

## U.S. Supreme Court: No Presumption of Prudence for ESOP Fiduciaries, Court Details Pleading Requirements for Breach of Prudence Claims

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On June 25, 2014, in *Fifth Third Bancorp et al. v. Dudenhoeffer et al.*, the U.S. Supreme Court unanimously overturned the presumption of prudence that has been applied in “stock drop” cases brought under the Employee Retirement Income Security Act of 1974 (“ERISA”) for nearly two decades. The Court held that fiduciaries of employee stock ownership plans (“ESOP”) are subject to the same duty of prudence that applies to ERISA fiduciaries in general, except that ESOP fiduciaries do not need to diversify the fund’s assets. The Court also described pleading requirements for plaintiffs bringing breach of prudence claims.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

**Jeffrey P. Crandall**

+1 212 450 4880  
jeffrey.crandall@davispolk.com

**Charles S. Duggan**

+1 212 450 4785  
charles.duggan@davispolk.com

**Edmond T. FitzGerald**

+1 212 450 4644  
edmond.fitzgerald@davispolk.com

**Kyoko Takahashi Lin**

+1 212 450 4706  
kyoko.lin@davispolk.com

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