Spence v. American Airlines: A Texas Court's View of the Duty of Loyalty under ERISA

by Anna Mikhaylina on March 6, 2025

Since we last discussed environmental, social, and corporate governance ("ESG") developments in the context of ERISA retirement plans (see our post here), ESG litigation has taken a rather unexpected turn. Although the plan lineup in *Spence v. American Airlines*[1] did not include ESG funds, the court concluded that American Airlines and its Employee Benefits Committee (the "EBC") violated ERISA's duty of loyalty—a mandate to act solely in the best interests of plan participants—because they did not sufficiently monitor, evaluate, and address the effect of an investment manager's use of plan assets to engage in ESG-oriented proxy voting. Notably, the court also concluded that the fiduciaries did *not* violate ERISA's duty of prudence because their processes comported with, and at times surpassed, industry standards.

This post summarizes the opinion, discusses the court's recommendations for what the fiduciaries could have done to satisfy their duty of loyalty, evaluates whether the court's recommendations would have made a difference, and considers whether this lawsuit could be the start of a trend in ERISA litigation.

Summary of the case. After a four-day trial, the court concluded that the fiduciaries acted disloyally by allowing non-Plan interests to influence the management and oversight of the Plan, based on:

- American Airlines' corporate commitment to ESG;
- The endorsement of ESG goals by those responsible for overseeing the Plan;
- The influence of, and conflicts of interests with, BlackRock, the Plan's largest investment manager; and
- A lack of separation between the corporate and fiduciary roles of the EBC members.

According to the court, American Airlines had an interest "in appeasing" BlackRock and that this "cross-pollination of interests and influence" caused the EBC to not sufficiently monitor, evaluate and address BlackRock's ESG-oriented proxy voting.

[1] No. 4:23-CV-00552-O, 2025 WL 225127, (N.D. Tex. Jan. 10, 2025).

The court's opinion delineated the facts supporting its conclusion as follows:

- **The Plan.** American Airlines sponsors two plans, the American Airlines, Inc. 401(k) Plan and the American Airlines, Inc. 401(k) Plan for Pilots (together, the "Plan"). During the class period, from 2017 to 2022:
  - The Plan's core investment lineup included target date funds, passively managed index funds, self-directed brokerage accounts, and actively managed funds.
  - BlackRock managed a collective investment trust, in which the Plan's passively managed index funds were invested.

- **American Airlines Corporate ESG Goals and relationship with BlackRock.** The court took note of the following:

  - According to its annual ESG Report, American Airlines views its ESG efforts as a key part of its success;
  - American Airlines is the only passenger airline included in the Dow Jones Sustainability North America Index, supports the UN Global Compact's Ten Principles, and considers its ESG efforts as integral to that commitment;
  - American Airlines is a climate change leader among its peers; and
  - American Airlines officials with fiduciary responsibilities expressed a positive view of ESG investing. For example, the Chair of the EBC, in an e-mail to Director of Sustainability, an executive on the corporate side, expressed support for BlackRock's ESG objectives, remarked that this alignment was "good," and attached an article titled "How to Make Your 401(k) a Little Less Evil."
  - American Airlines entrusted the employee responsible for the day-to-day oversight of the Plan's investment managers with managing the corporate financial relationship between American Airlines and BlackRock. In an e-mail to the Airlines' Treasurer, who was also an EBC member, the employee reflected on the importance of the relationship between American Airlines and BlackRock, remarking that "BlackRock holds ~$400M of our fixed income debt," "[t]hey are also our 4th largest equity holder," and "[w]e also invest a little over $10 billion with them between the 401(k) and pension plan."

- **BlackRock's ESG agenda.** As early as 2016, BlackRock, the Plan's largest investment manager, told its staff that it wanted to position itself as a leader of ESG investing and started actively supporting ESG proposals at major energy companies, including ExxonMobil.

- **Proxy Voting.** The Plan's investment management agreement ("IMA") with BlackRock assigned the responsibility for proxy voting to BlackRock. During the class period, the IMA required that BlackRock attest quarterly that all proxies were voted in compliance with established proxy-voting guidelines. The initial guidelines required BlackRock to vote proxies in the best long-term economic interests of the assets it manages, but a later version of the guidelines also expressly incorporated ESG considerations. BlackRock did not submit the required quarterly attestations.
- **The EBC.** The EBC did not pursue the attestations or meaningfully discuss proxy voting.

The court's recommendations for the fiduciaries. In finding that American Airlines breached its duty of loyalty, the court cautioned that:

- The EBC "wholly ignored" a "major red flag";
- "At a minimum, a loyal fiduciary would have monitored the situation more closely and even questioned BlackRock's non-pecuniary investment activities"; and
- Even if the EBC had specifically asked its retirement plan consultant to analyze BlackRock's ESG activism, including through proxy voting, outsourcing the analysis to a consultant would likely not have provided complete insulation from a breach of loyalty claim.

In the court's view, the Plan fiduciaries, acting as "loyal fiduciaries," needed to take at least some step to "address BlackRock's pursuit of non-pecuniary interests that could harm the Plan," such as:

- Conduct their own analysis of ESG investing and of BlackRock's proxy voting record;
- Meet with BlackRock directly to reiterate the obligation to act in the Plan's best financial interests; or
- Put additional monitoring measures in place to determine whether additional action was warranted.

What if the EBC had followed one or more of the court's recommended steps? Although the court outlines steps a fiduciary could take to ensure compliance with ERISA's duty of loyalty, it is unclear how these actions would make a meaningful difference to Plan participants in this case. Specifically, the court's recommendations – to undertake independent analysis of proxy voting and determine whether additional action was

warranted – appear to be intended to prompt the fiduciaries to assess whether BlackRock's actions were in the best financial interest of the Plan, and if not what losses, if any, the Plan has suffered.

So far, the plaintiffs do not have a solid answer regarding losses. The plaintiffs argued, based on an event study regarding BlackRock's 2021 ESG-oriented proxy vote at ExxonMobil, that the Plan was hurt by the reduced value of energy stocks, presumably caused in part by the vote, and that the drop in price also prevented the Plan from growing its value. The defendants, however, pointed out that the Plan did not liquidate its investments in ExxonMobil after the 2021 vote and Plan participants benefitted from the reversal of energy stock prices after being able to buy at temporarily lower values.

In dicta, when discussing the duty of prudence considerations, the court acknowledged that "the undisputed evidence is that BlackRock's management of the Plan resulted in lower fees and at least comparable returns to alternatives during the Class Period." This acknowledgement could be a preview of the court's future ruling regarding damages.

Could this case set a trend for ERISA litigation? The issue of damages in *Spence* may make it unlikely that this case will set a trend. The court's analysis, however, may incentivize plaintiffs to consider other circumstances where plan fiduciaries could be influenced by a plan investment manager that holds significant debt and equity in the plan sponsor. *Spence* serves as a reminder to fiduciary committees that they must at all times remain aware of when they are required to act on behalf of participants—and ERISA's duty of loyalty applies—and when they are properly acting on behalf of the plan sponsor

If you have questions about fiduciary compliance in general or *Spence*, please contact a member of Verrill's Employee Benefits & Executive Compensation Group.

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