

12-751 FIFTH THIRD BANCORP V. DUDENHOEFFER

DECISION BELOW: 692 F. 3d 410

LOWER COURT CASE NUMBER: 11-3012

QUESTION PRESENTED:

1. Whether the Sixth Circuit erred by holding that Respondents were not required to plausibly allege in their complaint that the fiduciaries of an employee stock ownership plan ("ESOP") abused their discretion by remaining invested in employer stock, in order to overcome the presumption that their decision to invest in employer stock was reasonable, as required by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1101, et seq. ("ERISA"), and every other circuit to address the issue.
2. Whether the Sixth Circuit erred by refusing to follow precedent of this Court (and the holdings of every other circuit to address the issue) by holding that filings with the Securities and Exchange Commission ("SEC") become actionable ERISA fiduciary communications merely by virtue of their incorporation by reference into plan documents.

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 12/13/2013