

NEXUS338

Williams-Linzey, et al vs. Empower¹

<https://benefitslink.com/src/ctop/williams-linzey-v-empower-dnj-complaint-08152025.pdf>

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ERISA FIDUCIARY & FIDUCIARY DUTIES

1. ERISA's three-pronged functional "fiduciary" definition² states that "a person is a fiduciary with respect to a plan to the extent:
 - (i) he exercises any discretionary authority or discretionary control respecting management of such plan or exercises any authority or control respecting management or disposition of its assets,
 - (ii) he renders investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan, or has any authority or responsibility to do so, or
 - (iii) he has any discretionary authority or discretionary responsibility in the administration of such plan.
2. An ERISA fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the plan.
3. A fiduciary also must act prudently "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use."³

On August 15, 2025, Williams-Lenzey, et al ("Plaintiffs") filed a class action complaint against Empower Retirement, LLC., Empower Financial Services, Inc., and Empower Annuity Insurance Company of America for breaches of fiduciary duties among other related alleged violations related to Empower's cross-selling activities to divert low-fee plan assets to rollover IRA accounts through the use of high fee and proprietary investments in Empower Managed Account Program.

¹ Empower Advisory Group, LLC ("Empower"), and its affiliates Empower Retirement, LLC ("Empower Retirement"), Empower Financial Services, Inc. ("Empower Financial Services"), and Empower Annuity Insurance Company of America ("Empower Annuity") (together, "Defendants")

² 29 U.S.C. § 1002(21)(A)

³ 29 U.S.C. § 1104(a)(1)(B)

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PARTIES TO THE COMPLAINT

- Plaintiffs
Shakira Williams-Linzey, Jennifer Patton and Kathleen McFarland, individually and as representatives of a class of similarly situated individuals.
- Defendants
Empower Advisory Group, LLS (“Empower”), Empower Retirement, LLC. (“Empower Retirement”), Empower Financial Services, Inc. (“Empower Financial Services”), and Empower Annuity Insurance Company of America (“Empower Annuity”).
 - Empower Annuity is the parent company of Empower, Empower Financial Services, and Empower Retirement.
 - Empower is a registered broker-dealer under the Securities Exchange Act of 1934 and an investment advisor under the Investment Advisers Act of 1940, and provides investment advisory services to individuals.
 - Empower Retirement’s clients include thousands of defined contribution retirement plans, which utilize Empower Retirement’s investment options and administrative services (such as recordkeeping of participants’ accounts)

ALLEGATIONS

- Misrepresentation
Significantly mislead retirement plan participants and greatly enhance corporate profits by instituting a corporate policy that strongly encouraged, and in many instances required, its sales representatives to use highly misleading sales tactics to induce retirement plan participants to transfer assets from their employer sponsored retirement plans and into Defendants’ high-fee laden “Managed Account” program⁴.
- Data Usage for Self Gain
Using Personal Data to Identify Participants to Sell High Fee Managed Account Program
A critical component involved Empower Retirement’s egregious and wholly improper abuse of its position as a recordkeeper for employer-sponsored retirement plans. Empower Retirement abused its role as retirement plan recordkeeper as follows:
 1. Empower Retirement improperly and repeatedly leveraged its position as plan recordkeeper to harvest highly confidential, private financial data concerning retirement plan participants for its economic benefit.
 2. Empower Retirement provided this highly confidential information to Empower, which used the data to identify and target certain categories of retirement plan participants, including participants with large account balances nearing retirement age.
 3. Empower’s sales representatives approached these targeted retirement plan participants, and falsely portrayed Defendants’ high-cost Managed Account

⁴ Managed Account program is also marketed as “Empower Premier IRA” and the individualized investment selection and allocation service is marketed as “My Total Retirement.”

program as the superior – and in fact the only – recommended investment option, regardless of whether the Managed Account program was actually in the best interests of retirement plan participants.

- Hidden High Costs Associated with the Managed Account Program

Empower tells participants the software was created by third-party Morningstar, a nationally known third-party investment analysis and financial services firm. However, contrary to Empower's representation that its software generates personalized, objective recommendations, the software only produces one recommendation: purchase Empower's Managed Account investment advisory services. After the software generates the only option it is designed to generate – that the retirement plan participant purchase Empower's Managed Account services – Empower requires its advisors to “communicate the advice” that it claims was “generated by Morningstar.” Empower does not disclose that its proprietary software and advisors are only permitted to make a single recommendation: that participants purchase the Managed Account investment advisory services. In falsely portraying the Managed Account program as the best investment option for retirement plan participants, Empower sales representatives actively concealed from plan participants the extremely high costs associated with the Managed Account program. Indeed, investors in Defendants' Managed Account program pay multiple layers of exorbitant investment fees that are routinely significantly higher than the fees retirement plan participants would pay by keeping their assets in their employer-sponsored retirement plans. This is because Managed Account investors not only pay a percentage fee, or “expense ratio,” on all assets in which they invest, but, on top of that, Empower charges a separate, asset-based investment fee of up to 55 basis points (i.e., 0.55%) – fees on top of fees, from which Defendants benefit at retirement plan participants' expense.

