

## *Dudenhoeffer* Revives Stock Drop Litigation – The Other Shoe(s) Drop

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We have written previously on the renewed likelihood of stock drop lawsuits following the U.S. Supreme Court's decision in *Fifth Third Bancorp v. Dudenhoeffer*, so we wanted to let you know that it has begun. Not only are plaintiffs filing new stock drop lawsuits against public companies, but the federal courts are reviving cases that previously had been dead.

On October 30, 2014, the Ninth Circuit Court of Appeals (San Francisco) revived the stock drop case against Amgen, Inc., which it previously decided in favor of Amgen based on the presumption of prudence, on the grounds that *Dudenhoeffer* has overruled the presumption of prudence (*Harris v. Amgen, Inc.*, 9th Cir., No. 10-56014). The Fifth Circuit previously had revived the stock drop lawsuit against the fiduciaries of the BP 401(k) Plans (*Whitley v. BP, PLC*).

Some companies may not have paid sufficient attention to the reversal in *Dudenhoeffer* because it came out during the dog days of summer. However, every publicly traded company that offers a company stock fund investment option in its 401(k) plan or ESOP should proactively revise its fiduciary documents and procedures in response to the post-*Dudenhoeffer* litigation landscape.

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