



Proving prudence and participant loyalty: A plan committee defends itself

June 17, 2020

Diane Gallagher

Vice President

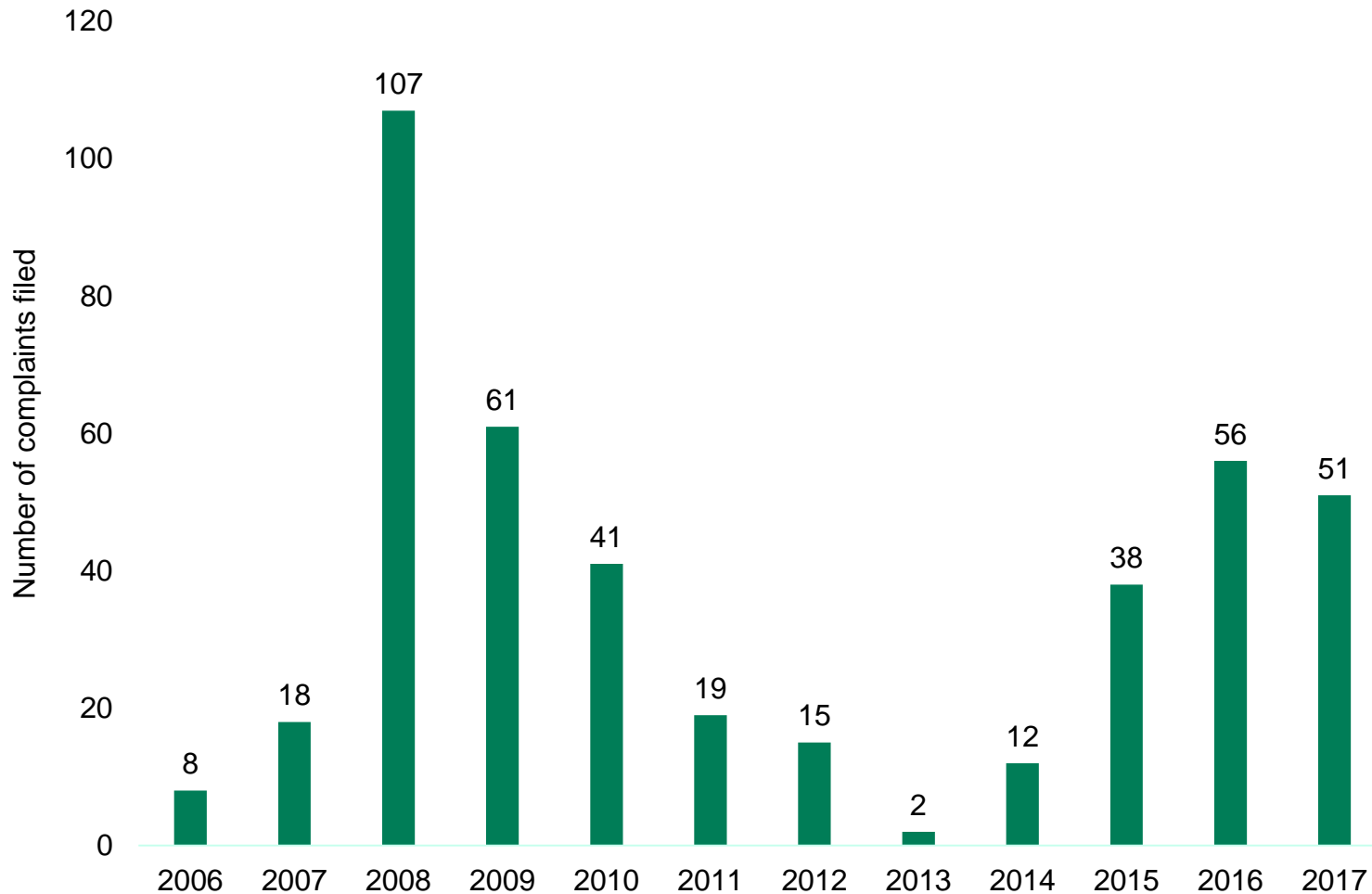
Chair, Retirement Plan Committee

ACI-1640021

Discussion

- Industry litigation landscape
- Internal history and perspective
- The case
- Decision
- Tips to consider

Number of 401(k) plan complaints



Source: Bloomberg Bureau of National Affairs, ERISA Litigation Tracker (2018); "401(k) Lawsuits: What are the Causes and Consequences?" Center for Retirement Research at Boston College, May 2018



FOR INSTITUTIONAL USE ONLY / NOT FOR PUBLIC USE

Three general categories of dispute

Inappropriate investment choices	Excessive fees	Self-dealing
<ul style="list-style-type: none">▪ Process, not outcome	<ul style="list-style-type: none">▪ Investment fees▪ Administrative fees	<ul style="list-style-type: none">▪ Best interests of participants

Most common

Most financial services cases

Source: Bloomberg Bureau of National Affairs, ERISA Litigation Tracker (2018); “401(k) Lawsuits: What are the Causes and Consequences?” Center for Retirement Research at Boston College, May 2018



The American Century Retirement Plan

- Match 100% on first 5%
- Automatic enrollment at 5% (with annual sweep) and automatic increase to 15%
- Discretionary profit-sharing contribution
- Target-date CITs, actively-managed investments, passive sleeve, self-directed brokerage
- Qualified Default Investment Alternative (QDIA) re-enrollment

Plan Assets	\$667.9 million
Total Participants	2,098
Active Participants	1,355
Average Deferral Rate	10.29%

