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## **SZAFERMAN LAKIND OBTAINS CLASS CERTIFICATION AGAINST TRANSAMERICA LIFE INSURANCE COMPANY IN BREACH OF FIDUCIARY DUTY SUIT BROUGHT BY RETIREMENT PLANS**

**Lawrenceville, New Jersey ~ Wednesday, March 16, 2016:** On March 14, 2016, United States District Judge Dean D. Pregerson (Central District of California) issued a 41 page written opinion and Order **granting class certification** in [Santomenno v. Transamerica Life Insurance Co.](#) ([LINK to OPINION](#))

Defendant Transamerica Life Insurance Company ["TLIC"] operates approximately 15,000 401k plans of small and mid-size employers and manages in excess of \$19 billion in employee retirement assets.

Plaintiffs, a group of retirement plans ["Plans"] that used TLIC products and people who are participants in or beneficiaries of the Plans, represented by the Lawrenceville, New Jersey law firm of [Szaferman Lakind](#), filed suit against TLIC and two of its affiliates alleging that Defendants violated their fiduciary duties under ERISA by charging excessive fees and engaging in transactions expressly prohibited by ERISA.

Judge Pregerson granted class certification to two classes. The first was Plaintiffs' Prohibited Transaction Class, which Class asserts that TLIC, as a fiduciary, violated ERISA by withdrawing fees directly out of Plan assets. Embracing Plaintiffs' position, the Court held that "a fiduciary cannot pay itself out of the plan assets over which the fiduciary exercises its fiduciary duty – period. \*\*\* The policy behind this rule is that certain fundamental fiduciary duties, including the duty against self-dealing are essentially sacrosanct." The Class contends that TLIC should be required to disgorge ALL fees it withdrew from the Plans in violation of ERISA.

The second class certified was Plaintiffs' TIM and TAM Class. TIM and TAM, named Defendants, are TLIC affiliates. The allegations of this Class are several fold: (1) that by repeatedly investing assets of the Plans in its affiliated funds, TIM and TAM, and by paying fees to its affiliates, TLIC engaged in self-dealing because TLIC dealt with assets of the Plans in its own interest; (2) that TLIC committed a prohibited transaction under ERISA when it acted on behalf of and represented its affiliates TIM and TAM, whose interests were directly adverse to the Plans; and (3) that TLIC breached its fiduciary duty to the Class by allowing its affiliates, TIM and TAM, to charge investors in the Plans higher fees than those charged to third parties who had bargained fees at arms-length. The Class seeks as damages, disgorgement of ALL fees charged in violation of ERISA's prohibited transaction rule, as well as disgorgement of ALL fees paid by the Plans in excess of those charged to third party investors.

Plaintiffs' Complaint also alleges that the fees charged by TLIC to the Plans were excessive and in violation of TLIC's duty of loyalty and prudence under ERISA. The Complaint asserts with respect to investments in

publicly traded mutual funds, that TLIC's fees, which are approximately .75% of the Plan assets, are excessive and not necessary because TLIC provides little to no services on such accounts. Rather, the underlying public mutual funds are paid a fee by the Plans to provide all of the necessary investment management and advisory services. Plaintiffs contend that TLIC's fees for non-existent services are frequently significantly higher than the fees charged by the underlying mutual fund, which in fact does actually perform the services. Here too, Plaintiffs ask that TLIC be required to disgorge ALL excessive and unnecessary fees. Plaintiffs are awaiting the Court's decision as to class certification with respect to this claim.

[Daniel Sweetser](#), one of Plaintiffs' lead attorneys at Szaferman Lakind, states: "Class certification is a positive and very satisfying forward step towards ultimate vindication of the rights of all of the employees who have invested their hard earned pay in these Transamerica products to save for retirement. The activities and fees of companies like Transamerica that provide 401k products are, for the protection and security of employees, highly regulated under ERISA. Employees have a right to expect and demand full compliance. While Plaintiffs want to be reimbursed, this lawsuit is also to move Transamerica's fees and procedures back in line with ERISA, and to deter similar conduct in the future by Transamerica and all other 401k product providers."

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Founded in 1977, [Szaferman Lakind](#) is a full-service, Martindale-Hubbell™ AV-Preeminent® law firm that has been listed among U.S. News & World Report Best Law Firms® 2014, 2015, and 2016. Based in Lawrenceville, N.J., Szaferman Lakind is a multi-faceted team of more than 40 attorneys who provide legal representation for businesses, investors, professionals, families, and individuals across four departments –family law, general and commercial litigation, personal injury and business law. The firm concentrates in commercial, general and environmental litigation, family law, complex ERISA class-action litigation, personal injury and workers' compensation, mergers and acquisitions, securities, corporate and commercial finance, tax and estate law, alternative dispute resolution and commercial real estate, including land use and zoning. **Tel: 609.275.0400 / [Szaferman.com](#)**.

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