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Hot off the Presses: Recent Supreme Court ERISA Decisions

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Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
  - In 2012, the Supreme Court upheld the constitutionality of the Affordable Care Act ("ACA") – *National Federation of Independent Business v. Sebellius*.
    - Supreme Court considered two major provisions of ACA:
      - Individual mandate – most citizens of U.S. must have minimum essential coverage – upheld as constitutional.
      - Medicaid expansion – held to be unconstitutionally coercive but Justices agreed that, so long as HHS does not withhold all Medicaid funds from states if they do not expand Medicaid coverage, then the law is constitutional.

Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
  - *King v. Burwell* (cert. granted Nov. 7, 2014) – U.S. Supreme Court agreed to review a 4th Circuit decision upholding the IRS rule permitting federal assistance under ACA on both state-run and federally-facilitated insurance exchange.

Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
  - **Facts**:
    - ACA makes federal assistance available to lower and middle-income individuals subsidies – through premium tax credits and cost-sharing reductions – when purchasing health coverage on a health insurance exchange (on-line health insurance marketplace).
    - There are 2 types of health insurance exchanges:
      - State-run; and
      - Federally-facilitated (HealthCare.gov)

Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
  - **Facts**: (cont'd)
    - By its terms, ACA provides the premium tax credit to individuals enrolled in an Exchange "established by the State".
      - This case centers on these 4 words.
    - Question: Are federal tax subsidies available to individuals who purchase an insurance plan on the federal exchange?
    - May 23, 2012, IRS issued proposed regulations providing premium tax credit availability to participants in both the federal exchange **AND** state-run exchanges.

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Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
  - **Facts**:
    - IRS position -- legislative history, structure and purpose of ACA does not demonstrate Congress intended to limit the premium tax credit to state exchanges.
    - Plaintiffs challenged the IRS regulation, arguing that language of ACA (*i.e.*, subsidies are available on "exchanges established by the state") explicitly limits availability of premium tax credit to participants in state-run exchanges.

Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
  - **Facts**:
    - Plaintiffs' argument – Congress could have referred to "exchanges" generally, which would have encompassed both state exchanges and federal exchange.
    - Congress wanted to incentivize states to implement state based exchanges and penalize those that refused to do so.
  - Government's response – ACA is a complex statute and must be read in context of whole law where subsidies were intended to be available for individuals who buy health insurance whether on state or federal exchange.

Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
  - **Facts**:
    - 37 states have not established their own exchange.
      - 8.8M residents in those states access plans on federal exchange.
    - 13 states and District of Columbia have established insurance exchanges.
      - 2.9M residents in those states access plans on state exchange.

Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
- **The Supreme Court Decides**:
  - The IRS interpretation that premium assistance under the ACA is available to individuals who purchase coverage on both State-run and Federally-run Marketplaces.
  - Although the language in Code Section 36B is ambiguous, the ACA's overall statutory scheme and the structure of Code Section 36B itself indicate that premium assistance is not limited to purchase of coverage on State-run marketplaces.
  - *Chevron* deference (deference to the IRS to interpret the Code) is not applicable because Congress would have not delegated to regulators an issue of such "deep economic and political significance."

Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
- **The Supreme Court Decides (cont'd)**:
  - Statutory interpretation that premium assistance is available only to individuals purchasing coverage on State-run Market places would effectively eliminate two of the ACA's three major purposes: tax credits and the coverage mandate in states with Federally-run marketplaces.

