

## 13-550 TRIBBLE V. EDISON INTERNATIONAL

DECISION BELOW: 729 F.3d 1110

LOWER COURT CASE NUMBER: 10-56406

QUESTION PRESENTED:

The Employee Retirement Income Security Act of 1974 (ERISA) imposes duties on retirement plan fiduciaries that are "the highest known to the law", and provides a six-year statute of limitations for plan participants to pursue an action for breach of those duties. Although Plaintiffs obtained a judgment that their 401(k) plan fiduciaries had breached their duties by selecting certain investment funds for their plan within six years of the complaint, the Ninth Circuit held that an identical claim as to other funds that were imprudent for the same reason, and continued to harm Plaintiffs at the time of their complaint, was time-barred because the funds were initially selected more than six years earlier. The Ninth Circuit also replaced ERISA's stringent fiduciary standard with the deferential standard of review that *Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101 (1989) adopted in §1132(a)(1)(B) actions challenging denials of benefits.

The questions presented are:

1. Notwithstanding the ongoing nature of ERISA's fiduciary duties, does the statute of limitations under 29 U.S.C. §1113(1) immunize 401(k) plan fiduciaries for retaining imprudent investments that continue to cause the plan losses if the funds were first included in the plan more than six years ago?

2. Does *Firestone* deference apply to fiduciary breach actions under 29 U.S.C. §1132(a)(2), where the fiduciary allegedly violated the terms of the govern-ing plan document in a manner that favors the finan-cial interests of the plan sponsor at the expense of plan participants?

GRANTED LIMITED TO THE FOLLOWING QUESTION: "WHETHER A CLAIM THAT ERISA PLAN FIDUCIARIES BREACHED THEIR DUTY OF PRUDENCE BY OFFERING HIGHER-COST RETAIL-CLASS MUTUAL FUNDS TO PLAN PARTICIPANTS, EVEN THOUGH IDENTICAL LOWER-COST INSTITUTION-CLASS MUTUAL FUNDS WERE AVAILABLE, IS BARRED BY 29 U.S.C. §1113(1) WHEN FIDUCIARIES INITIALLY CHOSE THE HIGHER-COST MUTUAL FUNDS AS PLAN INVESTMENTS MORE THAN SIX YEARS BEFORE THE CLAIM WAS FILED."

CERT. GRANTED 10/2/2014