

Institutional Investor Practice Group

Fiduciary/ERISA

Seyfarth attorneys regularly act as fiduciary counsel to pension funds (both single employer and multi-employer), governmental retirement systems, public and private REITS, and other institutional investors and fund managers across the U.S. regarding the legal aspects of their investments, fiduciary matters and tax issues, as well as compliance with statutory requirements.

In representing our clients on fiduciary matters, we can call upon a team consisting of employee benefits attorneys, as well as real estate, tax, private equity, securities, corporate, finance, and litigation attorneys to handle virtually every aspect of fiduciary counseling on behalf of public and private pension funds, whether the fiduciary counseling be with respect to benefit administration, investments, conflicts of interest, or other matters. Our team also represents investment advisors and fund managers who work with these investors regarding their fiduciary duties to their clients. Of particular importance to our institutional clients is our knowledge of ERISA, various state laws, UBTI and REITs, which allow us to be an integral part of the strategic teams that help our clients succeed.

We have also advised numerous public and private funds regarding:

- ✓ Boundaries of fiduciary responsibility
- ✓ Circumstances under which non-fiduciaries may be liable for breaches of duty
- ✓ Measures that effectively insulate funds from potential liability
- ✓ Measures that protect individual fiduciaries from co-fiduciary liability
- ✓ Prohibited transactions and alternative investment structures
- ✓ Regulatory issues
- ✓ State pension codes and administrative review statutes
- ✓ The exercise of interpretive or discretionary powers
- ✓ Funding obligations
- ✓ Contractual matters
- ✓ Conflicts of interest
- ✓ Public access to meetings, documents, and records
- ✓ Litigation

Track Record of Results

- Represented a major Illinois public retirement fund as fiduciary counsel, providing advice on a variety of issues including: conflicts of interest and investment policies, as well as the use of minority and emerging managers, and state freedom of information laws.
- Designed appropriate fiduciary structures and counseled fiduciaries—such as trustees and investment and administrative committee members—regarding individual fiduciary roles and duties in conjunction with the design and implementation of qualified employee benefit plans on behalf of several large industrial clients.
- Provided advice and drafted guidelines for the independent directors of a number of public mutual funds regarding common law and statutory fiduciary duties, investment responsibilities, procedures for reviewing investment management, and determining fees and voting rights, among other issues.
- Developed an ERISA compliance policy and procedure manual for a major real estate investment advisor and trained its various staff groups on their fiduciary duties to both public and private plans, in those areas of the manual applicable to them.
- Represented numerous pension funds, including governmental systems, single-employer plans, and Taft-Hartley plans, in negotiating investment management agreements, and various other types of investment-related and benefit administration-related contracts.
- Represented Taft-Hartley plans, single employer plans, public pension funds and other institutional investors in connection with their investments in alternative investments including international and domestic private equity and pooled real estate funds, and hedge funds, including reviewing and commenting upon all fund documentation and negotiating appropriate side letter agreements. The amount invested per transaction has typically ranged from \$25 million to \$100 million, although some of the transactions have been much larger and a few have been below this range.
- Represented a major metropolitan transportation authority pension plan in a dispute and litigation with an investment manager regarding the manager's suspected breach of fiduciary duty and failure to comply with established investment policy guidelines, resulting in a favorable multimillion-dollar settlement.
- Represented the fiduciaries of a trust in connection with the recovery of approximately \$1.9 million in wrongfully diverted collateral.
- Prosecuted a Supreme Court case on behalf of a retirement plan client against a major insurance company for breach of fiduciary duty. This dispute arose when the insurance company promised to invest funds from our client, as instructed, but instead invested the funds in another income-producing instrument for a brief period and kept the interest accrued during that time.