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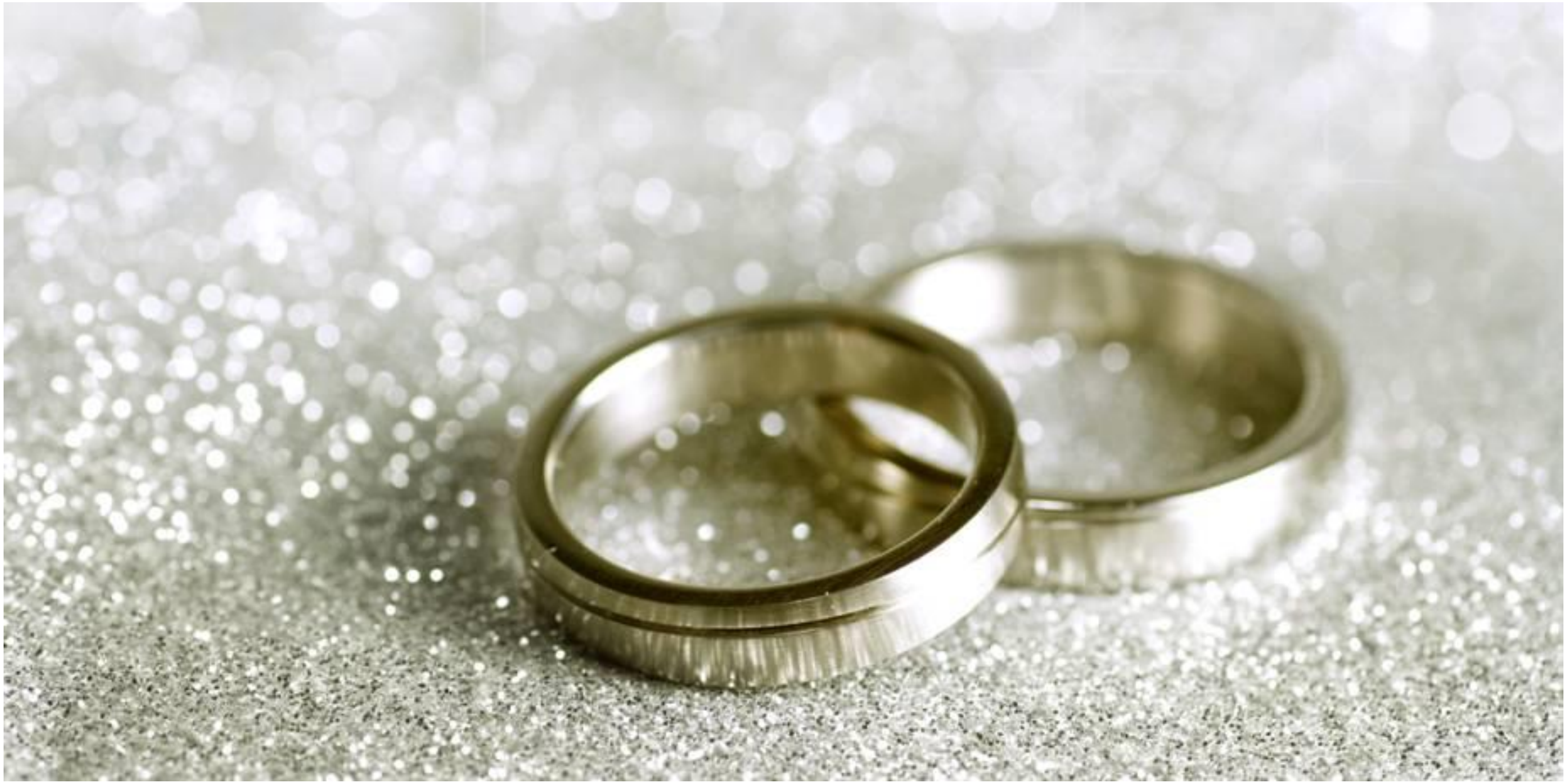
Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
  - **Takeaways**:
    - A decision in favor of plaintiffs could have significantly impacted the insurance marketplace, subsidies and the individual and employer mandates of the ACA.
    - However, the Court's ruling has kept the ACA intact.
    - For the time being, ACA implementation moves forward, premium assistance will continue and employers remain subject to the employer mandate.

Affordable Care Act and Tax Credits

- ***King v. Burwell*, 135 S.Ct. 2480 (2015)**
  - **Dissent (authored by Scalia)**
    - “Words no longer have meaning.”
    - Majority engages in “jiggery-pokery.”
    - In case you are interested, that means “dishonest or suspicious activity” or “underhanded manipulation or dealings.”
    - ACA should be called “SCOTUScare.”

