

# Federal Judge Certifies Class in Citigroup 401(k) ERISA Case

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On November 27, 2017, US Judge Sidney H. Stein, S.D.N.Y., granted class certification to a class of participants in Citigroup's 401(k) Plan. The class includes current and former Citigroup employees who suffered losses in their 401(k) retirement accounts because, they allege, Citigroup violated the Employee Retirement Income Security Act (ERISA) when it favored Citigroup mutual funds over better alternatives. The class includes those participants in the Plan who invested in certain Citigroup-managed mutual funds between October 18, 2001, and December 1, 2005, when Citigroup sold its investment management arm. The funds involved were removed from the Plan soon after the lawsuit was filed in 2007. Judge Stein noted that Plaintiffs allege the decision to include the proprietary fund cost the employees and retirees "millions of dollars a year."

Gregory Porter of Bailey Glasser argued the class certification motion on behalf of the plaintiffs. Porter commented that "the decision clarified important constitutional and class standing issues and continued the trend of certification of cases involving proprietary funds in 401(k) plans." Rejecting defendants' central argument that the prudence of any fund had to be determined on a fund-by-fund basis, the Court said "plaintiffs' allegations are centered on breaches of the duty to administer the Plan solely in the interest of its participants and the duty to monitor Plan investments. These are constant duties; they need not be triggered by the characteristics of any Affiliated Fund."

In addition to Mr. Porter, Judge Stein appointed J. Brian McTigue and James Moore of McTigue Law LLP as class counsel, and David M. Preminger of Keller Rohrback LLP as liaison counsel for the class.

Judge Stein's ruling means the case will move forward to consider the merits of Citigroup's use of the nine proprietary Smith Barney and Citi funds at issue in the lawsuit. The Funds are: Citi Institutional Liquid Reserves Fund, Smith Barney Government Securities Fund, Smith Barney Diversified Strategic Income Fund, Smith Barney Large Cap Growth Fund, Smith Barney Large Cap Value Fund, Smith Barney Small Cap Value Fund, Smith Barney International All Cap Growth Fund, Smith Barney Fundamental Value Fund, and the Soloman Brothers High Yield Bond Fund.

## **Attorneys**

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## **Practice Areas**

Class Actions

ERISA, Employee Benefits & Trust Litigation