

[TIME TO REVISIT TIBBLE VS. EDISON \(2015\) SUPREME COURT 9-0 RULING](#)

***IT COULD BE REALLY BAD LUCK IN 2021 FOR IMPRUDENT ERISA FIDUCIARIES*
THE ERISA 6-YEAR STATUTE OF LIMITATIONS
DOES NOT APPLY UNTIL SIX YEARS AFTER A BREACH IS CURED
(Ignorance is no longer bliss -- Folly is not wise!)**

The Supreme Court 9-0 ruled in a major 2015 ERISA case in favor of 401K participants versus Edison and overturned the 9th Circuit Court of Appeals.

Judge Breyer in *Tibble v. Edison International* wrote: “*ERISA’s fiduciary duty is derived from the common law of trusts, which provides that a trustee has a continuing duty - separate and apart from the duty to exercise prudence in selecting investments at the outset – to monitor, and remove imprudent investments.*”

The question before the court had to do with a 1999 addition of three retail-class mutual funds and whether this constituted a fiduciary breach even though the action was brought in 2007 which was beyond ERISA’s six-year statute of limitations. Three other retail class funds were added in 2002 and the plaintiff’s lawyers argued all along that the six-year limit to make a claim begins at the last point fiduciaries proved to have not prudently monitored the investments, which was in 2002.

The Supreme Court agreed and said “*So long as a plaintiff’s claim alleging breach of the continuing duty of prudence occurred within six years of the suit, the claim is timely*” [for the 1999 breach as well as the 2002 breach].

APPLICABILITY TO UNCOMPENSATED RISK: Through Investment Policy Statements (IPS) and implementation of their resulting asset allocation, a portfolio’s compensated (undiversifiable) risk strategies are usually well managed, while the management of uncompensated (diversifiable) risk is usually ignored.

“Failure to diversify on a prudent and reasonable basis to reduce ‘uncompensated risk’ is a violation of both the duty of caution and the duties of care and skill.”

Sec. 227, Restatement 3rd of Trusts <http://precisionfiduciary.com/restatement/>

TAKEAWAY: Beware of Regulators, Litigators & now Auditors! All fiduciaries should have by now adapted an IPS review and audit and should have established a documented record and procedural prudent process for all decisions concerning plan investments. The ERISA six-year statute of limitations doesn’t start to run until any imprudent actions stop and when imprudence continues the breach goes back to when it started (which could be unlimited). Ignorance is no longer bliss and folly is not wise.

THE INSTITUTE FOR PORTFOLIO DIVERSIFICATION



<https://portfolio-diversification-institute.com/>

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