- Misrepresentation to Personalization

Empower sales representatives claim that they provide individualized investment advice and options that are customized based on the needs of retirement plan participants. But the Managed Account program is not customized to the individual needs of investors, but instead has seven preset asset allocations, which are heavily populated with investment funds offered by Empower Financial Services where participants move their retirement assets to the Managed Account program paid multiple sets of fees to Empower and its affiliates – an “Investment Advisory Fee” to Empower, and “Fund Fees” to Empower Financial Services. Through ongoing advice, more assets are reallocated to model portfolio – with the result that assets are automatically funneled into investments that generate even more fees for Defendants.

- Conflict of Interest

Empower concealed sales representatives' conflicts of interest, requiring sales representatives to falsely claim that their recommendations were objective and non-commissioned – when in fact Empower's bonus structure created significant financial incentives for its sales representatives to recommend the Managed Account program.

Empower has instructed and trained its advisors across the board not to inform retirement plan participants of the exorbitant fees and expenses associated with moving assets to an Empower Managed Account. Empower advisors also repeatedly and across the board failed to provide retirement plan participants with comparative performance information illustrating the differences between employer-sponsored plans and Defendants' Managed Account program. Empower advisors were also instructed not to provide or share certain information with retirement plan participants until they had already signed up for the Managed Account program, including screenshots and printouts reflecting asset allocation and other information about the Managed Account investments. Advisors were trained to, among other things, emphasize the disruption to a retirement plan participant's portfolio from transferring retirement balances into employer sponsored plans each time one changes jobs, and characterize various features of and rules associated with employer-sponsored plans as inferior.

- Violation of ERISA Fiduciary Duties

By making rollover recommendations that benefited Defendants at Plaintiffs' and class members' expense, Defendants acted as fiduciaries as defined by ERISA, breached their fiduciary duty of loyalty, and engaged in transactions categorically prohibited by ERISA. In the Agreement, Empower explicitly "acknowledges that, as a registered investment adviser, it owes a fiduciary duty to participants with respect to the advice it provides. Defendants knowingly participated in Plan Sponsors' ERISA violations. Further, concealed that the Managed Account program and the funds in the Managed Account program are operated by closely related, affiliated entities. There is also significant conflict that exists as the result of the fact that Empower limits the universe of potential investment options to Empower affiliated funds. This results in Empower affiliates, including Empower Financial Services, receiving substantial additional inflated and unreasonable fees from Plaintiffs and members of the class.

- The Issue of Cross-Selling Products

In January 2011, the Government Accountability Office issued a report finding that "industry experts" at the time were aware of the "conflicts of interest" that arise when a recordkeeper markets its non-plan products to a plan's participants:

"Cross-selling products outside of a plan to participants can substantially increase a service provider's compensation, which creates an incentive for the service provider to steer participants toward the purchase of these products even though such purchases may not serve the participants' best interest. For example, products offered outside a plan may not be well suited to participants' needs or participants may be able to secure lower fees by choosing investment funds within their plans comparable with products offered outside their plan."

CAUSS OF ACTION

- Count One: Breach of ERISA Fiduciary Duties
 - The investment advice that Defendants rendered to Plaintiffs and class members was neither prudent nor loyal. Defendants provided advice for the purpose of furthering their own financial interests. Thus, Defendants, improperly using the confidential information they obtained about participants, intentionally steered participants to Empower Managed Accounts because that was the more lucrative option for Empower, without regard for whether rolling assets to Empower Managed Accounts was in the participant's best interest or otherwise prudent.

- Count Two: ERISA Prohibited Transactions
 - self-dealing transactions between a plan and a fiduciary
 - prohibits transactions between a plan and a party in interest and fraudulently concealed these prohibited transactions.

- Count Three: Non-Fiduciary Recipient of Ill-Gotten Profits
 - A nonfiduciary transferee of ill-gotten proceeds is subject to equitable relief if it had actual or constructive knowledge of the circumstances that rendered the transaction or payment unlawful.