

(ORDER LIST: 577 U.S.)

MONDAY, JANUARY 25, 2016

CERTIORARI -- SUMMARY DISPOSITION

14-1061 ELEM, BRENDA, ET AL. V. AIRTRAN AIRWAYS, INC.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Montanile v. Board of Trustees of Nat. Elevator Industry Health Benefit Plan*, 577 U. S. ____ (2016).

ORDERS IN PENDING CASES

15M76 ERARD, MATT V. JOHNSON, MI SEC. OF STATE

The motion to direct the Clerk to file a petition for a writ of certiorari out of time is denied.

14-614) HUGHES, W. KEVIN, ET AL. V. TALEN ENERGY MARKETING, ET AL.

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14-623)

CPV MARYLAND V. TALEN ENERGY MARKETING, ET AL.

The joint motion of petitioners for divided argument is granted. The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted.

14-1513) HALO ELECTRONICS, INC. V. PULSE ELECTRONICS, INC., ET AL.

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14-1520)

STRYKER CORPORATION, ET AL. V. ZIMMER, INC., ET AL.

The motion of the Solicitor General for leave to participate in oral argument as *amicus curiae* and for divided argument is granted. The joint motion of respondents for divided argument is denied.

15-274 WHOLE WOMAN'S HEALTH, ET AL. V. COLE, COMM'R, TX DHS, ET AL.

The motion of petitioners to file Volume VIII of the joint appendix under seal is granted.

15-278 AMGEN INC., ET AL. V. HARRIS, STEVE, ET AL.

The motion of Washington Legal Foundation for leave to file a brief as *amicus curiae* is granted. The motion of American Benefits Council for leave to file a brief as *amicus curiae* is granted. The motion of Chamber of Commerce of the United States of America, et al. for leave to file a brief as *amici curiae* is granted.

15-7043 HALL, WENDELL E. V. E.I. DU PONT DE NEMOURS AND CO.

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until February 16, 2016, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. Justice Alito took no part in the consideration or decision of this motion.

15-7097 YOUNG-SMITH, YOLANDA D. V. UNITED STEELWORKERS, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied. Petitioner is allowed until February 16, 2016, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court.

CERTIORARI DENIED

14-1194 HARVARD DRUG GROUP, LLC V. SCOTT BARR, DDS

15-84 NEW ALLIANCE BANK, ET AL. V. TANASI, PATRICK, ET AL.

15-491) PENNSYLVANIA V. FED. COMMUNITY DEF. ORG.

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15-494) PENNSYLVANIA V. DEFENDER ASSOC. OF PHILADELPHIA

15-522 TEXAS V. DAVIS, WENDY, ET AL.

15-583 SHELBY COUNTY, AL V. LYNCH, ATT'Y GEN., ET AL.

15-627 STENEHJEM, WAYNE, ET AL. V. MKB MANAGEMENT CORP., ET AL.

15-638 PRICEWATERHOUSECOOPERS, ET AL. V. LAURENT, TIMOTHY D., ET AL.

15-650 WALTER, SHONDA V. PENNSYLVANIA

15-653 DOUGLAS, AARON J. V. PRESIDENT AND FELLOWS OF HARVARD

15-654 WILLIAMS, MOSES V. MACKIE, WARDEN

15-657 BLACK, HAROLD J. V. HATHAWAY, DON, ET AL.

15-660 NEW MILLENNIUM SPORTS, S.L.U V. JACK WOLFSKIN

15-662 PETFINDERS, LLC V. SHERMAN, DANIEL J.

15-665 MURTAGH, JAMES J. V. EMORY UNIVERSITY

15-668 MARIN, DIANA V. FANNIE MAE

15-672 JOSHI, YATISH V. NTSB, ET AL.

15-676 UNITED STATES, EX REL. GAGE V. DAVIS S.R. AVIATION, ET AL.

15-681 MEISNER, RHONDA V. SOUTH STATE BANK

15-685 WILLIAMS, KIM V. KETTLER MANAGEMENT, INC., ET AL.

15-686 GILLIS, GEORGE W. V. CLARK, BRIAN, ET AL.

