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Tittle v. Enron Corp. and Fiduciary Duties Under ERISA

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Tittle v. Enron Corp. and Fiduciary Duties Under ERISA

Summary

Since November 2001, it has been reported that at least thirty-eight individual claims and three class action suits have been filed under the Employee Retirement Income Security Act ("ERISA") against the Enron Corporation, a Houston-based energy producer and trader. In general, these claims allege that fiduciaries of the Enron Corp. Savings Plan, a 401(k) plan established by Enron for the benefit of its employees, breached their fiduciary duties to participants and beneficiaries of the plan. Many participants and beneficiaries lost substantial amounts of retirement savings when the value of Enron stock plummeted. The company stock, representing 62 percent of employee retirement savings plans holdings and trading at $90 a share in November 2000, fell to less than a dollar a share when the company sought bankruptcy protection in December 2001.

As Congress considers legislation to address concerns raised by the Enron 401(k) plan, this report provides background on existing fiduciary duties required by section 404(a) of ERISA. Section 404(a) is considered the "touchstone for understanding the scope and object of an ERISA fiduciary's duties." The report will review selected cases that have interpreted section 404(a) and discuss bills introduced during the 107th Congress that would amend section 404(a).

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Tittle v. Enron Corp. and Fiduciary Duties Under ERISA

Since November 2001, it has been reported that at least thirty-eight individual claims and three class action suits have been filed under the Employee Retirement Income Security Act ("ERISA") against the Enron Corporation, a Houston-based energy producer and trader.[1] In general, these claims allege that fiduciaries of the Enron Corp. Savings Plan, a 401(k) plan established by Enron for the benefit of its employees, breached their fiduciary duties to participants and beneficiaries of the plan. Many participants and beneficiaries lost substantial amounts of retirement savings when the value of Enron stock plummeted. The company stock, representing 62 percent of employee retirement savings plans holdings and trading at $90 a share in November 2000, fell to less than a dollar a share when the company sought bankruptcy protection in December 2001.[2]

On December 12, 2001, a federal district court consolidated all of the ERISA claims brought in the Southern District of Texas under the caption of the first filed case, *Tittle v. Enron Corp*.[3] In *Tittle*, the plaintiffs allege that Enron and others acting as fiduciaries of the plan breached their fiduciary duties of loyalty and prudence and the duty to act in accordance with plan documents.[4] As Congress considers legislation to address concerns raised by the Enron 401(k) plan, this report provides background on existing fiduciary duties required by section 404(a) of ERISA. Section 404(a) is considered the "touchstone for understanding the scope and object of an ERISA fiduciary's duties."[5] The report will review selected cases that have

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[1]Joanne Wojcik, *Enron Employees Enraged Over Losses*, Bus. Ins., Dec. 10, 2001, at 1.

[2]See Julie Hirschfeld Davis, *Hill Ponders Pension Safeguards In Wake of Enron Collapse*, CQ Wkly., Jan. 26, 2002, at 234. See also Albert B. Crenshaw and Juliet Eilperin, *Bush Pension Plan Has Critics*, Wash. Post, Feb. 2, 2002, at E01. For additional information on Enron, see Patrick J. Purcell, *The Enron Bankruptcy and Employer Stock in Retirement Plans*, CRS Report RS21115 (2002); (name redacted), *Enron: Selected Securities, Accounting, and Pension Laws Possibly Implicated in its Collapse*, CRS Report RL31248 (2002).

[3]See *Enron 401(k) Plan Lawsuit: Recent News*, *at* http://www.enronsuit.com/news.html (last visited Feb. 8, 2002).

[4]First Consolidated and Amended Complaint, *Tittle v. Enron Corp.*, No. H-01-3913 (S.D. Tex. Apr. 8, 2002). The complaint also alleges violations of the Racketeer Influenced and Corrupt Organizations (RICO) Act and Texas Common Law. Those claims are beyond the scope of this report.

[5]*Bixler v. Central Pennsylvania Teamsters Health & Welfare Fund*, 12 F.3d 1292, 1299 (3rd Cir. 1993).

interpreted section 404(a) and discuss bills introduced during the 107th Congress that would amend section 404(a).

