)(A)(i) and an investment manager under ERISA Section 3(38) with respect to the account assets. As an ERISA fiduciary, the Adviser must adhere to the duties of prudence and loyalty in managing the participant account assets. [ERISA §§ 404(a)(1)(A); (B)] The plan fiduciary is subject to the ERISA duties of prudence and loyalty in selecting and monitoring the Adviser and must discharge its duties “for the exclusive purpose of defraying reasonable expenses of administering the plan...” [ERISA § 404(a)(1)(A)(ii) (emphasis added)] If the plan fiduciary fails to prudently select or monitor the Adviser or allows the plan to pay more than reasonable amounts for the managed account service, this would be a fiduciary breach.

Allowing the plan to pay more than reasonable amounts for the managed account service also results in a prohibited transaction. Under ERISA Section 408(b)(2), compensation for services provided to a plan by a party in interest is permitted only if the services are necessary, the arrangement is reasonable, and the plan pays no more than reasonable compensation. Here, the Adviser of the managed account is a party in interest in its capacity as an ERISA fiduciary and also in its capacity as a plan service provider. [ERISA §§ 3(14)(A); (B)] In addition, DOL regulations require that the Adviser disclose to the responsible plan fiduciary (usually, a plan committee) reasonably in advance of the arrangement a description of the services, the Adviser's direct and indirect compensation for those services, and an acknowledgement of the Adviser's status as an ERISA fiduciary and a registered investment adviser. [DOL Reg. § 2550.408b-2(c)(1)] As we discussed in Part 4 of our Conflicts of Interest series, the DOL has issued guidance in the form of a Field Assistance Bulletin describing the application of these

disclosures and the participant disclosures required under Labor Reg. Section 2550.404a-5 to Advisers providing managed account services. [See DOL Field Assistance Bulletin 2012-02R].

### Plaintiffs' Allegations

Based on these ERISA rules, plaintiffs have focused on a number of factors to allege that plan fiduciaries (1) breached their fiduciary duty in selecting and monitoring the managed account service as an investment alternative and overpaying for that service; and (2) engaged in a prohibited transaction because the managed account fees paid were excessive.

### Comparable Lower Cost Investment Alternatives Were Available

In many of the lawsuits, the plaintiffs claimed that the managed account service was an imprudent investment alternative because the Adviser managing the managed account failed to utilize personalized investment strategies and instead the managed account resembled a funds of funds—like a target date fund (TDF)—but at a higher cost. Plaintiffs argued that a prudent plan fiduciary would have selected a less costly comparable alternative and that selecting and retaining the managed account as a plan investment alternative was, therefore, a breach of fiduciary duty. For instance, in the *Babinski* complaint, the plaintiff made the following claim:

In practice little or no material customization is provided to the vast majority of plan participants which results in no material value to most participants relative to the fees paid. ...Managed account services merely mimic the asset allocation available through a target date fund while charging additional unnecessary fees for their services. Indeed, customized or personalized managed accounts offer little to no advantage over lower-cost funds of funds, such as target date funds, risk-based funds and balanced funds. [Babinski at pars. 119-120]

In other words, the plaintiff's position was that, due to the standardized asset allocations utilized in the managed account service, it was virtually the same as a TDF, except more expensive.

### Managed Account Services were Not Individualized for the Participant

In many of the lawsuits, plaintiffs claimed that offering the managed account service was a breach of

the plan fiduciary's duty of prudence and loyalty to participants because the managed account provider did not collect sufficient data about the participant to customize the investment strategy. In *Hanigan*, the managed account service served as the qualified default investment alternative for participants who failed to make an investment election. In that complaint, the plaintiff claimed that:

The vast majority of Bechtel participants who were automatically defaulted into one of the [managed account] programs during the Class Period...did not provide any personalized or demographic information to Empower to customize their managed account program and thus, were enrolled in essentially very expensive and imprudent TDFs. [Hanigan at par. 18]

Hanigan's claims were dismissed by the District Court. The District Judge noted that the plaintiff's complaint contained an Exhibit relied on in the complaint, "which demonstrates that the [managed account] asset allocation considers factors that a TDF does not, including risk tolerance; account balance; outside assets and pension wealth; gender; salary; savings rate; pension compensation; and social security income." [Hanigan at page 5] The District Judge further reasoned that:

it appears from the information properly considered with respect to the respective plans, that the [managed account] engages in a level of asset allocation and management not present in a TDF; and Hanigan has not made any factual allegations that demonstrate that the asset allocation and investment management between a TDF and [the managed account] is sufficiently similar to plausibly allege that a TDF is a meaningful benchmark to support her first claim. [*Id.*]

### Unreasonable and Imprudent Fees

Plaintiffs also claimed that the managed account fees were unreasonable and imprudent based upon the services provided. Plaintiffs in *Babinski* alleged that:

Defendants could have offered the exact same managed account services at a lower cost by using a different managed account provider or relying on index or target date funds as alleged herein...As a result, based on the value provided, the reasonable fee for the managed account service was zero or very close to zero, and the use of the managed account services provided by [the adviser] cost the

Plan at least \$7.4 million from 2021 to 2023. [Babinski. at pars. 133-135]

## Ways to Reduce the Risk of Fiduciary Breach Lawsuits

The lawsuits discussed above focus on a supposed lack of meaningful value provided by the managed account services when compared to investment options available in the plans. It is questionable whether it is appropriate to compare managed account services to other types of investments based solely on returns over limited periods of time, without deeper analysis into factors such as returns during down- and up-markets, and individual considerations (such as risk tolerance and the needs of a participant). Nonetheless, there are features of managed account services that would reduce the likelihood of a lawsuit (meritless or otherwise) against plan fiduciaries. The recommendations below are not meant to opine on what ERISA requires in all situations, but are meant to identify action items to avoid lawsuits in the first instance.

### Sufficient Participant Data

A managed account service should take into account multiple data points about the participant and then use that information to develop and implement an investment strategy that aligns with those characteristics. In *Hanigan*, the District Judge pointed to the many data points used by the managed account provider, including risk tolerance; account balance; outside assets and pension wealth; gender; salary; savings rate; pension compensation; and social security income as a characteristic distinguishing it from a target date fund.

### Individualized Asset Allocation Strategies

The managed account service should utilize an individualized set of portfolios rather than a cookie-cutter

set of asset allocation models. A range of asset allocation portfolios with more possible variations, depending on the needs and characteristics of the particular participant, distinguishes the managed account service from a target date fund and should be viewed as more valuable.

### Asset Allocation Adjustments

The Adviser managing the managed account service should periodically adjust the allocations due to changed circumstances (for example, increased age, changes in compensation). This level of asset allocation adjustment and management adds more value to the service and distinguishes it from a target date fund.

### Additional Services

Coupled with the principal service of customized discretionary portfolio management, the Adviser should consider providing additional valuable services, for example, projections on retirement readiness, savings rate guidance, Social Security retirement benefit guidance, and retirement distribution planning. These additional services should be considered in evaluating the reasonableness of the Adviser's compensation. These additional services also support the higher managed account service fee as compared to that of a target date fund, which is based primarily on a single data point, the age of a participant.

### Conclusion

Plaintiffs' attorneys bringing breach of fiduciary claims are focused on costs alleging that the managed account service is standardized and has little value. To avoid that risk, managed account services should be structured to provide investment strategies that are individualized for the particular participant, provide for periodic asset allocations due to changed circumstances, and offer enhanced services that help participants promote retirement readiness. ■

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