As the circuit courts continue to define the pleading standards for fiduciary breach claims challenging investments in defined contribution plans, the Eighth Circuit affirmed in part and reversed in part a district court’s finding that a group of 403(b) plan participants failed to state such a claim. In *Davis v Washington University*, plaintiffs alleged that plan fiduciaries breached their ERISA fiduciary duties by maintaining a mixed array of retail and institutional share classes in the plan’s line up and including three specific investment options in the plan that underperformed and cost more than other allegedly comparable funds available on the market. The district court dismissed the claims entirely.

The Eighth Circuit affirmed the dismissal of plaintiffs’ fund-by-fund challenge of fees and performance finding that the complaint alleged no meaningful comparators and instead pointed to funds with different structures, strategies, and management styles. Even with proper comparators, the Court held that minimal fee differences (here, between .06% and .11%) between the funds in the plan and comparators would
not be sufficient to state a claim. However, the Court reversed the dismissal of plaintiffs’ claim based on including retail share classes in the plan. Recognizing there could be lawful reasons for the fiduciaries’ conduct, the Court emphasized that inferences must be drawn in favor of the plaintiffs when reasonable, and the allegations that lower-cost share classes existed and that the plan had the buying power to invest in them stated a claim at the pleading stage.

The decision illustrates the importance of fiduciaries’ regular review of the fees charged for investment options in defined contribution plans and communication of those fees to plan participants, as the defendants, in this case, were able to secure early dismissal of many claims against them by pointing to disclosures about the investment options and the minimal fee differences between the plan’s funds and comparable funds.

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