15-692 BROWN, ARTHUR V. TD BANK USA

15-711 McCOOL, NANINE V. LA ATT'Y DISCIPLINARY BOARD

15-732 SMITH, LEANNA V. ARIZONA, ET AL.

15-737 MINNICK, DAVID M. V. WISCONSIN

15-748 SWECKER, GREGORY R., ET UX. V. MIDLAND POWER, ET AL.

15-809 ANTONARAS, JOHN V. UNITED STATES

15-6075 FLETCHER, TIMOTHY W. V. FLORIDA

15-6370 JACKSON, BILL D. V. WHITE, JESSE, ET AL.

15-6401 JOHNSON, DEXTER V. STEPHENS, DIR., TX DCJ

15-6430 SMITH, DELMER V. FLORIDA

15-6611 FLORES, CHARLES D. V. STEPHENS, DIR., TX DCJ

15-6988 THOMAS, RONALD A. V. HAMMER, WARDEN, ET AL.
15-7003 WILDMAN, STEVEN J. V. CALIFORNIA
15-7009 COBAS, NELSON B. V. MICHIGAN
15-7021 E. L. M. V. J. E. F.
15-7026 ELLIS, BARNELL E. V. HOOKS, WARDEN
15-7027 DUPONT, DEREK K. V. LOUISIANA
15-7030 COLEMAN, DREW V. DELBALSO, SUPT., RETREAT, ET AL.
15-7032 PADILLA, RAFAEL V. DUCART, WARDEN
15-7038 HANNA, RAYMOND A. V. JPMORGAN CHASE BANK, ET AL.
15-7040 FITZGERALD, ANTHONY J. V. USDC ED AR
15-7049 LACKING, ARMSTER V. USCA 5
15-7050 EPSHTEYN, YURIY S. V. POLICE DEPT. OF UPPER PROVIDENCE
15-7053 SISTRUNK, LAMARR V. PENNSYLVANIA, ET AL.
15-7069 JONES, SUDAN R. V. DEXTER, WARDEN
15-7070 RODRIGUEZ, DAVID G. V. STEPHENS, DIR., TX DCJ
15-7075 SHARPE, KA'REEM V. ARTUS, SUPT., ATTICA
15-7077 ROBINSON, DALRENO V. ALLEN, WARDEN
15-7079 THOMPSON, WILLIAM A. V. OZMINT, DIR., SC DOC, ET AL.
15-7082 BALFOUR, WILLIAM V. ILLINOIS
15-7084 ALBERTA, DOUGLAS M. V. CAMPBELL, WARDEN
15-7085 ALJA-IZ, CALIPH V. VI DEPARTMENT OF EDUCATION
15-7086 BARTLETT, RICKY V. NORTH CAROLINA
15-7096 ERVIN, OTIS F. V. SOTO, WARDEN
15-7102 ROBERTS, SOLOMON D. V. FLORIDA
15-7115 MITCHELL, JAMES V. KERESTES, SUPT., MAHANAY
15-7116 NORMAN, ANTHONY W. V. TEXAS
15-7140 DAVIS, VON C. V. OHIO
15-7158 BOSWELL, JAMES V. TEXAS CHRISTIAN UNIV., ET AL.

15-7166 ARMSTRONG, JERRY W. V. USDC ED CA, ET AL.
15-7177 CUNNINGHAM, JOHN L. V. CALIFORNIA
15-7188 PANN, ROBERT W. V. BURT, WARDEN
15-7190 ALEXANDER, HUGHES A. V. USDC ND AL
15-7209) JONES, OSHAY T. V. UNITED STATES
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15-7378) JONES, KEARRAH M., ET AL. V. UNITED STATES
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15-7392) JONES, DOMINIQUE M. V. UNITED STATES
15-7242 NEWELL, GARY L. V. UNITED STATES
15-7285 MOORE, FREDERICK D. V. HARTLEY, WARDEN, ET AL.
15-7394 BROOKS, CARL A. V. KEY, SUPT., AIRWAY
15-7422 DIXON, WOODROW R., ET AL. V. UNITED STATES
15-7477 SOTO, STEVEN V. UNITED STATES, ET AL.
15-7485 MEADE, JERIMI N. V. UNITED STATES
15-7498 MORANT, HENRY A. V. UNITED STATES
15-7499 ANDREWS, ROGER L. V. UNITED STATES
15-7502 JACKSON, CHARLES E. V. UNITED STATES
15-7511 WILSON, CORNELIUS V. UNITED STATES

The petitions for writs of certiorari are denied.

