

KELLY, HANNAFORD & BATTLES P.A.

ANTHONY R. BATTLES
JULE M. HANNAFORD IV
A. DAVID KELLY
THEODORE K. RICE
HOLLY A. FISTLER

MARK D. MEYER
SONJA LEMMER MARTENS
OF COUNSEL

ATTORNEYS AT LAW
900 BAKER BUILDING
706 SECOND AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55402
TELEPHONE (612) 341-0881
FACSIMILE (612) 341-1041
KHBLAW.COM

WRITER'S DIRECT DIAL:
612/341-0935
JHannaford@KHBlaw.com

October 25, 2011

Re: In re Citigroup ERISA Litigation Decision

Dear Clients and Other Friends:

As we all know, the financial crisis brought about significant stock market losses. These losses triggered a new wave of litigation against sponsors and fiduciaries of benefit plans that hold employer stock. These cases – referred to as “stock drop” lawsuits – have alleged that sponsors and fiduciaries imprudently continued to hold employer stock when market losses were foreseeable.

In reviewing these stock drop cases, courts have developed a “presumption of prudence” in favor of fiduciaries who invest in employer stock pursuant to the terms of a plan. Last week, in the closely-watched case of In re Citigroup ERISA Litigation, the influential Second Circuit (which includes New York City) adopted the presumption of prudence in affirming the dismissal of claims against fiduciaries who had been sued following the sharp decline of Citigroup stock. The Court further stated that the presumption of prudence could be applied at the pleadings stage of litigation in granting a motion to dismiss. This is a significant win for plan sponsors and fiduciaries.¹

The Second Circuit now joins the Third, Fifth, Sixth and Ninth Circuits in recognizing the presumption of prudence. No Circuit has ruled against the presumption. The Eighth Circuit, which includes Minnesota, has not ruled on the matter.

In the wake of the Citigroup decision, employers that sponsor benefit plans allowing investment in company stock will be able to do so with greater certainty. This ruling should make it less attractive for class action lawyers to bring “stock drop” lawsuits because many of these cases should be dismissed on the pleadings.

Our firm has followed the case law in this area since the Enron era. Last week's Citigroup decision confirms our longstanding analysis.

Please call us with any questions.

Very truly yours,

Jule M. Hannaford IV

¹ At the same time, the Second Circuit affirmed the dismissal of stock drop claims in the companion case Gearren v. McGraw-Hill Companies, Inc.