

Publications

Negative Consent: When avoiding fiduciary status might not be an option

ATTORNEYS & PROFESSIONALS

Ellen Goodwin

egoodwin@groom.com

202-861-6630

PUBLISHED

07/01/2012

SOURCE

Plan Sponsor Magazine

SERVICES

The Department of Labor (DOL) recently filed an amicus brief in a case on appeal within the 7th Circuit, *Leimkuehler v. American United Life Insurance Co.* The case considers whether an insurance company managing separate account products for Employee Retirement Income Security Act (ERISA)-covered plans becomes a fiduciary when it retains, but does not use, the authority to change the mutual funds initially approved by the plan sponsors. The brief raises significant obstacles to the use of negative consent procedures in implementing fiduciary directions in 401(k) plans.

Please see the attached article for further discussion.

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