

## Eleventh Circuit Holds No Fiduciary Breach in ESOP Stock Drop Case

---

May 18, 2012

---

---

The U.S. Court of Appeals for the Eleventh Circuit affirmed dismissal of the claim by plan participants that The Home Depot had violated its fiduciary duties with respect to the ESOP by continuing to offer employer stock as an investment option after certain accounting adjustments caused earnings to be restated and the stock price to fall. Although ultimately the Eleventh Circuit upheld the district court's decision, it overruled the district court on several points. First, the district court had determined that the plaintiffs' prudence claim was really a diversification claim in disguise (ESOPs are exempt from the diversification requirement). Alternately, the district court had held that even if the claim were properly a prudence claim, the claim would fail because the participants did not allege that The Home Depot was on "the brink of financial collapse." The Eleventh Circuit determined that this was a prudence claim, not a diversification claim. The claim was that the defendants acted imprudently because they knew the employer stock was overpriced, not because it made up too large a percentage of the employer stock fund. Further, the Eleventh Circuit found that "the brink of financial collapse" is not the correct standard. Rather, the standard is whether the ERISA fiduciary could not have believed reasonably that continued adherence to the plan document's provision for investment in an employer stock fund was in keeping with the settlor's expectations of a prudent trustee. Notwithstanding, the Eleventh Circuit determined that the plaintiffs failed to state sufficient facts to overcome the *Moench* presumption. *Lanfear v. [The] Home Depot, Inc.*, No. 10-13002 (11th Cir. May 8, 2012).