

401(k) Fees: Risk and Exposure

Stephen Lucke

Dorsey & Whitney LLP

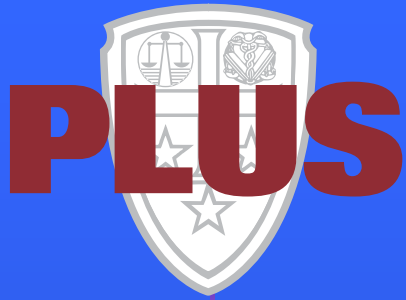
Nell Hennessy

Fiduciary Counselors, Inc.

Lawrence Fine

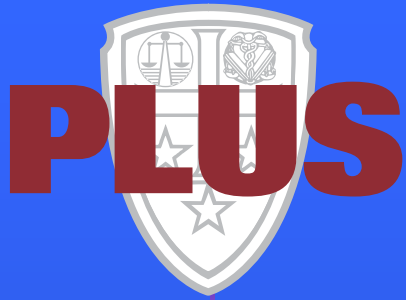
American International Group

Los Angeles ~ May 7 & 8, 2007



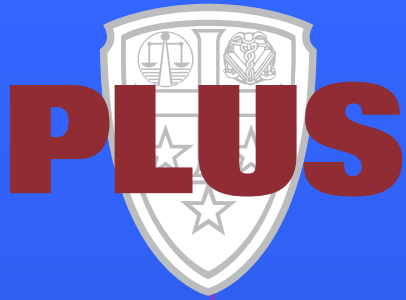
Key Statutory Provisions Regarding Fees

- Who may be a fiduciary-ERISA § 3(21)
- Fiduciary duties-ERISA § 404(a)
- Prohibited Transactions-ERISA § 406
 - Service provider exemption-ERISA § 408(b)(2)
- Participant-directed plans-ERISA § 404(c)



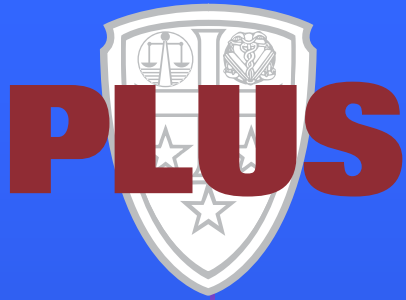
Regulatory Environment

- Securities and Exchange Commission
 - Reexamining 12b-1 fees, fee disclosure
- Congressional hearings
- State Regulatory Authorities
 - Spitzer settlement with ING
- Department of Labor



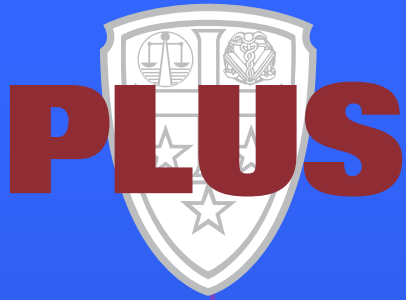
DOL Initiatives

- Participant disclosure
- Disclosure of indirect fees on Schedule C of the Form 5500
- Disclosure to plan fiduciaries by service providers
- Consultant/Advisor Program (CAP)
 - National enforcement priority



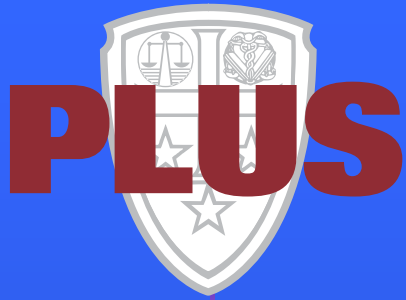
The Parties

- Defendants
 - Plan Sponsors
 - Investment Committee and Individual Members
 - Officers and Directors
 - Human Resources Employees
 - Service Providers and Related Entities
- Plaintiffs
 - Individual Plan Participants
 - Plan Trustees

