

the dana report

June 2018 Issue

A publication of Dana Consulting Group, Ltd.

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ABOUT THE FIRMS



Dana Consulting Group, Ltd. and Jennings Law Firm, Ltd. were established to provide employers with a single source of comprehensive legal and consulting services relating to retirement plan and employee benefit matters.

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STATE PUBLIC PENSION PLANS WANT TO HANDLE INVESTMENTS ON THEIR OWN

The Texas Retirement System of Texas is one of the largest state pension systems in the US and believes they can better invest their assets than outside professionals. The chief investment officer of Texas Teachers proposes to hire 120 people to start taking over investment duties. He believes he can cut \$600 million in fees and boost returns. The California system (called CALPERS) already directly invests about 70% of its own assets.

Our Comment: So why bring this up? In our March newsletter we described a proposal by the Illinois legislature personnel and pensions committee to borrow \$107 billion and invest the funds itself. The committee believes it can make more than the interest cost on the loans. According to various municipal bond raters, this kind of thing has never worked. We also mention again the Illinois Secure Choice Savings Plan that will finally go live in the autumn. Our March newsletter also gives on update on that. If you are an advisor to companies who may be subject to this state mandated savings program, give us a call.



ANNUITIES FROM 401(K) PLANS

For years all kinds of ideas have been tossed around for annuitizing a portion of Americans' 401(k) accounts. We even set up a tab on our website (called DC Plan Annuities) to collect various articles on this subject. Perhaps not surprisingly, we have received virtually no comments or articles from our readers on this idea and we will likely delete it from the website in the future. That said, we recently read about a start-up called Blueprint Income whose goal is to offer an lifetime income stream that can be purchased with as little as \$100 per month while the employee is still working. We have reprinted the article in the **Advisor Services** tab of our website (www.danaconsulting.com).



ILLINOIS SLAYER STATUTE AND ERISA PREEMPTION

A woman who stabbed her husband while he slept but was later found not guilty by reason of insanity is not entitled to receive surviving spouse pension benefits.

Most states, including Illinois, have a "slayer statute" that prohibits a person from financially benefiting from the murder of another. The Seventh Circuit Court of Appeals recently ruled that ERISA does not preempt the Illinois slayer statute. The case is noteworthy since the US Supreme Court has declined at least twice to rule on the preemption issue of these state statutes and no federal court has faced it since 1994.

The Illinois court also ruled that the slayer statute applies even if the murderer is found not guilty by reason of insanity. The woman intentionally stabbed her husband in his sleep and then repeatedly hit him with a baseball bat to prevent him from calling the police. She claimed she was unable to appreciate the criminality of her actions, but apparently acknowledged she intended to do it.



WADDELL & REED SUED OVER PROPRIETARY FUNDS

Financial firm Waddell & Reed has been sued by participants of its own 401(k) plan for packing the plan with proprietary funds that charge excessive fees and have underperformed comparable investment options. The lawsuit is the latest setback for financial firms for selecting and retaining affiliated funds in their retirement plans.

In the past few years, more than 20 financial firms have been sued over their use of in-house (or proprietary) funds in their 401(k) plans. So far courts have sided with participants, with only Capital Group and Wells Fargo succeeding in getting the lawsuits dismissed.

Our Comment: Plan sponsors need to be careful about "fully bundling" their 401(k) plans with a single vendor, whether the bundling includes just investments or investments and plan administration. In these cases, the plan sponsor needs to ask itself who is monitoring the vendor? Without an independent financial advisor or TPA firm, the plan sponsor may find itself using the wolf to guard the hen house.



ERISA LITIGATION UPDATE

As a follow up to our article above about proprietary fund lawsuits, we recently came across an interview with Ms. Nancy Ross who is head of the ERISA litigation dept of Chicago-based law firm Mayer Brown LLP. According to Ms. Ross, the excessive fee litigation cases are beginning to divide themselves into a few different categories. The most active category is the lawsuits against firms using the fund company's funds, ie, the proprietary funds. She indicated that the plaintiffs' attorneys view lawsuits relating to proprietary funds as the most likely to get past motions to dismiss.

Our Comment: This is another example of why plan sponsors need the services of financial advisors with experience and the expertise to help them develop the right fund lineup. The advisor also assists the plan sponsor with monitoring the funds' ongoing performance, including fees.

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