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Employee Benefit Plan Review

Spence v. American Airlines: Developments at the Intersection of ERISA and ESG

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An emerging and hotly contested question under ERISA[1] is whether a fiduciary may include funds in an ERISA-governed retirement plan that consider environmental, social and governance (ESG) factors. While the current administration, Congress and the Department of Labor (DOL) have taken a keen interest in such ESG funds,[2] only one court has issued substantive rulings on how ERISA's fiduciary standards apply to ESG-related investing.

In the first case to confront these issues substantively in the ERISA context, *Spence v. American Airlines*,[3] plaintiffs sued American Airlines and its benefits committee[4] in the Northern District of Texas for breaches of the fiduciary duties of prudence and loyalty under ERISA by allegedly allowing its investment manager to promote an ESG agenda through proxy voting and shareholder activism. Plaintiffs' theory of the case was that ESG investing harmed the financial interests of American Airlines plan participants "by pursuing socio-political outcomes rather than exclusively financial returns."[5]

As explained in detail below, the court in *Spence* has issued a series of notable and fluctuating rulings on liability and damages, finding that American Airlines breached its fiduciary duty of loyalty (but not its duty of prudence), denying plaintiffs' request for monetary damages and entering an injunction imposing restrictions on American Airlines' plan management.

In the latest installment, on February 10, 2026, the court denied American Airlines' motion for reconsideration, but clarified its injunctive relief and approved American Airlines' proposed processes for complying with the injunction. The court also awarded plaintiffs' counsel $4.6 million in attorneys' fees, while denying plaintiffs' request for a service fee for the named plaintiff. Taken together, these rulings highlight the challenges and scrutiny ERISA fiduciaries must consider in connection with ESG funds.

Background on ERISA Fiduciary Duties

ERISA requires plan fiduciaries—like American Airlines and its employee benefits committee in *Spence*—to exercise the duties of prudence and loyalty when acting on behalf of an ERISA plan. The duty of prudence requires a fiduciary to act with the "care, skill, prudence

and diligence under the circumstances then prevailing that a prudent [person] acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims."[6] Under the duty of loyalty, a fiduciary must discharge their duties with respect to a plan solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to the participants and beneficiaries, and defraying administrative costs.[7] While there is a rich body of ERISA caselaw interpreting these fiduciary duties, the law is still evolving on the extent to which a prudent fiduciary may incorporate ESG factors in ERISA plan investments.

Background on *Spence v. American Airlines*

After certifying a class and denying American Airlines' motions to dismiss and for summary judgment,[8] the court held a four-day bench trial in June 2024. Following trial, the court issued a unique split decision on liability in January 2025, finding for plaintiffs on the merits of their breach of loyalty claim, but not on their breach of prudence claim. Noting "the inherently comparative nature of the required analysis for the duty of prudence," the court held that American Airlines did not breach this duty under ERISA because it "acted consistent with the prevailing industry standards" in selecting its investment manager and not withdrawing its delegation of proxy voting to its investment manager due to its ESG activism.[9]

Despite rejecting the prudence claim, the court went out of its way to criticize ESG and the retirement plan industry, commenting that "the evidence revealed ESG investing is *not* in the best financial interests of a retirement plan."[10] The court further opined that American Airlines was able to "escape liability under the prudence standard" due to "the incestuous [retirement] industry comprised of powerful repeat players who rig the standard of care to escape fiduciary liability."[11]

With respect to the breach of loyalty claim, the court held that American Airlines violated ERISA's duty of loyalty because it "acted disloyally by failing to keep American Airlines' own corporate interests separate from their fiduciary responsibilities, resulting in impermissible cross-pollination of interests and influence on the management of the plan."[12] In particular, the court found that American Airlines "knew [its investment manager] was pursuing ESG initiatives through delegated proxy voting authority and related activism," and that a "loyal fiduciary would have monitored the situation more closely and even questioned [the investment manager's] non-pecuniary investment activities."[13] Even if American Airlines "acted in the same manner as other fiduciaries in the industry," the court held that these actions were not solely in the best interests of plan participants.[14]

Despite its harsh criticism of ESG and fiduciary breach finding, the court did not award any monetary damages to plaintiffs because it found that there was not a "sufficient causal link between the fiduciary breach and economic loss."[15] However, the court entered a permanent injunction imposing a number of measures designed to prevent the influence of non-pecuniary factors like ESG on the management and proxy voting activities on behalf of the American Airlines retirement plans.[16] These measures included prohibiting proxy voting or other stewardship activities motivated by ESG or non-pecuniary interests, appointing at least two independent members to the employee benefits committee for five years, requiring annual certifications that all investment and proxy decisions are made solely to maximize financial return, publicly disclosing memberships in ESG organizations, and barring the use of asset managers who hold significant shareholder or debt positions unless conflict of interest policies are implemented. Following the court's rulings on liability and remedies, American Airlines moved for reconsideration and plaintiffs moved for attorneys' fees and a service fee for the named plaintiff.

