

Supreme Court Receptive to Investors in 401(k) Case

Justices suggest appeals court was wrong in Edison suit

By Brent Kendall

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WASHINGTON—The Supreme Court on Tuesday signaled it was likely to side with 401(k) investors in a case that examines when workers can sue businesses for offering high-cost mutual-fund options in retirement plans when cheaper options are available.

The justices, in a case examining the 401(k) offerings by energy holding company Edison International, suggested a San Francisco-based federal appeals court was wrong when it held a legal time limit barred employees from suing over allegedly higher-cost funds that had been offered as options in the 401(k) for more than six years.

The Supreme Court's hourlong oral argument largely proceeded on the assumption the appeals court applied the time limit too strictly. Justice Samuel Alito said both sides in the case seemed to agree that such lawsuits are "not categorically barred."

If the court rules for the 401(k) investors, it could open the door for other lawsuits. More than a dozen companies, including Boeing Co. and Massachusetts Mutual Life Insurance Co., have faced similar claims.

The justices appeared to believe the lawsuits would be allowable in some circumstances because employee benefit managers have an ongoing duty to ensure that investment options in 401(k) plans are prudent, no matter how long those options have been offered.

Several justices, however, said the current case might not allow them to rule on the exact duties a company must meet in overseeing its 401(k) investment options. "I, for one, am not ready to do that," Justice Sonia Sotomayor said.

Jonathan Hacker, a lawyer for Edison, said it can't be the case that companies have to "constantly look and scour the market for...cheaper investment options," for retirement-plan participants.

"Well, you certainly do, if that's what a prudent trustee would do," Justice Anthony Kennedy responded.

Employees filed their lawsuit against Edison in 2007, alleging the company violated its federal-law duty to administer its benefits plan prudently. They argued the company breached that duty by offering higher-cost retail mutual funds when identical institutional-class funds were available with lower fees.

Some justices questioned why a benefit-plan manager would continue to offer workers higher-fee funds when the same funds could be obtained for less.

Mr. Hacker said there were costs associated with switching fund options and workers could be confused by the changes.

Chief Justice John Roberts said workers wouldn't be opposed to an employer switching fund offerings if the new option charged lower fees. "They're not going to, you know, be running out in the halls screaming that there's confusion about that," he said.

Lawyer David Frederick, representing the Edison workers who sued, told the Supreme Court that trustees who oversee 401(k) plans should monitor the performance of investment options on a regular basis and look at fund options to determine if there's a cheaper way to get the same investment with lower expenses. "That's not heavy lifting," he said.

The Obama administration is supporting the investors in the case. A decision in *Tibble v. Edison International* is expected before July.

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