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Publications

Employer Stock Litigation Update: DOL Urges Second Circuit to Reject "Moench" Presumption

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Companies that sponsor ESOPs, 401(k) and other forms of eligible individual account plans often are subjected to class action lawsuits under ERISA when the company stock held by the plan drops in value. Since the 2001 collapse of Enron Corporation, more than 200 such "stock drop" lawsuits have been filed under ERISA on behalf of alleged classes of plan participants. In recent years, the federal courts have shown an increased willingness to dismiss ERISA stock drop lawsuits at an early pre-trial stage, often on the basis of the so-called "Moench" presumption of prudence which treats a fiduciary's decision to continue offering the company stock investment as consistent with ERISA unless the plaintiff can show that the fiduciary knew at a pertinent time of an imminent corporate collapse or other dire situation.

In an amicus curiae brief filed in the Citigroup ERISA Litigation, DOL has urged the Second Circuit Court of Appeals to reject the Moench presumption as a tool for deciding ERISA stock drop cases. DOL argues that stock drop cases are not meaningfully different from any ERISA investment case that alleges a fiduciary knowingly caused or permitted the plan to overpay for an otherwise lawful investment. DOL's arguments, if adopted by the Second Circuit, could substantially change the legal landscape in connection with employer stock investments, including the way that ERISA stock drop cases are litigated.

Please see the attached memorandum to learn more about the DOL's amicus brief in the Citigroup ERISA Litigation.

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