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RECENT SUPREME COURT RULING SPARES CHURCH PLANS FROM THE SURGE OF ERISA FIDUCIARY DUTY LITIGATION

Earlier this week, the United States Supreme Court stopped the advance of plaintiff class action suits against the fiduciaries of church plans.

The past 20 years have seen a sharp rise in employee class actions directed against the persons and entities that administer employer-sponsored retirement plans. The vast majority of such plans are governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1001, *et seq.* The rise in ERISA plan litigation has been fueled in part by the nature of benefit plans and the framework of ERISA, which facilitate the prosecution of nationwide class actions by participants who claim that a plan's fiduciaries violated duties established by ERISA. The rise also is fueled in no small part by the size of the claims, with fairly common reports of ERISA class action settlements in excess of $100 million.

In recent years the ERISA plaintiff's bar has turned its eyes on one the few types of pension plans that traditionally have been viewed as exempt from the regulatory scheme of ERISA. ERISA exempts from its regulatory reach an employee benefit plan if, among other things, "such plan is a church plan (as defined in section 1002(33) of this title)...." The recent wave of ERISA lawsuits directed against fiduciaries of church plans has focused on the question of whether, in order to qualify as a church plan under ERISA, a plan that is managed by an "organization controlled by or associated with a church" 29 U.S.C. § 1002(33)(C)(i), must have been established by a church. The district courts were split over the question. Three federal appellate courts held that to qualify as a church plan under ERISA a plan did have to have been established by a church.

On June 5, 2017, the United States Supreme Court reversed those appellate courts in ***Advocate Health Care Network v. Stapleton***, Nos. 16–74, 16–86, 16–258, 2017 WL 2407476 (U.S. June 5, 2017). After examining the legislative history relevant to the church plan exemption, and after textual analysis of the

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provisions bearing on that exemption, the Supreme Court held:

The question presented here is whether a church must have originally established such a plan for it to so qualify. ERISA, we hold, does not impose that requirement.

Id. at *2.

This decision is significant on many levels. The ruling plainly is significant with respect to the management of plans that are managed by an "organization controlled by or associated with a church," regardless of whether the plans were created by a church. The ruling also is significant for class action litigation as it likely will put a stop to, or at least redirect, suits directed against fiduciaries of plans that are subject to ERISA's church plan exemption. Moreover, *Advocate Health* is significant with respect to the scope of its reach. As Justice Sotomayor noted in her concurring opinion, a great many entities that have benefit plans within the exemption for plans managed by an "organization controlled by or associated with a church" today "bear little resemblance to those Congress considered when enacting the 1980 amendment to the church plan definition." *Id.*at *11.