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# *COMMENTARY*

## *Anderson v. Intel: What the Supreme Court Case Could Mean for ERISA Plaintiffs*

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When employees channel their compensation into retirement accounts, they hope that the value of their investments will increase over time to provide financial security upon retirement. Tax and employer incentives further encourage employees to participate in retirement plans.[1] Employees may personally lack the necessary expertise to make sound investment decisions. As a result, they entrust their money to someone else to make those decisions on their behalf.[2] But what happens when plan portfolios underperform because the person to whom they gave their money made poor investment decisions?

Plan fiduciaries are individuals or entities who exercise discretionary control or authority over the management, administration, or disposition of employee benefit plan assets.[3] The Employment Retirement Income Security Act (ERISA) imposes a duty of prudence upon plan fiduciaries.[4] The plan fiduciary must discharge his or her duties "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."[5] Courts give strong deference to the decisions of plan fiduciaries because fiduciaries often consider difficult tradeoffs and refer to their specialized knowledge to make decisions.[6]

When a fund underperforms, a plan participant may claim that the plan fiduciary breached their duty of prudence. However, the plan participant benefits from hindsight. The plan fiduciary does not have that same benefit when making investment decisions.[7] When evaluating whether a

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[1] Roger Young, *Do Retirement Plans Still Make Sense? The Successes and Benefits of 401(k) Plans*, T. ROWE PRICE (Aug. 2025), https://www.troweprice.com/personal-investing/resources/insights/four-reasons-401-k-plans-still-make-sense.html.

[2] Meeting Your Fiduciary Responsibilities, U.S. DEP'T OF LAB., (last visited Nov. 20, 2026), https://www.dol.gov/node/63375.

[3] 29 U.S.C. § 1002(21)(A).

[4] 29 U.S.C. § 1104(a)(1)(B).

[5] *Id.*

[6] *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022).

[7] *Pension Ben. Guar. Corp. ex rel. St. Vincent Cath. Med. Centers Ret. Plan v. Morgan Stanley Inv. Mgmt. Inc.*, 712 F.3d 705, 716 (2d Cir. 2013).

fiduciary breached their duty of prudence, the courts consider whether the plan fiduciary "employed the appropriate methods to investigate the merits of the investment and to structure the investment."[8] But when alleging breach based on fund underperformance, how can courts differentiate between reasonable investment decisions that simply reaped lower returns versus truly unreasonable investment decisions?

Last month, the Supreme Court heard oral arguments over whether ERISA plaintiffs alleging breaches of the fiduciary duty of prudence based on fund underperformance must plead a "meaningful benchmark." In *Anderson v. Intel Corp. Inv. Pol'y Comm.*, Anderson brought a class action lawsuit under ERISA alleging that Intel plan fiduciaries breached their duty of prudence by investing plan assets into hedge funds and private equity funds.[9] The district court dismissed Anderson's suit for failure to state a claim, arguing that Anderson failed to show that the investments underperformed compared to peer funds.[10] The court stressed that Anderson failed to provide a "meaningful benchmark" against which the court could compare the Intel plan funds.[11] The Ninth Circuit affirmed.[12]

The thrust of petitioner's argument before the Supreme Court was that ERISA's duty of prudence is inherently flexible and requires a careful case-by-case analysis.[13] The Ninth Circuit's "meaningful benchmark" standard, however, adopts a categorical rule requiring plaintiffs to identify a virtually indistinguishable comparator fund to make it past the motion to dismiss stage.[14] Further, the petitioner argued that *Twombly* and *Iqbal* require the courts to balance all non-conclusory allegations to determine if a complaint plausibly states a claim, lending further support to a flexible approach.[15] Although merely alleging that one fund underperformed another does not state a plausible claim, the petitioner contended that throwing out an *entire* claim based on a failure to provide an acceptable comparator fund is too rigid because the courts must consider all relevant circumstances.[16] Alternatively, the respondent urged the need for an "apples-to-apples" comparison when evaluating the plausibility of a breach of duty of prudence claim premised upon fund underperformance.[17] Identifying a virtually indistinguishable comparator fund is necessary to assess whether an ERISA plaintiff alleges a plausible claim because it narrows the comparison to funds with similar aims and objectives.[18]

Although the Court has yet to issue an opinion, it signaled strong skepticism toward the petitioner's arguments. No matter the outcome, the Court's decision will have a profound impact on the feasibility for ERISA plaintiffs to plead breaches of fiduciary duty premised on fund

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[8] *Donovan v. Mazzola*, 716 F.2d 1226, 1232 (9th Cir. 1983).

[9] *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015, 1019 (9th Cir. 2025), cert. granted, 223 L. Ed. 2d 553 (Jan. 16, 2026).

[10] *Id.*

[11] *Id.* at 1020.

[12] *Id.* at 1027.

[13] Transcript of Oral Argument at 4, *Anderson v. Intel Corp. Inv. Pol'y Comm.*, No. 25-498 (U.S. Oct. 6, 2026).

[14] *Id.* at 4–5.

[15] *Id.* at 5.

[16] *Id.*

[17] *Id.* at 41.

[18] *Id.*

underperformance. The Court may very well affirm the "meaningful benchmark" standard. But if a plaintiff must show that a substantially indistinguishable fund reaped higher returns, how can they meet this standard in a case where a plan fiduciary makes unprecedented investment decisions? In this case, no comparator fund will exist precisely because of such novel decision-making. The standard becomes circular and creates a logical gap that only additional litigation can reconcile.

Ultimately, the Court's decision should properly account for the individuals that ERISA was designed to protect: employees who entrust their retirement savings to fiduciaries. Although fiduciaries should not be held liable simply because an investment underperforms, employees should not be left without a meaningful avenue for relief when fiduciaries breach their duty of prudence. Requiring a meaningful benchmark serves as an important safeguard against hindsight-driven litigation, but that standard should not become an overwhelming obstacle for plaintiffs challenging unprecedented investment strategies. The more difficult it becomes for employees to challenge imprudent investment decisions, the less meaningful the protections afforded by ERISA become. The Court should seek a standard that preserves the flexibility fiduciaries need to make reasonable investment decisions without sacrificing the protections employees depend on when entrusting others with their money.