

Northern Trust Must Face Suit Over 401(k) Plan's In-House Funds

By Jacklyn Wille 2022-08-10T09:55:45000-04:00

- Judge rejects ERISA standing argument he previously accepted
- Several recent suits target Northern Trust Focus Funds

Investors in Northern Trust Co.'s \$2.7 billion 401(k) plan advanced a lawsuit challenging the plan's recordkeeping fees and its decision to offer proprietary target date funds as the default investment option, according to an Illinois federal court ruling.

The investors can move forward with claims for fiduciary imprudence under the Employee Retirement Income Security Act, because they adequately alleged that the Northern Trust Focus Target Retirement Trusts chronically underperformed comparable alternatives, Judge [Charles R. Norgle Sr.](#) said.

Norgle also greenlighted claims of fiduciary disloyalty.

"The Focus Funds—the only target date funds offered in the Plan and the default fund option for all Plan participants—were proprietary funds, which is circumstantial evidence that Defendants were self-interested and purposefully imprudent to the detriment of Plan beneficiaries," he said.

Norgle, who sits in the US District Court for the Northern District of Illinois, declined to follow the US Court of Appeals for the Sixth Circuit's recent decision in [Smith v. CommonSpirit Health](#), which rejected claims that a retirement plan improperly paid excessive administrative fees and offered expensive and poorly performing funds. The complaint found insufficient by the *Smith* court was based on three to five years of investment performance history and comparisons between active and passively managed funds, whereas the Northern Trust investors allege a decade of underperformance based on comparisons between sufficiently similar funds, Norgle said.

Norgle's order, docketed Aug. 8, also rejected Northern Trust's standing arguments, which urged him to hold that the named plaintiffs lacked standing to challenge any funds they didn't personally hold in their retirement accounts. Norgle acknowledged that he'd previously issued a [decision to this effect](#) in

a case involving the Walgreen Co. 401(k) plan, but he said he's "persuaded by the weight of authority to change course," citing recent rulings involving [Universal Health Services Inc.](#) and [Goldman Sachs Group](#).

The [proposed class action](#) accuses Northern Trust of enriching itself at the expense of its workers' retirement savings by choosing expensive, proprietary target date funds as the default investment option in its 12,000-person 401(k) plan. It also challenges the plan's annual recordkeeping fees, which were allegedly as high as \$160 per person.

These Northern Trust Focus Funds have driven several recent ERISA lawsuits. Allstate Corp. [lost](#) its bid to dismiss litigation over the Northern Trust funds in its 401(k) plan, and Walgreen's signed a [\\$13.75 million class settlement](#) in a similar case. [Takeda Pharmaceuticals USA Inc.](#) is also defending litigation over these funds.

Scott & Scott LLP, Law Offices of Michael M. Mulder, and Peiffer Wolf Carr Kane & Conway LLP represent the Northern Trust plan participants. Willkie Farr & Gallagher LLP represents Northern Trust.

The case is [Conlon v. Northern Tr. Co.](#) , N.D. Ill., No. 1:21-cv-02940, decision docketed 8/8/22 .

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