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ERISA Presumption of Prudence in ‘Stock Drop’ Cases Rejected

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On June 23, the U.S. Supreme Court in *Fifth Third Bancorp v. Dudenhoeffer* unanimously rejected the “presumption of prudence” that several courts of appeals had recognized to deal with “stock drop” cases under the Employee Retirement Income Security Act of 1974 (ERISA), as amended. What should trustees of employee stock ownership plans (ESOPs) and §401(k) plans that invest in employer stock do when the price of the company begins to fall sharply? Plan fiduciaries are put on the horns of a dilemma: If they hold onto the stock, they may be accused of not acting in accordance with their duty of prudence, but if they sell the stock, they may face charges of insider trading in violation of the federal securities law. In this article, SRZ partner and co-head of the firm’s Employment & Employee Benefits Group Ronald E. Richman discusses the Supreme Court’s decision, which offered some concrete suggestions that may facilitate early dismissal of costly “stock drop” litigation. SRZ associate Frank P. Sabatini, III assisted in the preparation of this article.

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