

Fiduciary Fun Facts: From Roman Trusts to Employee Retirement Plans

History lessons for today's Plan Sponsors

by Lou Ressler, Senior Consultant

November 2025

The Ancient Roots of a Modern Duty

In an era of ERISA litigation and heightened regulatory oversight, it is easy to forget that fiduciary duty is not new — it's ancient. The idea that a person or persons must act solely for another's benefit dates back more than two thousand years. Long before 401(k) plans or ERISA existed, Romans, and later, English courts, were already wrestling with what it means to hold something "in trust" for someone else. Understanding that lineage helps today's Plan Sponsors appreciate that fiduciary duty has withstood the test of time and continues to define sound plan governance today.

The word [fiduciary](#)¹ originates from the Latin words *fiducia* ("trust, confidence, reliance") and *fidere* ("to trust").

One of the most illustrative Roman arrangements, [fiducia cum amico](#)² ("trust with a friend"), closely resembles the duties Plan Sponsors shoulder today. When a Roman noble traveled abroad, he might entrust his valuables or land to a *fiduciarius* (a *trusted friend*) for safekeeping. That friend held legal title but had no beneficial ownership. In fact, they were not entitled to profit from the property and had to return it upon request. This early structure mirrors a modern fiduciary's duty of loyalty, in which the assets may be under your control but are never used for your personal benefit.

English Common Law and the Birth of Prudence

Centuries later, English courts transformed those concepts of loyalty into enforceable duties under equity law. One landmark case, [Speight v. Gaunt \(1883\)](#)³, established the "prudent person" standard still echoed in fiduciary law today. In that case, trustees hired a broker who absconded with funds. Because the trustees acted with ordinary business prudence, the court held they were not liable for the loss. The takeaway from this decision is that fiduciaries are judged not by outcomes but by process. This emphasis on process is clear in modern plan governance best practices, such as Fiducient Advisors' [Fiduciary Governance Calendar](#).

¹ <https://www.etymonline.com/word/fiduciary>

² From the History of the Development of "Trust" and Terminological Units Related to it, Irina Gvelesiani, 2013

³ https://en.wikipedia.org/wiki/Speight_v_Gaunt

This report is intended for the exclusive use of clients or prospective clients (the "recipient") of Fiducient Advisors and the information contained herein is confidential and the dissemination or distribution to any other person without the prior approval of Fiducient Advisors is strictly prohibited. Information has been obtained from sources believed to be reliable, though not independently verified. Any forecasts are hypothetical and represent future expectations and not actual return volatilities and correlations will differ from forecasts. This report does not represent a specific investment recommendation. The opinions and analysis expressed herein are based on Fiducient Advisor research and professional experience and are expressed as of the date of this report. Please consult with your advisor, attorney and accountant, as appropriate, regarding specific advice. Past performance does not indicate future performance and there is risk of loss.

From Trust Law to ERISA: The American Codification

When Congress enacted the Employee Retirement Income Security Act of 1974 (ERISA), it embedded centuries of fiduciary tradition into federal law. Under [ERISA §404\(a\)\(1\)](#)⁴, fiduciaries must:

- Act solely in the interest of participants and beneficiaries
- Carry out duties prudently
- Diversify plan investments
- Follow plan documents
- Avoid conflicts of interest

As the [Department of Labor’s fiduciary guide](#)⁵ notes, these are practical governance principles — not academic ideals. They define the daily work of prudent Plan Sponsors.

Modern Fiduciary Failures

Even after centuries of legal evolution, fiduciary missteps remain remarkably consistent, as they tend to arise not from market turbulence, but from governance gaps. Two modern cases illustrate this perfectly.

In [Tussey v. ABB, Inc. \(8th Cir. 2014; settled 2019\)](#)⁶, one of the most publicized 401(k) lawsuits to date, employees alleged their Plan Sponsor allowed excessive recordkeeping fees, unmonitored revenue sharing and used plan assets to subsidize corporate expenses. After years of litigation, the case settled for \$55 million, but the real lesson isn’t the price tag. A fiduciary process that includes essential safeguards such as benchmarking, fee documentation and periodic vendor reviews is designed for your best protection.

[Tibble v. Edison International \(U.S. Supreme Court, 2015\)](#)⁷ reinforced the idea that fiduciary duty isn’t “set it and forget it.” The Supreme Court held that plan fiduciaries have an ongoing duty to monitor investments, even long after they’re initially chosen. In practical terms, once a fund is in your lineup, it stays under your microscope. Regular due diligence, fee comparisons and performance reviews aren’t just best practices, they are legal expectations.

From *Tussey* to *Tibble*, fiduciary breaches rarely stem from bad markets; they almost always arise from weak process or documentation. It’s not about perfection; it’s about prudence.

⁴ <https://www.law.cornell.edu/cfr/text/29/2550.404a-1>

⁵ <https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/publications/meeting-your-fiduciary-responsibilities-booklet-2021.pdf>

⁶ <https://www.plansponsor.com/12-years-litigation-deliver-final-settlement-tussey-vs-abb/>

⁷ <https://www.plansponsor.com/Supreme-Court-Reaches-Decision-in-Tibble-v-Edison/>

Fiduciary Principles in Practice

For today's retirement Plan Sponsors, ancient fiduciary duties remain alive. They have simply been updated for modern investment menus, service providers and participant behavior.

You can embody the *fiduciarius* mindset through these practices:

- **Adopt a prudent process** — your best defense against [hindsight bias](#)⁸
- **Monitor and evaluate vendors** — from recordkeepers to investment consultants
- **Avoid conflicts** — confirm fees and decisions are made in the best interests of participants
- **Educate your committee** — informed fiduciaries make better decisions
- **Document everything** — including meeting minutes, fund reviews and benchmarking analyses

Want to strengthen your fiduciary process or enhance your defined contribution plan governance? Consider partnering with an independent fiduciary consultant. Please [reach out](#) to any of the professionals at Fiducient Advisors.

About the Author



Lou Ressler
Senior Consultant

Lou has over 20 years of experience in the retirement plan industry. He advises institutional clients by providing counsel and guidance on fund menu design, manager selection, vendor due diligence, investment policy statements and performance monitoring. Additionally, Lou is a member of the firm's Recordkeeper Oversight Council. Prior to joining the firm in 2022, he was a Retirement Plan Advisor for Wintrust. Lou earned a BA degree from Taylor University, the Accredited Investment Fiduciary (AIF®) designation from the Center for Fiduciary Studies and the Certified Plan Fiduciary Advisor (CPFA) designation from the National Association of Plan Advisors. His interests include health and fitness, music and cheering on his kids' sports teams.

⁸ <https://encorefiduciary.com/the-sixth-circuit-vindicates-that-erisa-is-a-law-of-process-and-does-not-allow-hindsight-second-guessing-of-fiduciary-decisions/>