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## IBM Files Petition for Certiorari in ERISA Duty of Prudence Breach Claim

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Last week, International Business Machines Corp. (IBM) sought Supreme Court review of a Second Circuit decision favoring retirement plan participants claiming the plan's fiduciaries breached their duty of prudence in failing to disclose pertinent information with respect to the declining value of the business.

In *Jander v. Retirement Plans Committee of IBM*, Docket No. 17-3518 (2d Cir. 2018), the Second Circuit reversed the lower court decision and held that plaintiffs may pursue a claim under ERISA against plan fiduciaries based upon the notion that the fiduciaries knew that the company was overvalued yet failed to disclose pertinent information with respect to the declining stock value to plan participants.

In stating that one of the central tenants of ERISA is to protect beneficiaries of employee benefit plans, the Second Circuit concluded that plaintiffs sufficiently stated a claim for violation of ERISA's duty of prudence. This holding, a departure from Fifth Circuit and Sixth Circuit precedence following the Supreme Court's 2014 decision in *Fifth Third Bancorp v. Dudenhoeffer*, creates a circuit split for cases targeting retirement plans with employer stock investments.

We will be following the petition for certiorari. (*Retirement Plans Committee of IBM v. Jander*, U.S., No. 18-1165, petition for certiorari 3/8/19.)

For questions about employer stock as an investment in your 401(k) plan, reach out to a member of the Holland & Hart's Benefits Law Group.