Section 404(a)(1) of ERISA establishes the duties owed by a fiduciary to participants and beneficiaries of a plan. This section identifies four standards of conduct: a duty of loyalty, a duty of prudence, a duty to diversify investments, and a duty to follow plan documents to the extent that they comply with ERISA.[6] Section 404(a)(1) reflects Congress' interest in incorporating the core principles of the common law of trusts.[7] Indeed, the common law of trusts requires a trustee to "make such investments and only such investments as a prudent [person] would make of his own property having in view the preservation of the estate and the amount and regularity of the income to be derived . . ."[8]

Tittle v. Enron Corp.

Participants in the Enron Corp. Savings Plan were permitted to contribute between 1 and 15 percent of their eligible base pay to the plan.[9] Participants directed the investment of their contributions to various investment options available under the plan. Two options, the Enron Corp. Stock Fund and the Enron Oil & Gas Stock Fund, invested solely in company stock. Enron matched participants' contributions, at certain percentages, by making contributions to the participants' accounts in the stock funds.[10]

The plaintiffs in *Tittle* allege violations of the duties of loyalty and prudence and the duty to act in accordance with plan documents. They argue that officers of Enron and members of the Savings Plan Administrative Committee, the entity responsible for the daily activities of the Savings Plan, breached their duty of loyalty by actively

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[6]Section 404(a)(1) of ERISA, 29 U.S.C. § 1104(a)(1), provides in relevant part:

> . . . a fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and –
> (A) for the exclusive purpose of:
> (i) providing benefits to participants and their beneficiaries; and
> (ii) defraying reasonable expenses of administering the plan;
> (B) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims;
> (C) by diversifying the investments of the plan so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so; and
> (D) in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of this title and Title IV.

[7]S. Rep. No. 93-127 (1973), *reprinted in* 1974 U.S.C.C.A.N. 4838, 4866.

[8]Restatement (Second) of Trusts § 227 (1959).

[9]First Consolidated and Amended Complaint, *supra* note 4 at 48.

[10]*Id.* at 49.

misleading participants and beneficiaries about the appropriateness of investing in Enron stock. The plaintiffs contend that the fiduciaries' positive statements about Enron's earnings prospects and business condition influenced them into maintaining and purchasing Enron stock.

The plaintiffs allege several breaches of the duty of prudence. First, the plaintiffs argue that Enron and the Compensation and Management Development Committee of the Board of Directors ("Compensation Committee") failed to act prudently by appointing fiduciaries to manage the Savings Plan who were not qualified.[11] The plaintiffs also allege that Enron and the Compensation Committee failed to monitor adequately the investment decisions of these fiduciaries.

Second, the plaintiffs contend that the Administrative Committee breached its duty of prudence by failing to monitor Enron stock to determine whether such stock was a suitable investment option: "the Committee had no process for actively monitoring the prudence of Enron stock as an investment option for the Plan or protocol for discontinuing the use of Company stock upon it becoming no longer prudent as an investment for Plan assets."[12]

Third, the plaintiffs argue that Enron, the Administrative Committee, specified Enron officers, and the Northern Trust Company breached their duty of prudence by failing to postpone the "lockdown" of the Savings Plan in October, 2001.[13] The plaintiffs maintain that the fiduciaries "who knew some or all of the true facts concerning Enron's precarious financial condition, knew or should have known that it was imprudent to proceed with the Lockdowns."[14] During the lockdown, Enron stock lost more than one-third of its value, and plan participants suffered hundreds of millions of dollars in losses.[15]

Finally, the plaintiffs allege that the Administrative Committee and the Northern Trust Company breached their duty to act in accordance with plan documents by failing to diversify the plan investments. The Savings Plan states that each fiduciary shall discharge his duties and responsibilities with respect to the plan by, among other things, "'diversifying the investments of the Plan so as to minimize the risk of large losses . . .'"[16] The plaintiffs assert that because the fiduciaries did not comply with this plan requirement, the plan was "dangerously over-weighted in Enron stock."[17]

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[11]First Consolidated and Amended Complaint, *supra* note 4 at 263.

[12]*Id*. at 239.

[13]During the lockdown, the Savings Plan's recordkeeper and trustee were replaced. Participants were unable to move from one plan investment to another during the lockdown period.

[14]First Consolidated and Amended Complaint, *supra* note 4 at 256.

[15]*Id*.

[16]First Consolidated and Amended Complaint, *supra* note 4 at 259 (quoting the Enron Corp. Savings Plan § XV.3(c)).

[17]*Id*.

