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Harris v. Amgen

On January 25, 2016, the United States Supreme Court issued an opinion in that will impact the pleading standard for stock drop litigation. The plaintiffs in Harris are former employees of Amgen Inc. who participated in their employer's qualified ESOPs. When the value of Amgen stock fell significantly from 2005 to 2007, participants sued, claiming that Amgen violated their fiduciary duty of care under ERISA by continuing to offer the Amgen common stock fund as an investment option in the plans, when they knew (or should have known) that the stock was being sold to participants at an artificially inflated price. In 2013, the 9th Circuit Court of Appeals reversed the district court's dismissal of the complaint, holding that the plaintiffs had sufficiently alleged that the Amgen defendants (Amgen, its board and the plans' fiduciary committees) breached their fiduciary duties. However, in 2014 the Supreme Court heard Fifth Third Bancorp v. Dudenhoeffer, a similar "stock drop" case. Dudenhoeffer held that fiduciaries of an ESOP are not entitled to a presumption of prudence but are "subject to the same duty of prudence that applies to ERISA fiduciaries in general, except that they need not diversify the fund's assets." It also held that a proper complaint should "plausibly allege" an alternative action the fiduciaries could have taken, stating:

"[L]ower courts . . . should also consider whether the complaint has plausibly alleged that a prudent fiduciary in the defendant's position could not have concluded that stopping purchases [of employer stock]— which the market might take as a sign that insider fiduciaries viewed the employer's stock as a bad investment—or publicly disclosing negative information would do more harm than good to the fund by causing a drop in the stock price."

After Dudenhoeffer, the district court again dismissed the ERISA complaint, and the 9th Circuit Court of Appeals again reversed, stating that "there is a genuine issue whether the fiduciaries breached the prudent man standard by continuing to hold and purchase artificially inflated [company] stock." However, in this week's Harris decision, the Supreme Court holds that the 9th Circuit failed to properly evaluate the complaint in light of Dudenhoeffer, because it "failed to access whether the complaint in its current form 'has plausibly alleged' that a prudent fiduciary in the same position 'could not have concluded' that the alternative action 'would do more harm than good.'" Thus, the Supreme Court remanded the case back to the 9th Circuit. The Court did note, however, that it is within the District Court's discretion to allow the stockholders to amend their complaint to adequately plead a claim for breach of the duty of prudence guided by the standards set forth in Dudenhoeffer.