Defense of Marriage Act (DOMA)



Defense of Marriage Act (DOMA)

- ***United States v. Windsor*, 133 S. Ct. 2675 (2013)**
  - In 2013, the U.S. Supreme Court declared that Section 3 of DOMA, which defined "marriage" as between one man and one woman, was unconstitutional.
  - Impact of this case was that for federal law purposes, opposite-sex and same-sex spouses must be treated equally in states permitting same-sex marriages.
    - Over 1,000 benefits, rights and privileges under federal law are impacted by the definition of "spouse" or "marriage".

Defense of Marriage Act (DOMA)

- IRS and DOL issued guidance on application of *Windsor* to administration of pension plans.
  - “Place of celebration” rule – take your marital status with you, regardless of law in state where you reside.
- For <u>state law purposes</u>, states may define “marriage” to include or exclude same-sex spouses.
- In *Windsor*, Supreme Court avoided dealing with the ultimate issue of whether states can enact laws or constitutional amendments banning same-sex marriages in their states.

Constitutionality of Same-Sex Marriage

- **4 Consolidated Cases: *Obergefell v. Hodges*;*Tanco v. Haslam*; *DeBoer v. Snyder*; *Bourke v. Beshear***
  - October 6, 2014, Supreme Court denied 7 petitions to review state bans on same-sex marriage.
  - However, on January 16, 2015, Supreme Court agreed to review 4 cases from states in the 6th Circuit upholding state's right to define marriage as only between one man and one woman.
    - 2 Questions:
      - (1) Does 14^{th} Amendment require a state to license a marriage between 2 people of the same sex?

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Constitutionality of Same-Sex Marriage

- (2) Does 14th Amendment require a state to recognize a same-sex marriage when the marriage was lawfully licensed and performed out-of-state?

- Oral argument held on April 28, 2015.
- Supreme Court was swamped with amicus briefs arguing for and against same-sex marriage.
  - For example, a brief was signed by hundreds of U.S. companies, including Apple, Microsoft, Johnson & Johnson, Dow Chemical and New England Patriots arguing that inconsistent marriage laws impose an added economic burden on American business in excess of $1 billion per year.

Constitutionality of Same-Sex Marriage

- ***Obergefell v. Hodges*, 135 S.Ct. 2584 (2015)**
  - Same-sex marriage is currently legal in 37 states and the District of Columbia.
  - But, courts have been slow to address the application of *Windsor* to welfare benefit plans.
  - Definition of “marriage” and “spouse” are key terms for employee benefit plans.
  - Multi-state health plans with some states recognizing same-sex marriage and others not recognizing it.