Fiduciary Duties Under ERISA

Duty of Loyalty. Section 404(a)(1)(A) of ERISA requires plan fiduciaries to discharge their duties "solely in the interest of the participants and beneficiaries" and for the "exclusive purpose" of providing benefits and defraying reasonable expenses of administering the plan.[18] This section is supplemented by section 403(c)(1) of ERISA, which provides that the "assets of a plan shall never inure to the benefit of any employer and shall be held for the exclusive purposes of providing benefits . . . and defraying reasonable expenses of administering the plan."[19]

The duty of loyalty under ERISA requires the fiduciary to act with an "eye single to the interests of the participants and beneficiaries."[20] Courts have concluded that deceiving participants and beneficiaries is inconsistent with the duty imposed by section 404(a)(1)(A).[21] In *Varity Corporation v. Howe*, the U.S. Supreme Court considered whether Varity breached its duty of loyalty under ERISA when it misled beneficiaries of its subsidiary's welfare benefit plan.[22] Varity persuaded the beneficiaries to change employers and benefit plans as a way of avoiding obligations arising from the plan's promises to pay medical and other nonpension benefits. Although Varity knew that the beneficiaries' new employer, a separately incorporated subsidiary, would fail, it indicated that the new subsidiary had a positive business outlook and offered secure employee benefits. The new subsidiary suffered a loss in its first year and ended its second year in receivership. Consequently, the employees lost their nonpension benefits.

The Court determined that Varity had violated section 404(a)(1)(A): "[t]o participate knowingly and significantly in deceiving a plan's beneficiaries in order to save the employer money at the beneficiaries' expense is not to act 'solely in the interest of the participants and beneficiaries.'"[23] The Court maintained that such deceit is inconsistent with the duty of loyalty owed by all fiduciaries under section 404(a)(1)(A).[24]

Duty of Prudence. Section 404(a)(1)(B) of ERISA requires fiduciaries to act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man would use in the conduct of an enterprise of a like character with

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[18]29 U.S.C. § 1104(a)(1)(A).

[19]29 U.S.C. § 1103(c)(1).

[20]*Donovan v. Bierwirth*, 680 F.2d 263, 271 (2d Cir. 1982), *cert. denied*, 459 U.S. 1069 (1984).

[21]See *Central States Pension Fund v. Central Transport*, 472 U.S. 559 (1985); *In re Unisys Corp. Retiree Med. Benefit "ERISA" Litig.*, 57 F.3d 1255 (3d Cir. 1995).

[22]516 U.S. 489 (1996).

[23]*Varity*, 516 U.S. at 506.

[24]*Id.*

like aims."[25] Department of Labor regulations indicate that a fiduciary may satisfy his duty of prudence under ERISA by giving appropriate consideration to the facts and circumstances that the fiduciary knows or should know are relevant to an investment or investment course of action.[26]

To determine whether a fiduciary has acted prudently, a court will consider the fiduciary's conduct in arriving at an investment decision and not the actual performance of the investment. In *In re Unisys Saving Plan Litigation*, the U.S. Court of Appeals for the Third Circuit noted: "if at the time an investment is made, it is an investment a prudent person would make, there is no liability if the investment later depreciates in value."[27]

The plaintiffs in *Unisys* alleged that the company breached its fiduciary duty of prudence by investing pension plan assets in guaranteed investment contracts ("GICs") issued by the Executive Life Insurance Company.[28] Although Unisys had been advised that such an investment was "controversial," it invested in Executive Life based on the company's high credit rating from Standard & Poor's.[29] Unisys maintained its investments in Executive Life GICs even after learning of the insurer's declining financial condition.

The Third Circuit considered whether Unisys conducted an independent investigation into the merits of the Executive Life GICs. Although Unisys claimed that it relied on the research of a consultant to determine that Executive Life was financially sound, the court was unconvinced. The court maintained that Unisys "passively accepted" the consultant's positive appraisal of Executive Life.[30] Any further investigation into Executive Life's financial condition appeared to be limited to Unisys' confirmation of the company's high credit rating by Standard & Poor's.

