

"Dog Days of Summer Pave the Way for Continuing Rise in ERISA Litigation" Covered by BenefitsLink Retirement Plans Newsletter

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In this alert, covered by the *BenefitsLink Retirement Plans Newsletter*, authors Elizabeth Jonas* and Theresa Gee discuss the three important Employee Retirement Income Security Act of 1974 (ERISA) breach of fiduciary decisions issued this summer. In *Sacerdote v. New York University (Sacerdote III)*, No. 18-2707-CV, 2021 WL 3610355 (2d Cir. Aug. 16, 2021), the Second Circuit affirmed the trial result in favor of the fiduciaries but reversed on the district court's earlier dismissal at the pleadings stage of a prudence claim, sending it back for further proceedings. The Seventh Circuit's *Halperin v. Richards*, No. 20-2793, 2021 WL 3184305 (7th Cir. July 28, 2021), decided whether ERISA preempts state corporate law/breach of fiduciary claims against company officers and directors who also serve in an ERISA fiduciary capacity, as permitted by ERISA's "two-hat" principles. Both *Sacerdote III* and *Halperin* are plaintiff-friendly, and *Sacerdote III* in particular is likely to pave the way for an influx of breach of fiduciary litigation in the future, including class actions. In *Jackson v. AT&T Retirement Savings Plan (Jackson II)*, No. 20-30255, 2021 WL 3624751 (5th Cir. Aug. 16, 2021), petition for cert. filed, No. 20-8153 (U.S. May 21, 2021), the Fifth Circuit provided fiduciaries and plan sponsors some comfort by confirming again that a plan sponsor's authority to amend its plan does not implicate fiduciary duties.

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