The Court's February 2026 Ruling

On February 10, 2026, the court denied American Airlines' request to reconsider its prior rulings. However, the court agreed to clarify several aspects of the injunctive relief and approved American Airlines' proposed processes for complying with the injunction. In particular, the court clarified that American Airlines may comply with the investment objective certification requirement of the injunction by contractually obligating investment managers to annually attest or certify that they will "pursue investment objectives based on provable financial performance," utilize a log to ensure that American Airlines receives such certifications, and retain an outside consultant to review such certifications and report on them independently.[17] The court also clarified that American Airlines may comply with the membership disclosure requirement of the injunction by contractually obligating vendors to disclose their applicable memberships and affiliations to American Airlines, and display such information on the plan website. Lastly, the court clarified that the financial transaction reporting requirement of the injunction excludes routine commercial transactions and is limited to direct, contractual transactions for the plan options excluding the brokerage window. The court granted American Airlines 150 days to fully implement the required changes in alignment with the injunction as clarified.

On the issue of attorneys' fees, despite finding no monetary damages, the court awarded the plaintiffs' lawyers approximately $4.6 million—less than the $7.9 million plaintiffs had requested, but still a significant award. The court reduced the fees for several reasons, including billed time

on the lost duty of prudence claim, unproved damages, and time related to the voluntarily dismissed former defendants. The court also cut hours for billing errors, block-billed time, travel time, and paralegal work that was not legal in nature. Additionally, the court declined to include a bonus for the novelty and difficulty of the case and costs because plaintiffs did not win on all claims. Finally, the court rejected a service award for the class representative because there was no underlying award of monetary damages.

Conclusion

Although the court in *Spence* declined to award monetary damages, its harsh criticism of ESG and substantial award of attorneys' fees may motivate plaintiffs to pursue similar claims against fiduciaries of other ERISA plans with ESG investment options or objectives.

However, the court's ruling in *Spence* will not be the last word on the interplay between ESG and ERISA. Other courts may reach different decisions on fiduciary challenges to ESG investing and the DOL may issue regulations imposing further ESG restrictions.

Notes

1. The Employee Retirement Income Security Act of 1974, as amended.
2. For example, President Trump issued an Executive Order discouraging large proxy advisory firms from promoting ESG investments. Protecting American Investors From Foreign-Owned and Politically Motivated Proxy Advisors, Exec. Order No. 14366, 90 Fed. Reg. 58503 (Dec. 11, 2025). The House of Representatives has approved legislation aimed at curbing ERISA plans' ESG investing. Protecting Prudent Investment of Retirement Savings Act, H.R. 2988 119th Cong. (2026). And the DOL has announced its intent to replace a Biden-era regulation which viewed certain types of ESG strategies as capable of satisfying ERISA's fiduciary duties. Letter from Daniel Winik, Dep't of Lab., to Lyle W. Cayce, Clerk of Court, U.S. Ct. of Appeals for the Fifth Cir. (May 28, 2025).
3. Spence v. American Airlines, Inc., 4:23-cv-00552 (N.D. Tex.).
4. We refer to defendants collectively herein as "American Airlines."
5. Spence, 4:23-cv-00552, Dkt. 157 at 2.
6. 29 U.S.C. § 1104(a)(1)(B).
7. 29 U.S.C. § 1104(a)(1)(A).
8. In July 2023, plaintiffs voluntarily dismissed their claims against two other defendants, Fidelity Investments Institutional and Financial Engines Advisors, LLC, leaving American Airlines, Inc. and the American Airlines Employee Benefits Committee as the remaining defendants.
9. Spence, 4:23-cv-00552, Dkt. 157 at 53.
10. Id. at 54 (emphasis in original).
11. Id.
12. Id. at 55.
13. Id. at 67.
14. Id.
15. Spence, 4:23-cv-00552, Dkt. 165 at 2.
16. Id. at 2-4.
17. Spence, 4:23-cv-00552, Dkt. 188 at 6.

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