The court observed that the thoroughness of a fiduciary's investigation is measured not only by the actions it took in conducting it, but by the facts that an adequate evaluation would have uncovered. In this case, the court found that a more thorough investigation would have revealed that Executive Life was given lower credit ratings by other investment analysts. Further investigation would have also shown that Unisys' Standard & Poor's rating was questioned in some financial circles. Ultimately, the court concluded that there were genuine issues as to whether Unisys' reliance on the credit ratings was justified and informed.[31]

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[25]29 U.S.C. § 1104(a)(1)(B).

[26]See 29 C.F.R. § 2550.404a-1.

[27]74 F.3d 420, 434 (3d Cir. 1996).

[28]See *Unisys*, 74 F.3d at 425-26 ("A GIC is a contract under which the issuer is obligated to repay the principal deposit at a designated future date and to pay interest at a specified rate over the duration of the contract.").

[29]See *Unisys*, 74 F.3d at 427.

[30]*Unisys*, 74 F.3d at 436.

[31]*Unisys* was heard as an appeal from a district court decision that granted summary judgment (continued...)

Similarly, in *GIW Industries v. Trevor, Stewart, Burton & Jacobsen*, the Eleventh Circuit found that an investment management firm breached its duty of prudence under ERISA by failing to investigate thoroughly the cash requirements of a profit-sharing plan fund.[32] GIW Industries maintained a profit-sharing plan which consisted of three funds. Trevor Stewart was hired to provide investment management services for one of these funds. Trevor Stewart was given sole authority to manage the investment of the fund's assets.

Trevor Stewart invested 70 percent of the fund assets in long-term government bonds. The firm claimed that this investment was based on solid market analysis and that it investigated market conditions before making the investment. Within a year of being hired, GIW Industries informed Trevor Stewart of a required cash disbursal to be made from the fund. To make the disbursal, Trevor Stewart was forced to sell some of the bonds for less than their purchase price.

GIW Industries filed suit against Trevor Stewart, alleging that the firm's decision to invest in long-term government bonds was not prudent because it failed to provide the liquidity necessary to make payments to retiring employees without adversely affecting the fund.[33] The court agreed with this position. The court noted that Trevor Stewart failed to determine the fund's historical cash flow needs. Although the bonds carried minimal risk, Trevor Stewart failed to consider the withdrawals and disbursements that were characteristic of the fund. Moreover, the court maintained that if Trevor Stewart "had investigated the age and projected retirement plans of employee participants, it could have anticipated the need for cash" and made different investment decisions.[34]

Duty to Diversify Investments. Section 404(a)(1)(C) of ERISA requires fiduciaries to diversify the investments of a plan "so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so."[35] In general, it is believed that fiduciaries should not invest an unreasonably large proportion of a plan's portfolio in a single security, in a single type of security, or in various securities dependent upon the success of a single enterprise or upon conditions in a single locality.[36] The duty to diversify investments does not apply to eligible individual account plans that acquire or hold qualifying employer real estate or qualifying employer securities.[37]

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[31](...continued)
to the company. The Third Circuit remanded the case for further proceedings.

[32]895 F.2d 729 (11th Cir. 1990).

[33]*GIW Industries*, 895 F.2d at 731.

[34]*GIW Industries*, 895 F.2d at 733.

[35]29 U.S.C. § 1104(a)(1)(C).

[36]See Edward B. Horahan III and Ellen A. Hennessy, *ERISA – Fiduciary Responsibility and Prohibited Transactions*, Tax Mgmt. (BNA) (2001).

[37]29 U.S.C. § 1104(a)(2). See 29 U.S.C. § 1002(34) (An individual account plan is "a pension plan which provides for an individual account for each participant and for benefits
(continued...)

In *GIW Industries*, the court concluded that Trevor Stewart breached its duty to diversify investments by investing too heavily in long-term government bonds. By investing 70 percent of the plan's assets in long-term bonds rather than short-term bonds, the firm exposed the fund to a greater degree of risk. Expert testimony had indicated that short-term bonds or bonds with staggered maturity dates would have minimized exposure if the bonds were sold before maturity. The court maintained that Trevor Stewart's investment exposed the fund "to greater risk of cash outflows than was prudent."[38]

Similarly, in *Brock v. Citizens Bank of Clovis*, the Tenth Circuit determined that trustees of the Citizens Bank of Clovis Pension Plan breached their duty to diversify investments by investing over 65 percent of the plan's assets in commercial real estate first mortgages.[39] The court maintained that the trustees' significant investment in one type of security exposed the plan to a multitude of risks. Moreover, the court found that the trustees failed to establish that the investments were prudent notwithstanding the lack of diversification.[40]

In *Metzler v. Graham*, the Fifth Circuit did not find a violation of section 404(a)(1)(C) despite a significant investment in one piece of real estate.[41] Graham, the sole trustee and administrator of a pension plan, invested 63 percent of the plan assets in 24.251 acres of undeveloped land. Metzler, the Acting Secretary of Labor at the time of the suit, alleged that the investment violated Graham's duty to diversify investments.

