

No Presumption of Prudence in Stock Drop Cases, but ESOP Fiduciaries Provided Some Comfort

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The U.S. Supreme Court held that ESOP fiduciaries are not entitled to a special “presumption of prudence” when investing plan assets in employer stock. The Court stated, however, that it is generally prudent to assume that a major stock market provides the best estimate of a stock’s value, in the absence of special circumstances. In addition, the Court stated that, to state a claim for breach of the duty of prudence on the basis of inside information, a plaintiff must plausibly allege an alternative action that the defendant could have taken that (1) would have been consistent with securities laws, and (2) a prudent fiduciary in the same circumstances would not have viewed as more likely to harm the fund than help it. *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. ____ (2014). The decision can be found [here](#).