

# Supreme Court Reiterates High Pleading Bar for Stock Drop Cases

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As noted in [our earlier blog post](#), the U.S. Supreme Court's 2014 decision [\*Fifth Third Bancorp v. Dudenhoeffer\*](#) made clear that participants bringing stock-drop cases are subject to heightened pleading standards to help "divide the plausible sheep from the meritless goats."

In its first substantive ruling in a post-*Dudenhoeffer* stock-drop case, the U.S. Supreme Court yesterday held that the Ninth Circuit had failed to hold the plaintiffs in [\*Amgen Inc. v. Harris\*](#) to these high standards. In the Supreme Court's view, the Ninth Circuit in *Harris* failed to assess a factor that the *Dudenhoeffer* decision specifically instructed lower courts to consider: whether the complaint "plausibly alleged" that a prudent fiduciary in the same position "could not have concluded" that removing the company stock fund from the plan's investment lineup "would do more harm than good." The court remanded the case for the district court to determine whether to allow the plaintiffs to amend their complaint.

The *Harris* decision reinforces the requirement that a stock-drop complaint should be dismissed unless the complaint alleges specific facts addressing each factor laid out in the *Dudenhoeffer* decision. As a result, it will continue to be difficult for plaintiffs to bring stock-drop suits that can survive a motion to dismiss.

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National Law Review, Volume VI, Number 26

Source URL: <https://natlawreview.com/article/supreme-court-reiterates-high-pleading-bar-stock-drop-cases>