The court maintained that Graham's investment was prudent under the circumstances and thus, within the exception in section 404(a)(1)(C). The court identified four factors that supported the position that Graham did not "imprudently introduce a risk of large loss by purchasing the Property."[42] First, the plan was not required to make payments to beneficiaries until age 65, death, or disability, and the average age of the plan participants was 37 when the property was purchased. Remaining plan assets were available to cover projected payouts for the next twenty years. Second, the purchase was better insulated from the possible return of high inflation: "when the plan's holdings consisted solely of cash and short term instruments, there was little hedge against inflation."[43] Third, there was a significant cushion between the purchase price and the property's appraised value. Finally,

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[37](...continued)
based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participants's account."). See also 29 U.S.C. § 1107(b)(1) (eligible individual account plans not subject to 10 percent limit on employer securities).

[38]*GIW Industries*, 895 F.2d at 733.

[39]841 F.2d 344 (10th Cir. 1988).

[40]*Brock*, 841 F.2d at 346.

[41]112 F.3d 207 (5th Cir. 1997).

[42]*Graham*, 112 F.3d at 210.

[43]*Graham*, 112 F.3d at 211.

Graham's expertise in the development of industrial property supported the conclusion that the investment was prudent. After considering these factors, the court was persuaded that the investment did not carry a risk of large loss.

Duty to Act in Accordance with Plan Documents. Section 404(a)(1)(D) of ERISA requires fiduciaries to discharge their duties "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with [ERISA]."[44] Courts have held that the duty imposed by section 404(a)(1)(D) does not require fiduciaries to resolve issues of interpretation in favor of plan fiduciaries.[45] In *DeBruyne v. Equitable Life Assurance Society of the United States*, the Seventh Circuit held that the investment manager of a retirement plan did not violate section 404(a)(1)(D) by maintaining an allegedly "imbalanced" portfolio for one of its funds.[46] The plaintiffs, participants in the plan, argued that Equitable assembled a portfolio that was risky and volatile in contravention of plan documents. They contended that Equitable's breach contributed to the fund's losses, particularly during the October 1987 stock market crash.

The court declined to find a violation of section 404(a)(1)(D). The court observed that the language of the prospectuses and semiannual and annual reports gave Equitable broad discretion to decide the mix of investments in the fund.[47] Moreover, Equitable made continuous and consistent disclosures indicating that the "balance" in the fund could vary substantially.[48] The court concluded that the plaintiffs could not hold Equitable to a specific portfolio because Equitable never made promises about the composition of its investments.

In interpreting section 404(a)(1)(D), courts have also held that fiduciaries do not breach the duty to act in accordance with plan documents if their failure to follow such documents results from erroneous interpretations made in good faith.[49] In *Morgan v. Independent Drivers Association Pension Plan*, the Tenth Circuit found that the trustees of a pension plan did not violate section 404(a)(1)(D) because their decision to terminate the plan was considered in good faith and based on consultation with experts.[50]

The trustees' decision to terminate the plan was based on their understanding that the plan would be unable to pay required benefits following a decision by the Independent Drivers Association membership to change the way the plan was funded. Prior to making their decision, the trustees sought advice from counsel and an outside actuary. The plaintiffs, participants in the plan, argued that the termination was not authorized by, and was contrary to, the terms of the plan.

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[44]29 U.S.C. § 1104(a)(1)(D).

[45]See Horahan and Hennessy, *supra* note 36 at A-32.

[46]920 F.2d 457 (7th Cir. 1990).

[47]*DeBruyne*, 920 F.2d at 464.

[48]*Id.*

[49]See Horahan and Hennessy, *supra* note 36 at A-31.

[50]975 F.2d 1467 (10th Cir. 1992).

