

## Worth Noting

### Challenging Excessive Fees Emerging Trend Among “Smaller Plans”

Over the course of the nine years *Tibble v. Edison* was being litigated in the courts, the case called ongoing attention to the responsibility plan sponsors have to ensure participants are not subjected to excessive fees. (\*)

The case also reinforced the conventional wisdom that it's generally fiduciaries overseeing plans with substantial assets and hundreds if not thousands of participants who run the risk of becoming embroiled in charges relating to excessive fees.

And there are any numbers of cases, both past and pending, that support this misconception.

For example, Ameriprise Financial recently agreed to pay \$27.5 million to settle a lawsuit brought as a result of excessive fees, and Lockheed Martin is paying a reported \$62 million to its plan participants for similar reasons.

Another high profile lawsuit involving charges of excessive fees was filed recently against M&T Bank Corporation, which has a 401(k) plan with nearly \$2 billion in assets.

But, at the same time these and other lawsuits were dominating the news, lawyers were filing papers on behalf of a very small but determined number of plaintiffs. More specifically, the case in question, *Damberg v. LaMettry's Collision*, involves a plan with just \$9.2 million in assets and 114 participants.

In the lawsuit, the employees allege that plan fiduciaries breached their responsibilities by paying excessive fees involving not only investments but recordkeeping and administration services as well. That breach of duty, the suit claims, ultimately resulted in participants overpaying hundreds of thousands of dollars in fees.

And the plaintiffs in *Damberg v. LaMettry* are not alone. This case is only one of an increasing number of lawsuits involving “small” 401(k) plans that have been filed across the country in recent months.

So, this emerging trend is one well worth noting.

(\*) In the end, the case wasn't decided on the issue of excessive fees; rather, the 9th U.S. District Circuit Court of Appeals (San Francisco) found in favor of Edison due to the statute of limitations pertaining to the primary basis for the lawsuit.

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