# Fifth Circuit Holds that Offering Single Stock Investments in a 401(k) Plan is Not Per-Se Imprudent

June 1, 2020

Following a spinoff, a 401(k) plan continued to offer the employer stock fund of the predecessor parent company as an investment alternative, but closed it to new investments. After the share price fell by approximately 50%, the participants brought a lawsuit against the plan fiduciaries claiming, among other things, that the fiduciary breached its duty to diversify under ERISA Section 404(a)(1)(C) by retaining the stock fund as an investment alternative. The District Court dismissed the case and the U.S. Court of Appeals for the Fifth Circuit upheld the dismissal.

The Fifth Circuit held that although the stock of the former parent was not statutorily exempt from ERISA?ÃÃs diversification because it was no longer a ?ÃÂ£qualifying employer security?ÃÂ¥, there was no obligation for the plan fiduciaries to force plan participants to divest from the funds. The court explained that ERISA contains no per se prohibition on individual account plans offering single-stock funds. Rather, fiduciaries of a defined contribution plan need only provide investment options that enable participants to create diversified portfolios and provide participants with the statutorily mandated warning against holding more than 20% of a portfolio in the security of one entity. Because the participants had the opportunity to divest from the stock fund and were provided with the warning on the risks of not diversifying, there was no fiduciary breach.

*Schweitzer v. The Investment Comm. of the Phillips 66 Savings Plan*, No. 18-20379 (5th Cir. May 22, 2020) is available **here**.