The plaintiffs believed that trust law principles supported their position. They argued that when a trustee violates a duty because of a mistake as to the extent of his duties and powers, he is not protected by liability even if he acts in good faith.[51] The court, however, maintained that the trustees' mistake concerned the *exercise* of their powers or the performance of their duties rather than the *extent* of their powers.[52] The court noted that the trustees had broad authority to amend or modify the plan. The trustees' mistake was in their interpretation of the plan with regard to the effect of the new funding method. Such a mistake would not result in liability if the trustees acted in good faith. The court concluded that because the trustees made their decision in good faith after consulting with experts section 404(a)(1)(D) was not violated.

Legislation to Amend Section 404(a) of ERISA

Although numerous bills have been introduced to respond to concerns raised by the Enron 401(k) plan, only a handful of those bills would amend section 404(a). The bills discussed in this section would amend section 404(a) to address lockdowns, misrepresentations made by plan fiduciaries, and investment in employer securities.[53]

H.R. 3623, the Employee Savings Protection Act of 2002, would amend section 404(a) to prohibit misrepresentations relating to employer securities by plan fiduciaries. Under H.R. 3623, any knowing misrepresentation by a fiduciary of an individual account plan concerning the present or expected valuation of an employer security that is either made during a period of decisionmaking by the participant or beneficiary or potentially likely to induce a decision by the participant or beneficiary would be treated as a breach of fiduciary duty.[54] H.R. 3623 would ensure that employees who rely on a fiduciary's misrepresentations "to the detriment of their retirement savings can have a legal claim that survives bankruptcy."[55] Representative Ken Bentsen, the bill's sponsor, maintains that ERISA must be amended to ensure that "employers, who have superior information as to the financial condition of their business and [who] communicate information that they know to be false to influence

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[51] *Morgan*, 975 F.2d at 1470.

[52] *Id* (Quoting Restatement (Second) of Trusts § 201 cmt. c (1959): "[w]hen the question . . . depends . . . upon whether [a trustee] has acted with proper care or caution, the mere fact that he has made a mistake of fact or of law in the exercise of his powers or performance of his duties does not render him liable for breach of trust. In such a case he is liable for breach of trust if he is negligent, but not if he acts with proper care and caution.").

[53] See Purcell, *supra* note 2 (describing additional pension reform measures introduced during the 107th Congress). H.R. 3762, the Pension Security Act of 2002, was passed by the House on April 11, 2002. H.R. 3762 addresses lockdowns and investment restrictions in other sections of ERISA.

[54] H.R. 3623, 107th Cong. § 2(a) (2002).

[55] 148 Cong. Rec. H51 (daily ed. Jan. 24, 2002) (introduction of Employee Savings Protection Act of 2002).

their employees in the administration of their 401(k) accounts, face serious legal consequences."[56]

H.R. 3677, the Safeguarding America's Retirement Act of 2002, would amend section 404(a)(2) to impose additional requirements on individual account plans that invest in employer securities.[57] For participants who have not completed three years of participation under the plan, not more than 20 percent of the participant's accrued benefit from employee contributions may be invested in employer securities. For participants who have completed three years of participation under the plan, not more than 20 percent of the participant's entire nonforfeitable accrued benefit may be invested in employer securities. In addition, a lockdown could not be imposed in connection with the nonforfeitable accrued benefit of a participant or beneficiary.

S. 1921, the Pension Plan Protection Act, would amend section 404(a)(2) to provide that a lockdown could not take effect under an individual account plan until at least thirty days after written notice has been provided by the plan administrator to participants and beneficiaries.[58]

Tittle v. Enron is still in its early stages. In February 2002, a federal district court issued a scheduling order for the case. Enron's answer to the *Tittle* complaint is not required until the stay imposed by the Enron bankruptcy is lifted for all purposes on June 21, 2002, pursuant to the bankruptcy judge's order.[59] A trial date has been set for December 1, 2003.[60] A document depository for the receipt and maintenance of discovery in the case shall be set up in Houston, Texas.

The court's ultimate handling of the case and a possible outcome are beyond the scope of this report. Nevertheless, the court's consideration of the plaintiffs' claims is likely to be influenced by the cases discussed here.

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[56] *Id.*

[57] H.R. 3677, 107th Cong. (2002).

[58] S. 1921, 107th Cong. § 301(b) (2002).

[59] Scheduling Order, *Tittle v. Enron Corp.*, No. H-01-3913 (S.D. Tex. Feb. 28, 2002) at 4.

[60] *Id.* at 5.

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