

## Supreme Court Vacates and Remands IBM Stock Drop Case

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January 31, 2020

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In a per curiam opinion, the U.S. Supreme Court vacated the decision of the U.S. Circuit Court of Appeals for the Second Circuit in favor of a group of IBM retirement plan participants who alleged that IBM, in its capacity as plan sponsor of the IBM Company Stock Fund (which is an ESOP governed by ERISA), breached its duty to prudently manage the ESOP's assets. The participants alleged that IBM had a duty to disclose enormous losses being incurred by its microelectronics business and that the company's failure to disclose such losses resulted in an artificially high stock price, which dropped significantly once those losses were eventually disclosed (see our prior blog post on the Second Circuit's opinion [here](#)).

In its opinion, the Supreme Court remanded the case back to the Second Circuit so that court could consider new arguments briefed by IBM in its appeal to the Supreme Court that were not previously presented to the Second Circuit. Specifically, the Supreme Court stated that the question presented in this case was whether the so-called "more harm than good" pleading standard set by the Court in its 2014 decision in *Fifth Third Bancorp vs. Dudenhoeffer* could be satisfied by "generalized allegations that the harm of an inevitable disclosure of an alleged fraud generally increases over time." In its briefing to the Supreme Court, IBM did not address that question but instead argued that a plan fiduciary does not have an ERISA-based duty to act on or disclose certain inside information because to do so would conflict with the policy objectives of insider trading and corporate securities disclosure rules.

The Supreme Court's opinion is available [here](#).