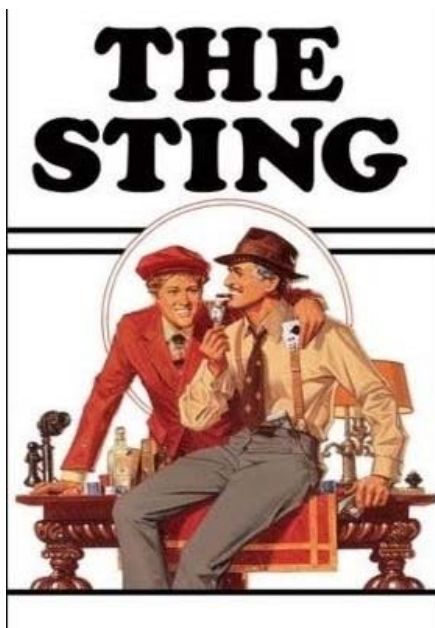


**THE
ROSENBAUM
LAW FIRM P.C.**

THE LAW FIRM REVIEW
A Publication for Plan Sponsors and Retirement Plan
Professionals

What Makes A 401(k) Plan A Target For Litigation.

Don't be a mark.



I've always been a big fan of 1970's cinema and one forgotten classic is The Sting, starring Paul Newman, Robert Redford, and Robert Shaw. The title to the movie refers to the exact moment when the con artist finishes the "play" and takes the mark's money. Of course, any con requires a mark and a mark is that gullible person, "the sucker" for the con. When it comes to 401(k) plans, there are certain plan sponsors that are going to be the "mark" to get sued over their 401(k) plan. I'm not suggesting that 401(k) litigation is an actual con, but a plan sponsor who makes mistakes and ignores the plan is certainly a gullible person. This article lets 401(k) plan sponsors know what they can do to avoid being a mark or target for litigation.

To read the article, please click [here](#).

What 401(k) Plan Sponsors Shouldn't Forget.

Lots of things they can't forget.

It's easy to forget things. Heck, half of the things my wife tells me to do is forgotten by the afternoon. My wife often suggests that I keep a list of things I need to do so I don't forget. Of course, I forget to keep lists. Seriously, a plan sponsor can't afford to forget things because of their role as a



retirement plan sponsor. So this article is a list of things that plan sponsors shouldn't forget about their 401(k) plan.

For the article, click [here](#).

You Might Have A Problem With Your 401(k) Plan When....

If you do, deal with it.



There are many situations in life when you clearly have a problem such as leaving the stove on when you leave home, or when the next-door neighbor leased the house to a rock band looking for a place to practice. When it comes to sponsoring a 401(k) plan, there are many situations that may lead to an immediate

problem. This article will let you know which signs on your 401(k) plan are actual major problems.

To read the article, please click [here](#).

The effect of more 401(k) bundled provider litigation.

What will happen is just common sense.

There is a proliferation of litigation against plan sponsors and against bundled 401(k) plan providers for offering their own proprietary funds in 401(k) plans for their employees as well as the 401(k) plans they administer their clients.

Mutual fund companies went into the 401(k) administration as a bundled provider because they saw it as an inexpensive way of distributing their mutual funds. More distribution of mutual funds

is going to equal more management fees and that means more money in the pockets of the mutual funds.



People don't hire Fidelity as their bundled provider solution for 401(k) plans because they love T. Rowe Price and Vanguard. They hire Fidelity because they love their funds and think that this will also lower their administration costs.

Now if plan sponsors and bundled provider get targeted with enough litigation for offering proprietary funds in a 401(k) plan, eventually these bundled providers will decide that it's too costly to be in the administration business because rising litigation costs no longer make this a cost effective distribution of their mutual funds.

I believe that thanks to litigation and the forthcoming fiduciary rule, more bundled providers will exit the 401(k) industry just like many did with the fee disclosure regulations being implemented in 2012. Its just common sense.

401(k) Litigation: The Next Frontier .

What's up next.



With the proliferation of litigation against 401(k) plans, it should be noted that it focuses on only one thing: cost. Litigation surrounding share classes, proprietary funds, and overall plan expenses is all about plan participants shelling out too much in fees or at least that's what these plaintiff ERISA litigators are arguing about.

Eventually ERISA litigators will be done with litigation concerning fees. There will be those ERISA litigators that will still focus on fee litigation until they waste their time arguing cases where a plan participant is paying 5 basis points more than maybe they should because the sad fact is that many ERISA litigators don't understand that such litigation is effectively trying to get blood from a stone. We will eventually reach a point of 401(k) fee litigation overkill if we aren't there already.

The next frontier in 401(k) litigation isn't going to be about fees and it's going to be the issue that most plan sponsors and providers neglect. It's also going to need the right climate and that climate is going to be a bad market for investing. In my opinion, a fertile ground for litigation is going to be surrounding losses incurred by plan participants where they direct their own investments under

ERISA §404(c) and the plan sponsor doesn't provide enough information for participants to make informed investment decisions. Too many plan sponsors think that they are bullet proof under ERISA §404(c) as it offers them absolute liability protection from losses incurred by plan participants when they exercise control over their investments. The problem is that it's not the case, protection is a sliding scale and is dependent on how much a plan sponsor informs participants about investments and the investment options offered under the plan. Too often, plan sponsors offer little information and no investment education to plan participants. I'm sure that's the case with many large plans, which makes them easy pickings for hungry ERISA litigators. People laughed at me when I suggested that small to medium sized 401(k) plans were at risk for litigation. I'm sure there will be those that laugh at my suggestion that the next big thing of 401(k) litigation will be ERISA §404(c), time will tell again if I'm right again.

Introducing That 401(k) Site.

That401kSite.com.

Starting right after Labor Day, I will be launching a new 401(k)-centric website called that401k.com.

The website is a 401(k) Freedom Inc. production.

I'm sure many are asking why another 401(k) website? There are many great 401(k) news websites out there like 401khelpcenter.com; benefitslink.com; and 401kspecialistmag.com. The difference my site and the others ones is that we're not going to be a 401(k) news site. We're going to be a site that won't tell you what the Department of Labor did, we'll tell you how it will affect you as a plan sponsor and/or plan provider. Think of Bill Simmons' theringer.com meeting 401(k) plans.




The site is geared towards both plan sponsors and plan providers. It will contain articles on how they can improve their standing by instituting good practices. It will talk about law changes and court decisions and how it will impact their duties as plan fiduciaries and plan providers. We're even going to run content that has nothing to do with 401(k) plans such as why Caddyshack II was one of the worst movie sequels of all time and why drinking light beer makes no sense.


I'll be a main writer on the site, but I won't be the only writer. If you can provide good and interesting content geared towards plan providers and/or plan sponsors, let me know by calling me or by [email](#). If you can provider content about pop culture, let me know too.

We can't run alone on content. We need advertising. If you're a plan custodian, mutual fund company, third party administrator, financial advisory firm, broker-dealer, ERISA auditor, or any other type of retirement plan provider, consider advertising on a website with a unique and direct audience. Advertising won't be just an ad and a link, there will be an area on the site for our advertisers to post sponsored content for the appropriate audience (plan sponsors/plan providers). Obviously, better ad placement will make the advertising rate vary, but there will be a special area for all advertisers (a plan provider directory) with rates as a fraction of the cost of a front web page ad. Founding sponsors will get "most favored nation status" upon annual renewal. Please contact me for more information about our rates.

As we get closer to Labor Day, I'll let you know about how the site is coming along in content and advertising.

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