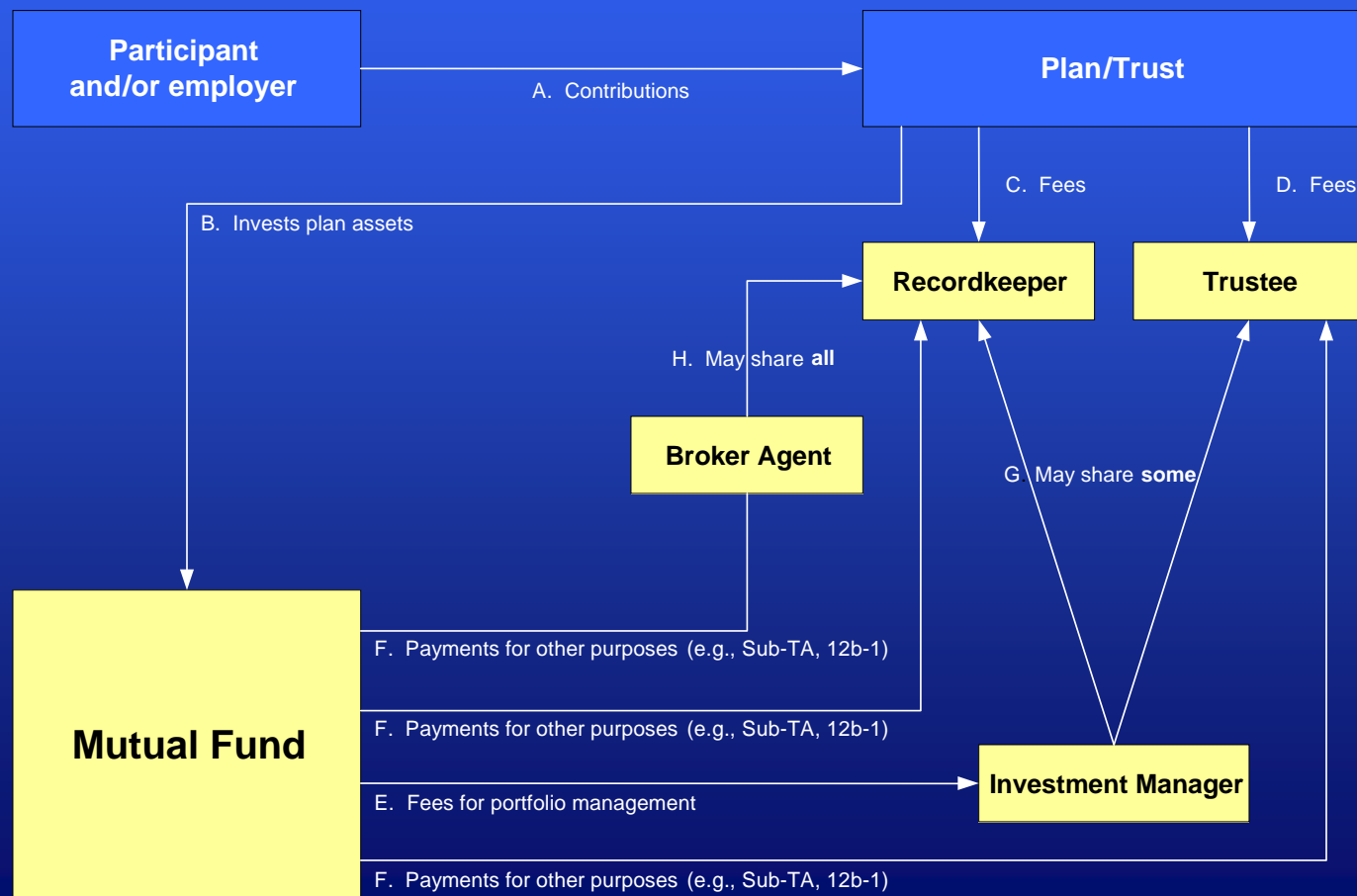


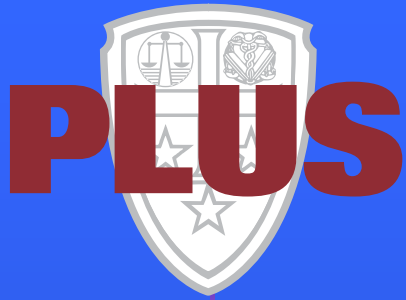
Alleged Improper Practices Include

- Revenue Sharing
- Employer Stock Practices
- Multiplication of Investment Trusts
- Shadow Index Funds
- Retail vs. Institutional Funds
- Misleading Benchmarks



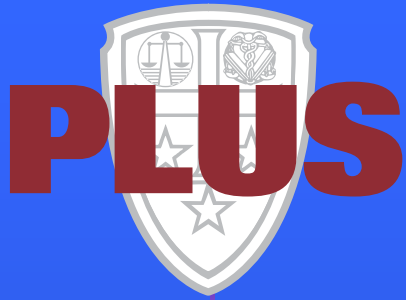
Revenue Share Arrangement





The Claims

- Failure to Act Prudently and Loyalloy in Managing Fees
- Failure to Disclose Fees
- Prohibited Transactions
- Failure to Monitor
- Co-Fiduciary Liability



401(k) Fee Litigation Advertisements

**- ATTENTION -
Unisys Corp.
Employees**

If you are a retiree or a current participant in Unisys Corp's 401k Plan, we would like to speak with you about your benefits.

