

Fujitsu Lawsuit Hints at Trouble for Custom TDFs

By Emile Hallez, *Ignites*, July 12, 2016 [subscription only]

A recent lawsuit filed against Fujitsu America could herald trouble for the custom target-date fund market.

The [lawsuit](#) alleges that the company and its 401(k) fiduciaries built a plan with unreasonably high expenses and subpar investments, including a custom target-date series designed by plan fiduciary and registered investment advisor Shepherd Kaplan.

“Custom target-date funds were just starting to take off,” says Marcia Wagner, head of the Wagner Law Group. “Depending on how this suit comes down, it could really harm an industry in its infancy.”

That the case takes aim at custom target-date funds is a unique spin on other 401(k) lawsuits — the use of custom products can indicate that a sponsor has undertaken a considerable process to build a plan menu. The custom target-date funds in question were added to the plan in 2011, according to the plaintiffs.

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While a substantial amount of the lawsuit focuses on asset allocations, the plaintiffs will likely have an easier time making the case for allegedly excessive fees, says Niels Holch, executive director the Coalition of Mutual Fund Investors.

“Judges are not inclined to substitute their judgment for those of the fiduciaries,” Holch says. “It’s going to be hard for the plaintiffs to say that the allocation percentages should have been different.”

Regarding the use of a custom product rather than a less expensive, off-the-shelf target-date series, there will be differing opinions, he says.

“You can argue that you’re being a better fiduciary if you have a custom product,” he says. “You can also argue that you can take an off-the-shelf product and still be fulfilling your fiduciary duty.”