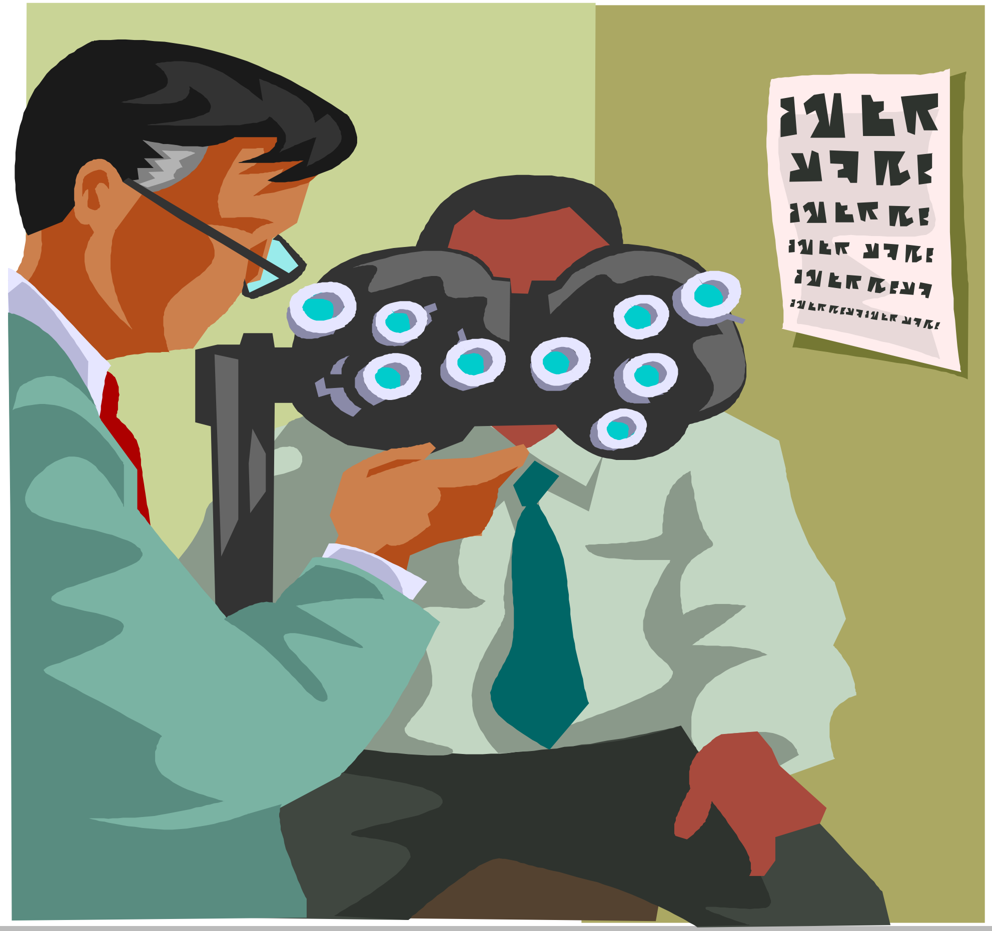
Constitutionality of Same-Sex Marriage

- ***Obergefell v. Hodges, 135 S.Ct. 2584 (2015)***
  - On June 26, 2015, the Court issued historic decision
  - 14th Amendment's Due Process and Equal Protection Clauses require states to allow same-sex marriage and to recognize same-sex marriage performed in other states.
  - 14 state bans on same-sex marriage are invalid.
  - Same-sex spouses are entitled to all the rights extended to opposite-sex spouses under federal and state law.

Constitutionality of Same-Sex Marriage

- ***Obergefell v. Hodges, 135 S.Ct. 2584 (2015)***
  - **Takeaways**
    - Significant impact on sponsors of *insured* health and welfare plans in states that currently ban same-sex marriage, as they will be required to offer insured benefits to same-sex spouses.
    - *Self-insured* benefit plans governed by ERISA face heightened risk of discrimination claims if they define “spouse” inconsistent with federal and state definitions.
    - Employers in states that currently ban same-sex marriages should review benefit plans and consider changes that may need to be made.
    - May also reconsider domestic partner benefits now that same-sex couples have the right to marry and have their marriage recognized across the country.

Retiree Health Benefits



Retiree Health Benefits

- ***M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (2015)**
  - **Facts**:
    - Company provided health benefits to union retirees, spouses and dependents without cost to retirees.
    - Expired CBA required "full Company contribution" towards cost of retiree health benefits.
    - Company sought to amend plan requiring retirees to begin to contribute towards cost of benefits.
    - Retirees sued, contending the above language in expired CBA required Company to provide lifetime no-employee-contribution health benefits.

Retiree Health Benefits

- ***M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (2015)**
  - **Facts**:
    - Company argued that retiree benefits ended when CBA expired and company could eliminate or modify the benefits.
    - 6th Circuit reversed district court decision and upheld retirees' claims.
    - Court based its decision on 1983 "retiree-friendly" *Yard-Man* case finding an "inference of vesting".
    - 6th Circuit held -- When CBA is unclear:
      - Under *Yard-Man*, courts should infer an intent of the collective bargaining parties to vest retiree benefits for life when CBA language as to duration of post-retirement health benefits is not clear.

Retiree Health Benefits

- ***M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (2015)**
  - **In *M&G Polymers*, 6th Circuit found**:
    - There was no express durational language in expired CBA applicable to retiree benefits.
    - CBA contained a general durational clause (*i.e.*, "the term of the agreement is ____ to ____.").
    - CBA language providing "full Company contribution" showed the intent of the bargaining parties to provide vested lifetime benefits.
    - Found intent to vest lifetime contribution-free health benefits from provisions in CBA tying eligibility for health benefits to eligibility for pension benefits.

