



News Release

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DRI Files Amicus Brief in *Glenn Tibble, et al. v. Edison International, et al.*

Case Centers on Applicability of ERISA's Six-Year Statute of Limitations

Chicago—(January 28, 2015)—DRI – The Voice of the Defense Bar has filed an amicus brief with the U.S. Supreme Court in *Glenn Tibble, et al. v. Edison International, et al.* The brief was filed through DRI's Center for Law and Public Policy.

In the case, plaintiffs brought fiduciary duty claims against Edison International for alleged mismanagement of Edison's 401(k) plan. Plaintiffs' claims centered upon the fact that the plan's investment committee selected retail-class shares for the plan when comparable lower-cost institutional-class shares were available.

Plaintiffs filed this class action as one of more than a dozen similar cases by the same counsel, challenging the fees associated with administration of ERISA-governed 401(k) retirement plans as imprudent and a breach of fiduciary duty. Defendant, Edison International, defeated the majority of the claims on grounds that they were barred by the six-year statute of limitations set forth in ERISA § 413(1)(A). Plaintiffs appealed and the Ninth Circuit affirmed the district court's ruling that the claim challenging the selection of investment funds was barred by the ERISA limitation, because the claim challenged funds selected more than six years before the claim was filed, and the claim did not allege that any materially new circumstances arose within the previous six years that required removal of the funds.

Plaintiffs attempted to challenge the committee's initial decision to include the retail-class shares in 1999 under a "continuing violation" theory as a result of the committee's alleged failure to remove the retail-class shares through prudent monitoring. Plaintiffs' theory was based on the premise that the effects of the initial decision to include retail-class shares continued in time as to toll the limitations period for bringing suit. The Ninth Circuit rejected that theory.

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In its brief supporting Edison, DRI agrees with the Ninth Circuit decision. ERISA's statute of repose unquestionably bars petitioners' claims.

However, DRI's brief focuses on the potential effect of the Court's decision on benefit claims under ERISA § 502(a)(1)(B). DRI requests in its brief that the Court keep in mind that petitioners' claims for breach of fiduciary duty are very different from claims for individual recovery of benefits under ERISA § 502(a)(1)(B). In the event the Court considers petitioners' "continuing violation" theory to toll accrual of petitioners' fiduciary duty claims, the Court's decision should be crafted to avoid affecting benefit claims under ERISA § 502(a)(1)(B).

Brief co-authors Edmund S. Sauer, Scott Burnett Smith and Mary Ann Couch of the Nashville, TN, Huntsville, AL, and Birmingham, AL offices, respectively, of Bradley Arant Boult Cummings LLP are available for interview or expert comment through DRI's Communications Office.

For the full text of the amicus brief, [click here](#).

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