

Publications

Enron Corp. Summary of September 30, 2003 Ruling

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Executive Summary – Enron ERISA Litigation Ruling

In the wake of the Enron accounting scandal and bankruptcy filing, participants in its retirement plans filed a series of lawsuits challenging the prudence of investing the plans assets in Enron stock. The cases have been consolidated before the U.S. District Court for the Southern District of Texas, which, on September 30, 2003, issued its much anticipated ruling on the defendants motions to dismiss the plaintiffs consolidated complaint. *Tittle v. Enron Corp.*, 2003 WL 22245394 (S.D. Tex. Sept. 30, 2003).

In its 327-page ruling, the Court refused to dismiss most of the ERISA breach of fiduciary duty claims plaintiffs asserted against Enron, the plan administrative committees, the committee members, the officers and directors who appointed the administrative committee members, the plans bank serving as directed trustee, and Arthur Andersen. The Court did dismiss the plaintiffs RICO claims and their state law claims, but not their professional malpractice claim against Arthur Andersen.

While the Courts ruling breaks little new ground, some of the more significant conclusions that it reached include:

- The individual officers and directors who act with respect to a benefit plan on behalf of a corporate fiduciary are themselves ERISA fiduciaries (disagreeing with the Third Circuits ruling in *Confer v. Custom Engineering Co.*, 952 F.3d 34, 37 (3rd Cir. 1991))
- The defendant officers and directors could have acted consistently with their duties under ERISA and federal securities rules prohibiting insider trading by either (1) disclosing to plan participants, beneficiaries and the general public – earlier than Enron did – the non-public information regarding Enrons financial condition, or (2) causing the plan to stop investing in Enron stock

- ERISA does not impose a duty to diversify 401(k) and other individual account plans to the extent assets are invested in company stock. Nevertheless, the court read the terms of the Enron Savings Plan to impose a contractual duty to diversify on the plan's fiduciaries
- A directed trustee is an ERISA fiduciary and has a duty to "supervise" and "investigate" the directions that it receives from the plans named fiduciary when the directed trustee "has some reason to know" that the directions may conflict with ERISA or the terms of the plan. A directed trustee also has a duty to stay informed as to the financial condition of the company in order to determine whether the stock is a prudent investment

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