Retiree Health Benefits

- ***M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (2015)**
  - **Holding**:
    - 6/26/2015 – Supreme Court reverses 6th Circuit decision.
      - Retiree health benefit language in CBA or plan document must be interpreted in accordance with ordinary principles of contract law.
      - When intent of the parties is unambiguously expressed in an agreement, courts should uphold those provisions ("four corners" doctrine).
      - But when contract is ambiguous courts can consider extrinsic evidence.

Retiree Health Benefits

- ***M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (2015)**
  - **Holding**:
    - 6th Circuit's *Yard-Man* inference is inconsistent with the application of ordinary principles of contract law.
    - *Yard-Man* inference impermissibly tips the scale in favor of vested retiree benefits.
  - Requiring a specific durational clause directed at retiree health benefits conflicts with principles of contract law construction.
    - Traditional contract principle: courts should not interpret ambiguous contracts to create life-time promises.

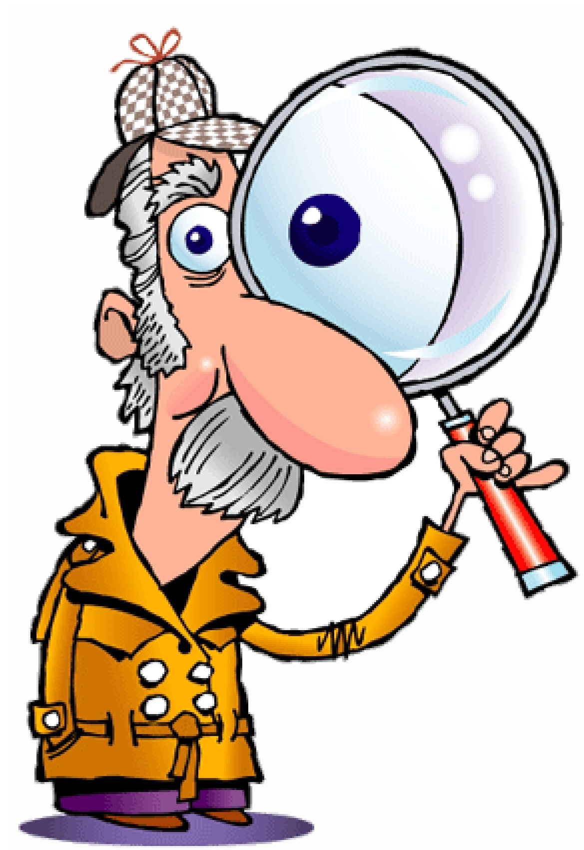
Retiree Health Benefits

- ***M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (2015)**
  - **Holding**:
    - Contractual obligations cease in the ordinary course upon termination of CBA.
    - For benefits to continue after CBA's expiration there must be explicit provisions in CBA.
    - "When a contract is silent as to the duration of retiree benefits, a court may not infer that the parties intended those benefits to vest for life".

Retiree Health Benefits

- ***M&G Polymers USA, LLC v. Tackett*, 135 S.Ct. 926 (2015)**
  - **Takeaways**:
    - Courts can no longer infer from the absence of an explicit durational provision in CBA relating to retiree health benefits that parties intended those benefits to continue after expiration of CBA.
      - Promotes uniformity in interpretations of CBAs.
      - Will have a lasting impact on how bargaining parties negotiate language in new CBAs.
      - Resolves long-standing circuit court split over question of lifetime vesting of retiree benefits.
    - Plan sponsors should review CBAs (including expired CBAs) BEFORE attempting to amend, modify or terminate retiree benefits.

Regular Review of ERISA Investments Required



Regular Review of ERISA Investments Required

- ***Tibble v. Edison International*, 135 S.Ct. 1823 (2015)**
  - Background:
    - Class of participants and beneficiaries in the Edison 401(k) Savings Plan (Plan) filed a lawsuit asserting a variety of fiduciary breach claims associated with the selection, monitoring and removal of certain investment options in the Plan that had been available since as early as 1999.
    - The claims included assertions that the investment funds selected were: (i) "retail mutual funds" and, as such, allegedly charged higher fees than institutional funds that were available instead; (ii) in the wrong economic sector; and (iii) money market as opposed to "stable value" funds.

