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Retained by Morgan, Lewis & Bockius

Defense counsel achieved a complete victory for US Airways, Inc., in the first post-Enron ERISA company stock case to go to judgment following trial. The plaintiffs alleged that US Airways and the fiduciaries of the US Airways, Inc. 401(k) Savings Plan should have intervened to eliminate US Airways stock as an investment option and liquidate existing company stock holdings. Assisting the defense counsel, Cornerstone Research supported analysis and expert testimony by two finance experts.

In this precedent-setting decision, the court both accepted and cited modern portfolio theory.

Our first expert analyzed US Airways’ viability prior to its bankruptcy and explained the importance of considering the implications of modern portfolio theory in assessing the prudence of including employer stock as one among a set of diversified investment options. He testified that at no point during the relevant period did the available information indicate that the stock was an imprudent investment option for the plan. Our second expert provided testimony demonstrating that an analysis of the plan’s transaction and holdings data, using reasonable assumptions, implied a damages amount far lower than the amount calculated by plaintiffs’ experts.

Following a six-day bench trial in the U.S. District Court for the Eastern District of Virginia, Judge T.S. Ellis III concluded that “there is no question the Company Stock Fund was a viable investment option throughout the class period” and “the continued offering of the Company Stock Fund as an investment option in the Plan was not a breach of US Airways’ ERISA fiduciary duty. ...” Moreover, in this precedent-setting decision, the court both accepted and cited modern portfolio theory. On August 1, 2007, the U.S. Court of Appeals for the Fourth Circuit affirmed the trial judgment in favor of the defendants.