

The image features a logo for 'fi360' centered on a background of wavy, horizontal lines in shades of orange and yellow. The 'fi' is in a black serif font, '360' is in a larger orange serif font, and a registered trademark symbol (®) is to its upper right. Below '360' are the words 'global' and 'fiduciary insights' in a smaller, italicized serif font, stacked vertically.

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global
fiduciary insights

Tussey v. ABB

Or

Lessons to be Learned
When Ignoring a
Prudent Process

Panelists

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Moderator

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The Players



- **ABB Inc.** (formerly Westinghouse) a manufacturing company
 - \$1.4 billion in 401(k) plan assets (as of 2008)
 - **Pension Review Committee** (“PRC”) named fiduciary
 - Selects, monitors Plan investment options
 - IPS provided investment, expense guidelines
 - **Employee Benefits Committee** (“EBC”) plan administrator
- **Fidelity Trust** (“FT”)
 - Recordkeeper, other services
- **Fidelity Management & Research** (“FMR”)
 - Investment advisor to Fidelity funds
- **Mercer**, national pension consultant

The Facts



- **1995** After RFP, FT becomes recordkeeper
- **1997** FT provides DB plan services to ABB
- **1999** FT provides health and welfare benefits to ABB
- **2000** PRC
 - Adopts written IPS, including cost policy;
 - Investment changes included
 - Fidelity Freedom TDF ‘mapped’ from Wellington balanced fund

The Facts -- 2



- **2001** FT eliminates 'per head' portion of service fee; solely compensated through revenue-sharing
- **2004** FT provides payroll services to ABB
- **2005** Mercer recommends changes to ABB plans
- **2006** ABB participant Ronald Tussey, others sue ABB, Fidelity
- **2010** Bench trial
- **2012** Western District of Missouri issues order

The Verdict



- ABB, Fidelity found in breach of fiduciary duties and to have committed prohibited transactions
- First full trial on self-dealing and excessive fees in a 401(k) plan
- ‘Big Case’
 - **\$48.7 million** awarded in damages, legal costs
 - \$13.4 million in excessive administrative fees
 - \$21.8 million investment losses due to ‘mapping’
 - \$1.7 million in lost ‘float’ income
 - \$13.5 million in legal fees, court costs

Lessons to be Learned



- Was the IPS in *Tussey* a governing document?
- Did ABB act imprudently in switching from Wellington to Fidelity Freedom fund?
- Were recordkeeping fees unreasonable?
- Was ABB at fault for not acting on Mercer's recommendation to re-negotiate recordkeeping fees?
- Was float income (contributions held in overnight sweep account) a plan asset?
- What was the fiduciary status of the various *Tussey* entities?
- To what extent was there self-dealing in the ABB plans?