

## District Court Replaces Plan Trustees with Independent Fiduciary

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In *Su v. Fensler*, No. 22-cv-01030, 2023 WL 5152640 (N.D. Ill. Aug. 10, 2023), the court granted the Department of Labor's motion for a preliminary injunction to replace with an independent fiduciary the trustees of the United Employee Benefit Fund, who are accused of breaching their fiduciary duties by using Fund assets to engage in prohibited transactions. The Fund purchases life insurance policies that pay death benefits to participants' beneficiaries. The Fund's assets declined almost 75% over a four-year period, which DOL alleged was due in large part to the trustees' approval of substantial and unreasonable legal and administrative expenses, including millions of dollars in legal fees in this and other litigations relating to the same underlying conduct. While the Court reserved judgment on whether the challenged expenses were unreasonable, it held that the Fund and its participants would be irreparably harmed if the trustees were not replaced.

The DOL could seek only equitable relief, and as a result, if the trustees continued to pay the Fund's substantial legal and administrative expenses, there may be no assets left to pay benefits, and DOL might lack any legal recourse. Furthermore, the Court concluded that DOL had shown a likelihood of succeeding on the merits of its claims that the trustees breached their fiduciary duties in approving the transactions at issue, which included a seven-figure loan to buy a former trustee's home out of foreclosure and allegedly unreasonable compensation to that same former trustee. Finally, the Court held that an independent fiduciary could better scrutinize the Fund's assets and expenses and "chart a path that is in the best interest of the Fund and its participants, and not solely in the interests of the Fund's Trustees or lawyers." The Court concluded that any disruption caused by the appointment of an independent fiduciary was far outweighed by the potential harm to the Fund and its participants if the trustees were permitted to continue exercising control over the Fund's assets.

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