

## Fourth Circuit Rejects “Could Have” Standard for Determining Fiduciary Breach

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The U.S. Court of Appeals for the Fourth Circuit held that the plan administrator failed to follow a prudent process when it decided to forcibly divest all stock of a predecessor employer while such stock was priced at an all-time low. As a result, the burden shifted to the administrator to prove that despite its imprudent decision-making process, its ultimate investment decision was “objectively prudent.” The lower court ruled the decision was objectively prudent because a hypothetical prudent fiduciary “could have” made the same decision after performing a proper investigation. Rejecting this standard for determining loss causation, the Fourth Circuit held that the proper standard is whether a reasonable fiduciary “would have” made the same decision. *Tatum v. RJR Pension Investment Committee*, No. 13-1360 (4th Cir. Aug. 4, 2014).