15-421 JACOBS ENGINEERING GROUP V. ADKISSON, GREG, ET AL.

The petition for a writ of certiorari is denied. Justice Alito took no part in the consideration or decision of this petition.

15-659 ACT, INC. V. BAIS YAAKOV OF SPRING VALLEY

The motion of Anthony Michael Sabino for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is denied.

15-667 WHITE, TIMOTHY, ET AL. V. REGENTS OF UNIV. OF CA, ET AL.

The motion of The American Association of Physical Anthropologists, et al. for leave to file a brief as *amici curiae* is granted. The motion of The Ohio Archaeological Council, et al. for leave to file a brief as *amici curiae* is granted. The petition for a writ of certiorari is denied.

15-7023 LeBLANC, JEFFREY R. V. ROMANOWSKI, WARDEN

15-7024 LeBLANC, JEFFREY R. V. ROMANOWSKI, WARDEN

15-7044 LeBLANC, JEFFREY R. V. MICHIGAN STATE POLICE

The motions of petitioner for leave to proceed *in forma pauperis* are denied, and the petitions for writs of certiorari are dismissed. See Rule 39.8.

15-7103 KEARNEY, RICHARD V. GRAHAM, SUPT., AUBURN

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Justice Sotomayor took no part in the consideration or decision of this motion and this petition.

15-7199 LaCROIX, LORI R. V. USDC WD KY, ET AL.

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of certiorari is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner

unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*).

HABEAS CORPUS DENIED

15-7614 IN RE ROBERT EARL HACKNEY

The petition for a writ of habeas corpus is denied.

15-7603 IN RE BARRY R. SCHOTZ

The motion of petitioner for leave to proceed *in forma pauperis* is denied, and the petition for a writ of habeas corpus is dismissed. See Rule 39.8. As the petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matters from petitioner unless the docketing fee required by Rule 38(a) is paid and the petition is submitted in compliance with Rule 33.1. See *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Justice Kagan took no part in the consideration or decision of this motion and this petition.

MANDAMUS DENIED

15-7013 IN RE MELVIN KEITH RICHARDSON

The petition for a writ of mandamus is denied.

REHEARINGS DENIED

14-9708 BEGOLLI, BAHRI V. HOME DEPOT U.S.A., INC.

15-5227 WARREN, STEVON V. UNITED STATES

15-6076 KRUSHWITZ, KAREN V. UNIVERSITY OF CALIFORNIA

15-6101 IN RE COREY MICHAELS

15-6105 JOHNSON, PRESTON V. UNITED STATES

15-6130 ISRANI, ASH V. 960 CRYSTAL LAKE ASSOC.

15-6171 MARTIN, DONN D. V. STEPHENS, DIR., TX DCJ
15-6194 SEIBERT, STEVEN J. V. GEORGIA
15-6200 TALLEY, DURWYN V. BAKER, THOMAS, ET AL.
15-6231 VALENCIA, JOSE F. V. SANTA FE, NM, ET AL.
15-6232 VALENCIA, JOSE V. DE LUCA, HEINZ, ET AL.
15-6343 ADKINS, ERNEST V. WETZEL, SEC., PA DOC, ET AL.
15-6572 McCANN, DAVID V. FDIC
15-6622 TAYLOR, ISIAH V. UNITED STATES
15-6803 JACKMAN, DONALD G. V. UNITED STATES

The petitions for rehearing are denied.

14-10470 IN RE JACOB BEN-ARI

The motion of petitioner for leave to file a petition for rehearing under seal with redacted copies for the public record is granted. The petition for rehearing is denied.

