Amgen Inc. v. Harris, No. 15-278

In a *per curiam* summary reversal, the Supreme Court today clarified that the standard plaintiffs must satisfy in ERISA stock-drop actions is a high one.

In a stock-drop action, participants in an employer's 401(k) plan sue fiduciaries to the plan on the theory that the fiduciaries should have removed the employer's stock as an investment option to 401(k) plan participants before the stock price dropped. In *Fifth Third Bancorp v. Dudenhoeffer*, the Supreme Court held that there is no special presumption that employer stock offerings are prudent but suggested a series of obstacles that stock-drop claimants must overcome.

This case concerns the Amgen Common Stock Fund. After the price of Amgen stock fell in 2007, a group of former employees who invested in that fund through Amgen's 401(k) plan filed suit. The Ninth Circuit held that the plaintiffs had adequately pleaded a claim. After the Supreme Court asked the Ninth Circuit to revisit its holding in light of *Fifth Third*, the Ninth Circuit reinstated its earlier decision.

In today's brief *per curiam* decision, the Court again vacated the Ninth Circuit's ruling in light of *Fifth Third*. The Court held that, even if "removing the Amgen Common Stock Fund from the list of investment options was an alternative action that could plausibly have satisfied *Fifth Third*'s standards, . . . the Court has not found sufficient facts and allegations to state a claim for breach of the duty of prudence."

After *Fifth Third*, commentators divided on whether the decision was a boon for plaintiffs or a victory for defendants. The Court's unusual action in *Amgen* suggests that the latter camp was correct—and that plaintiffs will be hard-pressed to meet the Court's standards for alleging fiduciary-breach claims. Despite the brevity of today's action, *Amgen* is likely to stem the tide of stock-drop class actions.

Any questions regarding this case should be directed to Brian D. Netter (+1 202 263 3339) in our Washington DC office.