The Employee Retirement Income Security Act of 1974 (ERISA) imposes duties on retirement plan fiduciaries that are "the highest known to the law", and provides a six-year statute of limitations for plan participants to pursue an action for breach of those duties. Although Plaintiffs obtained a judgment that their 401(k) plan fiduciaries had breached their duties by selecting certain investment funds for their plan within six years of the complaint, the Ninth Circuit held that an identical claim as to other funds that were imprudent for the same reason, and continued to harm Plaintiffs at the time of their complaint, was time-barred because the funds were initially selected more than six years earlier. The Ninth Circuit also replaced ERISA's stringent fiduciary standard with the deferential standard of review that Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101 (1989) adopted in §1132(a)(1)(B) actions challenging denials of benefits.

1. Notwithstanding the ongoing nature of ERISA's fiduciary duties, does the statute of limitations under 29 U.S.C. §1113(1) immunize 401(k) plan fiduciaries for retaining imprudent investments that continue to cause the plan losses if the funds were first included in the plan more than six years ago?

2. Does Firestone deference apply to fiduciary breach actions under 29 U.S.C. §1132(a)(2), where the fiduciary allegedly violated the terms of the governing plan document in a manner that favors the financial interests of the plan sponsor at the expense of plan participants?