

# Individual Inquiries Predominate in 401(k) Litigation

December 23, 2015

In denying class certification in an action against Transamerica Life Insurance Company (TLIC), the Central District of California noted that the “sheer number of participants and plans” potentially involved in this litigation meant that “any difference in facts or legal posture among plans is potentially multiplied by a thousandfold[.]” The plaintiffs in *Santomenno v. Transamerica Life Ins. Co.* – three 401(k) plan participants from two different retirement plans – sought to represent a class of “about 300,000 participants in about 7,400 plans” serviced by TLIC. TLIC offers 401(k) products consisting of investment options and administrative services to small and midsize employers, operating about 15,500 such plans and managing approximately \$19.5 billion in plan assets. Plaintiffs alleged that TLIC’s fees on its retirement accounts were excessive and constituted a breach of its fiduciary duty under ERISA. Specifically, plaintiffs alleged that “TLIC’s fees on separate accounts that invest in publicly available mutual funds are excessive because TLIC provides no services on such accounts[.]” In addition, plaintiffs alleged that TLIC did not use its institutional leverage to invest their money in the lowest price share class of mutual funds, and that TLIC’s affiliates made transactions prohibited under ERISA. The nail in the certification coffin turned out to be predominance: the court concluded that individual questions regarding the investment management/administrative management charges and lower-cost share classes would predominate over the common questions in this case. Even though the Central District denied certification, it noted that its holding was limited and that “[i]f the question of evaluation of total plan expenses against total plan fees were more directly presented, or if the class more narrowly drawn (so that individualized inquiries, even if present, would not overwhelm common questions), the holding might well be different.”

## Related Practices

[Life, Annuity, and Retirement Litigation](#)

# Related Industries

## Life, Annuity, and Retirement Solutions

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.