Per Curiam

SUPREME COURT OF THE UNITED STATES

AMGEN INC., ET AL. *v.* STEVE HARRIS, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 15–278. Decided January 25, 2016

PER CURIAM.

The Court considers for the second time the Ninth Circuit’s determination that respondent stockholders’ complaint states a claim against petitioner fiduciaries for breach of the duty of prudence. The first time, the Court vacated and remanded in light of *Fifth Third Bancorp v. Dudenhoeffer*, 573 U. S. ____ (2014), a case which set forth the standards for stating a claim for breach of the duty of prudence against fiduciaries who manage employee stock ownership plans (ESOPs). On remand, the Ninth Circuit reiterated its conclusion that the complaint states such a claim. The Court now reverses and remands.

The stockholders are former employees of Amgen Inc. and its subsidiary Amgen Manufacturing, Limited, who participated in plans that qualified under 29 U. S. C. §1107(d)(3)(A) as eligible individual account plans. Like ESOPs, these plans offer ownership in employer stock as an option to employees. The parties agree that the decision in *Fifth Third* is fully applicable to the plans at issue here. See 788 F. 3d 916, 935 (2014).

All of the plans had holdings in the Amgen Common Stock Fund (composed, unsurprisingly, of Amgen common stock) during the relevant period. The value of Amgen stock fell, and in 2007, the stockholders filed a class action against petitioner fiduciaries alleging that they had breached their fiduciary duties, including the duty of prudence, under the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 829, as amended, 29 U. S. C. §1001 *et seq.* The District Court granted the

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fiduciaries’ motion to dismiss, and the Ninth Circuit reversed, *Harris v. Amgen, Inc.*, 738 F. 3d 1026 (2013). The fiduciaries sought certiorari.

While that petition was pending, this Court issued a decision that concerned the duty of prudence owed by ERISA fiduciaries who administer ESOPs. That decision, *Fifth Third*, held that such ERISA fiduciaries are not entitled to a presumption of prudence but are “subject to the same duty of prudence that applies to ERISA fiduciaries in general, except that they need not diversify the fund’s assets.” 573 U. S., at ___ (slip op., at 1–2).

Notwithstanding the lack of a presumption of prudence, *Fifth Third* noted that “Congress sought to encourage the creation of” employee stock-ownership plans, *id.*, at ___ (slip op., at 14), a purpose that the decision recognized may come into tension with ERISA’s general duty of prudence. Moreover, ESOP fiduciaries confront unique challenges given “the potential for conflict” that arises when fiduciaries are alleged to have imprudently “fail[ed] to act on inside information they had about the value of the employer’s stock.” *Id.*, at ___ (slip op., at 13). *Fifth Third* therefore laid out standards to help “divide the plausible sheep from the meritless goats,” *id.*, at ___ (slip op., at 15):

“To state a claim for breach of the duty of prudence on the basis of inside information, a plaintiff must plausibly allege an alternative action that the defendant could have taken that would have been consistent with the securities laws and that a prudent fiduciary in the same circumstances would not have viewed as more likely to harm the fund than to help it.” *Id.*, at ___ (slip op., at 18).

It further clarified that courts should determine whether the complaint itself states a claim satisfying that liability standard:

“[L]ower courts faced with such claims should also

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consider *whether the complaint has plausibly alleged* that a prudent fiduciary in the defendant’s position could not have concluded that stopping purchases—which the market might take as a sign that insider fiduciaries viewed the employer’s stock as a bad investment—or publicly disclosing negative information would do more harm than good to the fund by causing a drop in the stock price and a concomitant drop in the value of the stock already held by the fund.” *Id.*, at ____ (slip op., at 20) (emphasis added).

In the matter that is once again before the Court here, following the issuance of *Fifth Third*, the Court granted the fiduciaries’ first petition for a writ of certiorari, vacated the judgment, and remanded for further proceedings consistent with that decision. *Amgen Inc. v. Harris*, 576 U. S. ____ (2014). On remand, the Ninth Circuit reversed again the dismissal of the complaint and denied the fiduciaries’ petition for rehearing en banc. See 788 F. 3d 916. The fiduciaries once more sought certiorari.

