

Sixth Circuit: ERISA Defenses for Employer Stock Fund do not Prevail in Motion to Dismiss

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The U.S. Court of Appeals for the Sixth Circuit found that several common defenses to participant stock-drop lawsuits alleging fiduciary breach are not available in the motion to dismiss stage. In its opinion, the Sixth Circuit held that the *Moench* presumption (presumption of prudence when the plan's terms require a company stock fund) does not apply at the motion to dismiss stage. Plaintiffs do not have to plead enough facts to overcome the presumption in order to survive a motion to dismiss. Additionally, the Sixth Circuit held that ERISA section 404(c) is not available as an affirmative defense at the motion to dismiss stage. The court found that ERISA section 404(c) does not shield fiduciaries from liability for allowing imprudent investment choices to be offered to plan participants. The court also refused to dismiss for inadequate causation on the basis that the participants had an unrestricted right to transfer their investments out of the employer stock fund. The effect for employers defending stock-drop lawsuits in the Sixth Circuit is that early disposal of the lawsuit will likely have to wait until the motion for summary judgment. *Pfeil v. State Street Bank and Trust Co.*, No. 10-2302 (6th Cir. Feb. 22, 2012).