**as of 12/31/2018*



Deep experience in qualified retirement plans

Participant &
Sponsor
Research

Consultant
Tools &
Resources

Target-date
Manager
2004-current

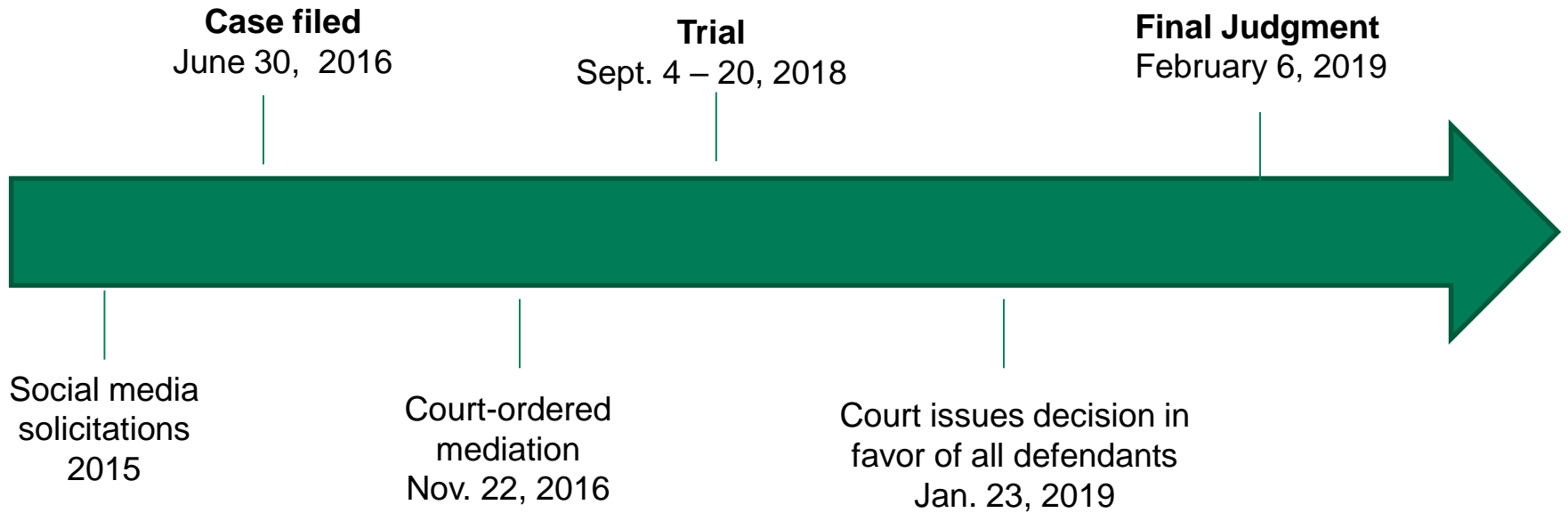
Recordkeeper
1989-2003

Investment
Management

The case

- Class action covering 2010-2016
- Steve Wildman, et al., Plaintiffs, vs. American Century Services, LLC, et al., Defendants
- Claims of breaches of fiduciary duty and prohibited transactions under ERISA

Timeline



Key points of decision

- Experienced committee members
 - CFA, CFP, career retirement professionals
 - Benchmarking studies on best practices for discussion
 - Annual fiduciary training
- Understanding of the employee population
 - Sequencing of plan changes to minimize participant disruption
 - High percentage of investment professionals among employee base
- Multi-dimensional investment consideration process
 - Evaluation factors of risk-adjusted performance, interviews with portfolio managers and market conditions, among others
 - Directional – not prescriptive – Investment Policy Statement (IPS)
 - Documented, in-depth debate and discussion over important plan issues.

Summary

“The Court finds Plaintiffs failed to prove Defendants breached any fiduciary duty to the Plan Participants.”

Instead,

“The evidence shows the Committee thoroughly discussed the composition of the Plan’s lineup to ensure it covered the entire risk/reward spectrum without duplication while the Plan offered a large number of investment options to participants, it was certainly not imprudent to do so given the sophisticated investor base of the Plan participants.”

- Greg Kays, Chief Judge, United States District Court
for the Western District of Missouri, Western Division

Important tips

Have a process...and follow it.

Investment Policy Statement (IPS) should offer guidelines not directions.

Meeting minutes should include discussion items and next steps

Committees should meet with portfolio managers directly.

Remember that handwritten notes, emails, instant messages, etc. are admissible.

Maintain accessible electronic files of committee documents.

Conduct annual fiduciary training.

Hold regularly-scheduled committee meetings.

Consider a consultant if there isn't expertise internally.

Act in the best interests of participants, always.

Important Information

Managing Money, Making An Impact

American Century Investments® is a leading asset manager focused on delivering investment results and building long-term client relationships while supporting research that can improve health and save lives. It's how we and our clients together **Prosper With Purpose**®

Every day people are increasingly focused on investing to make the world a better place for themselves, their families, their organizations, and the world at large. It is possible to live a more meaningful and impactful life and give back something that's more valuable than money.

When you invest with us, you can also invest in the future of others and have the potential to impact the lives of millions. That's possible because of the distinct relationship with the Stowers Institute for Medical Research, which owns more than 40% of American Century Investments. Our dividend payments provide ongoing financial support for the Institute's work of uncovering the causes, treatments and prevention of life-threatening diseases, like cancer.

Together we can become a powerful force for good.



American Century Investments®

- Performance focus for 60 years
- Pure play business model
- Privately controlled and independent
- Prosper With Purpose®

This material has been prepared for educational purposes only. It is not intended to provide, and should not be relied upon for, investment, accounting, legal or tax advice.

The contents of this American Century Investments presentation are protected by applicable copyright and trademark laws. No permission is granted to copy, redistribute, modify, post or frame any text, graphics, images, trademarks, designs or logos.

©2019 American Century Proprietary Holdings, Inc. All rights reserved