The Court now holds that the Ninth Circuit failed to properly evaluate the complaint. That court explained that its previous opinion (that is, the one it issued before *Fifth Third* was decided) “had already assumed” the standards for ERISA fiduciary liability laid out by this Court in *Fifth Third*. 788 F. 3d, at 940. And it reasoned that the complaint at issue here satisfies those standards because when “the federal securities laws require disclosure of material information,” it is “quite plausible” that removing the Amgen Common Stock Fund “from the list of investment options” would not “caus[e] undue harm to plan participants.” *Id.*, at 937–938. The Ninth Circuit, however, failed to assess whether the complaint in its current form “has plausibly alleged” that a prudent fiduciary in the same position “could not have concluded” that the alternative action “would do more harm than good.”

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Fifth Third, supra, at ___ (slip op., at 20).

The Ninth Circuit's proposition that removing the Amgen Common Stock Fund from the list of investment options was an alternative action that could plausibly have satisfied *Fifth Third's* standards may be true. If so, the facts and allegations supporting that proposition should appear in the stockholders' complaint. Having examined the complaint, the Court has not found sufficient facts and allegations to state a claim for breach of the duty of prudence.

Although the Ninth Circuit did not correctly apply *Fifth Third*, the stockholders are the masters of their complaint. The Court leaves to the District Court in the first instance whether the stockholders may amend it in order to adequately plead a claim for breach of the duty of prudence guided by the standards provided in *Fifth Third*.

The petition for certiorari is granted. The judgment of the Ninth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

Per Curiam

SUPREME COURT OF THE UNITED STATESMELENE JAMES *v.* CITY OF BOISE, IDAHO, ET AL.ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF IDAHO

No. 15–493. Decided January 25, 2016

PER CURIAM.

Under federal law, a court has discretion to “allow the prevailing party, other than the United States, a reasonable attorney’s fee” in a civil rights lawsuit filed under 42 U. S. C. §1983. 42 U. S. C. §1988. In *Hughes v. Rowe*, 449 U. S. 5 (1980) (*per curiam*), this Court interpreted §1988 to permit a prevailing defendant in such a suit to recover fees only if “the plaintiff’s action was frivolous, unreasonable, or without foundation.” *Id.*, at 14 (quoting *Christiansburg Garment Co. v. EEOC*, 434 U. S. 412, 421 (1978) (internal quotation marks omitted)).

In the decision below, the Idaho Supreme Court concluded that it was not bound by this Court’s interpretation of §1988 in *Hughes*. According to that court, “[a]lthough the Supreme Court may have the authority to limit the discretion of lower federal courts, it does not have the authority to limit the discretion of state courts where such limitation is not contained in the statute.” 158 Idaho 713, 734, 351 P. 3d 1171, 1192 (2015). The court then proceeded to award attorney’s fees under §1988 to a prevailing defendant without first determining that “the plaintiff’s action was frivolous, unreasonable, or without foundation.” The court’s fee award rested solely on its interpretation of federal law; the court explicitly refused to award fees under state law. *Id.*, at 734–735, 351 P. 3d, at 1192–1193. We grant certiorari, and now reverse.

Section 1988 is a federal statute. “It is this Court’s responsibility to say what a [federal] statute means, and once the Court has spoken, it is the duty of other courts to

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respect that understanding of the governing rule of law.” *Nitro-Lift Technologies, L. L. C. v. Howard*, 568 U. S. ___, ___ (2012) (*per curiam*) (slip op., at 5) (quoting *Rivers v. Roadway Express, Inc.*, 511 U. S. 298, 312 (1994) (internal quotation marks omitted)). And for good reason. As Justice Story explained 200 years ago, if state courts were permitted to disregard this Court’s rulings on federal law, “the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be truly deplorable.” *Martin v. Hunter’s Lessee*, 1 Wheat. 304, 348 (1816).

The Idaho Supreme Court, like any other state or federal court, is bound by this Court’s interpretation of federal law. The state court erred in concluding otherwise. The judgment of the Idaho Supreme Court is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.