Regular Review of ERISA Investments Required

- ***Tibble v. Edison International*, 135 S.Ct. 1823 (2015)**
  - Background:
    - Plaintiffs also claimed, among other things, that the Plan's company stock fund was imprudently managed because it was a "unitized" fund, rather than a direct ownership fund.
    - The district court ruled that plaintiffs' claims related to the investment options that were added to the Plan's menu of investment options in 1999 were untimely because they had been added more than six years prior to the filing of the complaint.

Regular Review of ERISA Investments Required

- ***Tibble v. Edison International*, 135 S.Ct. 1823 (2015)**
  - Background:
    - The Ninth Circuit affirmed.
    - The statute of limitations for a fiduciary breach claim for imprudent plan design begins to run from the "act of designating an investment for inclusion" in the Plan, not from the date fiduciaries of the Plan failed to remove the investment option or the date that the alleged imprudent option remained in the Plan.
    - Plaintiffs could not establish that there were "changed circumstances engendering a new breach," such that a new statute of limitations period had arisen.

Regular Review of ERISA Investments Required

- ***Tibble v. Edison International*, 135 S.Ct. 1823 (2015)**
  - Background:
    - The Court further explained that if the continued offering of a plan investment option, without more, started a new statute of limitations period, it would render the statute of limitations "meaningless" and potentially expose current fiduciaries to claims based on actions that occurred many years ago by their predecessors.

Regular Review of ERISA Investments Required

- ***Tibble v. Edison International*, 135 S.Ct. 1823 (2015)**
  - The U.S. Supreme Court unanimously decided that an ERISA plan participant may allege that a plan fiduciary breached the duty of prudence by not properly monitoring the plan's investment options as long as the alleged breach of the continuing duty occurred within six years of the suit.
  - The Court vacated the Ninth Circuit's earlier decision.
  - The Ninth Circuit had ruled that absent a "significant change in circumstances," a participant could not pursue such a claim based on the selection of an investment option more than six years prior to the suit.

Regular Review of ERISA Investments Required

- ***Tibble v. Edison International*****, 135 S.Ct. 1823 (2015)**
  - The Court reasoned that trust law requires a fiduciary to conduct “a regular review of its investments with the nature and timing of the review contingent on the circumstances.”
  - The Court remanded the *Tibble* case to the Ninth Circuit to determine the “contours of the alleged breach of fiduciary duty” and whether the fiduciaries satisfied their continuing obligation to monitor the investment options during the six years prior to the filing of the lawsuit
  - The Court did not state what exactly a fiduciary must do when monitoring investments to satisfy his or her fiduciary obligation.

Regular Review of ERISA Investments Required

- ***Tibble v. Edison International*, 135 S.Ct. 1823 (2015)**
  - However, the Court gave us some hints:
    - “the nature and timing of the review [is] contingent on the circumstances.”
    - recognize the “importance of analogous trust law.”
    - fiduciaries must “systematic[ally] condside[r] all the investments of the trust at regular intervals” to ensure their continued appropriateness for the trust.
    - The level of diligence required must be “reasonable” and “appropriate” to the particular investments.
    - The monitoring of plan investments must be regular, systematic and reasonable based on the particular investments at issue.

Regular Review of ERISA Investments Required

- ***Tibble v. Edison International*, 135 S.Ct. 1823 (2015)**
  - Takeaways:
    - Take proactive measures to ensure that the monitoring of plan investment options is regular, systematic and reasonable.
    - "Best practices" militate in favor of plan fiduciaries adopting a procedure for the regular monitoring of plan investment options, closely following that procedure, and making a written record of the implementation of and the adherence to that procedure.
    - While the results of investment decisions on behalf of the plan do not have to be "correct," the process in place must be prudent and diligently followed.

Questions?

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