Please call:
J. BRAD WILMOTH

**- ATTENTION -
VAN KAMPEN
EMPLOYEES**

If you are a retiree or a current employee of Van Kampen Investments, Inc. and are in the Morgan Stanley 401k Plan, we would like to speak with you about your benefits.

Please call:
J. BRAD WILMOTH
Law Offices of
SCHLICHTER BOGARD & DENTON
(800) 873-5297

**- ATTENTION -
WACHOVIA
EMPLOYEES**

If you are a retiree or a current employee of Wachovia Securities and are in the 401k Plan, we would like to speak with you about your benefits.

Please call:
J. BRAD WILMOTH
Law Offices of
SCHLICHTER BOGARD & DENTON
(800) 873-5297

120 West Main Street, Ste. 208
Belleville, Illinois 62220

**- ATTENTION -
SIEMENS
EMPLOYEES**

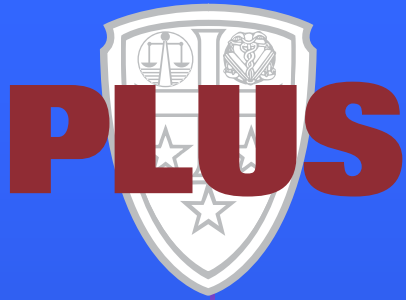
If you are a retiree or a current employee of Siemens and are in the 401k Plan, we would like to speak to you about your benefits.

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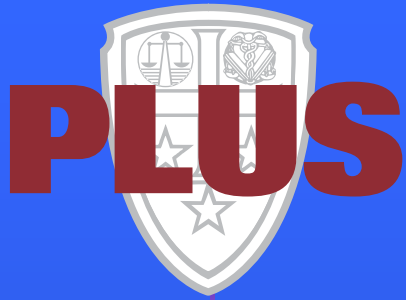
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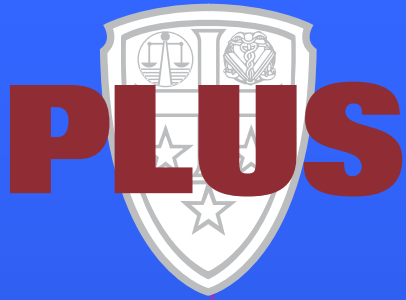
Potential Defenses

- Conclusory Allegations
- Procedural Prudence
- No Duty to Disclose Revenue Sharing and Other Fees
- No Causation
- Reasonable Outcome



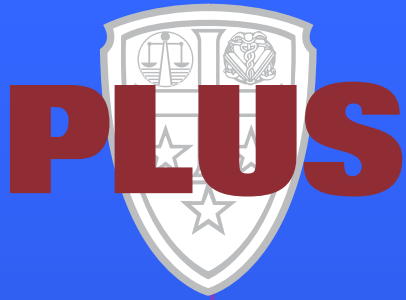
Alleged Damages

- As one recent lawsuit alleged: The impact of excessive retirement plan fees is well known in the industry. In the November 2006 [GAO Fees Report], the GAO described the impact that excessive fees have on retirement savings:



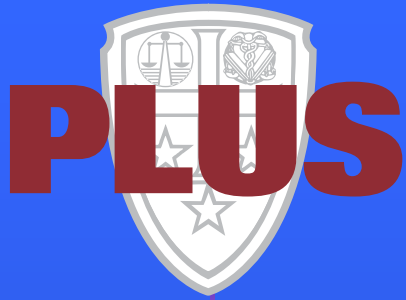
Alleged Damages (Cont.)

- Over the course of the employee's career, fees may significantly decrease retirement savings. For example, a 1-percentage point difference in fees can significantly reduce the amount of money saved for retirement. Assume an employee of 45 years of age with 20 years until retirement changes employers and leaves \$20,000 in a 401(k) account until retirement. If the average annual net is 6.5 percent – a 7 percent investment return minus a 0.5 percent charge for fees – the \$20,000 will grow to about \$70,500 at retirement. However, if fees are instead 1.5 percent annually, the average net return is reduced to 5.5 percent, and the \$20,000 will grow to only about \$58,400. The additional 1 percent annual charge for fees would reduce the account balance at retirement by about 17 percent.



Ten Steps Fiduciaries Can Take to Reduce Exposure

1. Determine Who Is A Fiduciary
2. Understand Plan Provider Arrangements
3. Understand The Fees and Expenses That Plans and Participants Pay
4. Investigate and Compare Alternatives



Ten Steps Fiduciaries Can Take To Reduce Exposure (Cont.)

5. Negotiate
6. Meet, Deliberate and Decide
7. Document
8. Disclose
9. Monitor
10. Consider the Result