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GRIST**SUPREME COURT WILL HEAR IBM STOCK-DROP CASE**

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The US Supreme Court has agreed to hear IBM's appeal of the 2nd US Circuit Court of Appeal's decision in a stock-drop case against the fiduciary committee for the company's employee stock ownership plan ([*Jander v. Retirement Plans Comm. of IBM*](#), No. 17-3518 (2d Cir. Dec. 10, 2018)).

The plaintiffs claimed the committee acted imprudently by not disclosing that IBM's microelectronics division, which the company was trying to sell, was overvalued. They argued the committee could have disclosed the division's true value in routine quarterly SEC filings instead of waiting until IBM sold the microelectronics business. Earlier disclosure, they alleged, would have corrected the stock price — but only by the amount the stock was overvalued — and protected management's reputation and IBM's long-term prospects as an investment.

The 2nd Circuit found the plaintiffs' claim met the high pleading standard for stock-drop cases based on inside information, which the Supreme Court set forth in its 2014 decision in [*Fifth Third Bancorp v. Dudenhoeffer*](#), No. 12-751 (S. Ct. June 25, 2014). Under *Dudenhoeffer*, plaintiffs claiming a fiduciary breach must suggest a legal alternative course of action and plausibly allege that a prudent fiduciary in the defendant's position couldn't have found that the proposed course of action would have caused more harm than good to the fund.

The 2nd Circuit's decision was a surprise. Since *Dudenhoeffer*, most cases haven't made it past the motion-to-dismiss stage. If the Supreme Court allows the decision to stand, the IBM case could be the beginning of a new wave of stock-drop litigation.

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- [*Petition for Writ of Certiorari in Retirement Plans Comm. of IBM v. Jander*](#) (S. Ct., March 4, 2019)
- [*Jander v. Retirement Plans Comm. of IBM*](#) (2d Cir., Dec. 10, 2018)

- [*Fifth Third Bancorp v. Dudenhoeffer*](#) (S. Ct., June 25, 2014)

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- [Second Circuit Revives IBM Stock-Drop Case](#) (Jan. 29, 2019)

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