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McKinley Carter

MASTER YOUR WEALTH.



Hello,

Spring has sprung and so have the fee litigation lawsuits against Plan Sponsors/named Fiduciaries. Working with a CEFEX certified 3(38) Fiduciary like McKinley Carter is like the weed killer (I make my own organic potion) to prevent a nasty looking lawn. In the case of your retirement plan, it prevents a nasty lawsuit and or IRS/DOL Audit. Note that litigation is coming down stream so you should not have a false sense of reality that your plan "is too small" or lacks a risk of audit. Many of these suits are being stirred up by teams of litigators as well as plan participants.

Our [first article](#) talks about a national accounting and consulting firm who was sued for excess fees. The bottom line summary of the article is: It behooves the prudent fiduciary to explore every avenue to protect themselves whilst acting in the best interests of their participants.

The [second article](#) speaks of IRS/DOL Audits and provides a laundry list of items for potential review during an audit. Quite a long list I must say – how would your plan fare in being able to check these items off? How about fiduciary education as auditors are likely to ask if the plan fiduciaries are participating in ongoing fiduciary education programs.

The [third and final article](#) also addresses Fee Litigation with a bit of a twist. The plaintiffs in this case have asserted claims for breach of the fiduciary duties of prudence and failure to monitor fiduciaries. Nothing new so far, but in

addition to naming the typical plan fiduciaries as defendants, the lawsuit also targets members of the board of directors, as well as other officers of the firm who serve on the retirement plan's fiduciary investment committee. The last paragraph of this article suggests there is a simple way of to offset such liability.

Each of these articles clearly demonstrates the strength in working with us as your 3(38) Plan Advisor whether it's the fiduciary education component of our services or the creation of a committee with all the documentation to offset liability and reduce risk.

We will continue to strive to be front and center of Fiduciary Best Practices that limit liability and fend off litigators and expensive and timely suits.

We are open for business so please refer us to a friend and colleague so we can spray our organic solution to the weeds that may lurk in their Plan gardens.

Until next time...

Sincerely,

[McKinley Carter Wealth Services](#)

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The Risk of 401(k) Lawsuits: If It Can Happen to Them...

~ by [MCWS](#)

When a giant organization with extensive resources gets sued for alleged ERISA compliance failures — especially if the organization's own service offerings include reviewing for such violations — that could very well be the canary in the coalmine for all other, lesser endowed firms. And that's perhaps the key takeaway for plan sponsors in light



of a complaint filed late last year against KPMG for an alleged fiduciary breach.

The lawsuit, filed by former KPMG 401(k) plan participants, names the firm's fiduciaries — including its Board of Directors and Pension Strategy and Investment Committee — as defendants. Noting established requirements, it points to the high level of diligence and care imposed by ERISA on fiduciaries and their responsibility to establish a prudent process for choosing service providers and investment options. It also cites their responsibility for ensuring these selections are appropriate on an ongoing basis. "Prudent and impartial plan sponsors thus should be monitoring both the performance and cost of the investments selected for their retirement plans," the complaint states, "as well as investigating alternatives in the marketplace to ensure that well-performing, low-cost investment options are being made available to plan participants."

[Read more](#)

IRS/DOL Audits Are Increasing Dramatically, Are You Ready?

~ by [MCWS](#)

Facts you should know

If your plan has not been recently audited, it is likely only a matter of time before the Internal Revenue Service (IRS) or the Department of Labor (DOL) comes knocking. If/when you are notified of an audit, early preparation can help streamline the process, keep the investigation narrow, as well as potentially avoid financial costs of potential penalties and interest.



DOL and IRS audits focus on different issues guided by their specific jurisdictions.

[Read more](#)

Fee Litigation with an Odd 'Twist'

~ by [MCWS](#)

A recent class action lawsuit highlights an often neglected but important item of fiduciary concern.

The plaintiffs in this case have asserted claims for breach of the fiduciary duties of prudence and failure to monitor fiduciaries. Nothing new so far, but in addition to naming the typical plan fiduciaries as defendants, the lawsuit also targets members of the board of directors, as well as other officers of the firm who serve on the retirement plan's fiduciary investment committee.



The complaint indicates that the "Taylor Corporation, ... is the Plan sponsor, the Plan Administrator (as defined in Section 3(16) of ERISA), and a named fiduciary," (highlights added).

You may be wondering why the board of directors is implicated in this litigation. The reason is that the Taylor Company's plan document indicates that "the company" is the named fiduciary for the plan. The "named fiduciary" identifies the plan's primary fiduciary (the main decisionmaker for the company).

[Read more](#)

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