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Trustees settle multiemployer DC plan lawsuit for $8.75 million

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Union worker multiemployer defined contribution plan settles participant class-action lawsuit for $8.75 million.

The Board of Trustees of Supplemental Income Trust Fund, the sponsor of a multiemployer defined contribution plan for union members, has agreed to settle a class-action lawsuit brought by two plan participants for about $8.75 million.

The hearing for preliminary approval of the settlement is scheduled for May, with the final hearing slated for August, according to court documents filed Monday with the U.S. District Court in Santa Ana, Calif.

Felipe Ybarra and Cesario Serrato, the two participants in the $1.1 billion Supplemental Income 401(k) Plan, alleged that the board of trustees breached their fiduciary duties by offering retail class mutual fund shares when identical lower-cost institutional shares were available. They also accused the defendants of paying its record keeper excessive fees through revenue-sharing arrangements with the mutual funds offered as investment options under the plan.

The breaches cost plan participants "millions of dollars in excessive fees, costs and lost investment opportunity," lawyers for the plaintiffs claimed in court documents.

Messrs. Ybarra and Mr. Serrato filed the lawsuit in November 2017 on behalf of participants and beneficiaries of the plan. In addition to the board of trustees, the plaintiffs also named in the lawsuit board members Richard Barbour, executive vice president of The Herrick Corp.; Keith E. Fleming, chairman of Industrial Employers Distributors Association; Rome A. Aloise, secretary-treasurer of Teamsters Local 853; Carlos Borba, president of Teamsters Local 315; and Clark Ritchey, secretary-treasurer of Teamsters District Council 2.

The defendants denied the allegations but agreed to settle the matter rather than incur the risk and expense of further litigation, according to court documents. A spokesman for the plan sponsor did not return a phone call requesting comment from the board members.

The settlement calls for the creation of a "non-reversionary common fund" of about $8.75 million, which is the amount remaining under the defendants' fiduciary liability policy after paying for defense costs. The settlement covers all former and current plan participants who had account balances between Dec. 1, 2011, and Dec. 31, 2018.

In addition to creating the fund, the defendants also agreed to hire an independent consultant to oversee a request for proposals for plan record-keeping and administrative services, something the plaintiffs claimed hadn't been done in more than 15 years. The RFP process is be completed prior to the end of 2019, according to the settlement agreement.

"The RFP process is expected to result in substantially lower administrative and record-keeping fees, thereby saving plan participants millions of dollars, collectively," the lawyers for the plaintiffs — Andrew D. Stolper, Jason M. Frank and Scott H. Sims of Frank Sims & Stolper, and Paul Wood and Franklin D. Azar of Franklin D. Azar & Associates — said in court documents.

The plaintiffs lawyers said in an email they had no comment.

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