COURIER CAPITAL CORPORATION
INVESTMENT COUNSEL

Client Bulletin

October 2008

Best Practices for Preventing 401k Plan Lawsuits

In December, a San Francisco court is expected to begin hearing arguments in the first wave of class-action lawsuits focused on the mismanagement of retirement plans by employers. The lawsuits accuse a number of *Fortune 500* companies of failing to put workers' interests first, resulting in millions of dollars of losses over time.

The suits accuse employers of allowing plan administers and providers to charge excessive, hidden fees to workers thus breaching their fiduciary duty under ERISA. Employers and trustees are being accused of "being asleep at the wheel" while financial service firms were extracting egregious fees by overcharging employees.

As plan trustee, you have a fiduciary duty to ensure that the fees associated with your plan do not "impair the value of plan assets in a participant's account."

The Court will examine employer's relationships with plan administrators to determine whether they have "ignored their fiduciary responsibilities by putting the interests of the employer ahead of the interests of their workers and retirees."

While it is impossible to eliminate the risk of being sued, the following several steps should help 401(k) plan fiduciaries reduce the risk of becoming a lawsuit target:

1) Make your investment selections prudently
2) Review plan operations and communications including investor education
3) Establish good, consistent, written procedures and document (with care) all decisions
4) Consult retirement plan specialists for guidance and advice

As a Registered Investment Advisor with over $1.5 billion entrusted for our management, we have the unique ability to be co-fiduciaries of your plan. We are as personally liable for the selection and monitoring of a plan's investment options. Let us consult with you and demonstrate how we provide investment advice with accountability, based on the highest standard of the law, "The Fiduciary Standard."

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