

COURT DISMISSES “HOLDER” STOCK DROP CASE

Forte v. U.S. Pension Committee et al. S.D.N.Y.
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Last month, we wrote about BP, RadioShack, IBM, and Whole Foods prevailing in stock drop cases brought against each of them. In a recent putative class action, a plan participant brought a stock drop suit against three retirement committees for the Sanofi US Group Savings Plan (the “Plan”) and two Sanofi employees. The complaint alleged that the defendants breached their fiduciary duties by allowing Plan participants to continue to invest in the Sanofi stock fund under the Plan when the defendants had knowledge that the stock fund was no longer a prudent investment because of an undisclosed illegal kickback scheme allegedly engaged in by Sanofi.

The named plaintiff alleged that, upon learning of the alleged kickback scheme, defendants should have taken action to remove the stock fund as an investment option under the Plan or otherwise prevent Plan participants from purchasing shares in the stock fund during the relevant time period. In addition, the named plaintiff alleged that the employee-defendants should have alerted their co-fiduciaries and Sanofi’s board of directors about the alleged kickback scheme, which would have prompted a curative public disclosure and a correction in the stock price.

During the relevant time period, the named plaintiff did not direct the Plan’s administrator to purchase or sell any Sanofi stock allocated to his account under the Plan’s stock fund; however, the named plaintiff alleged that the failure to disclose the alleged kickback scheme caused him to forego alternative investments that were available to him under the Plan.

The court dismissed the complaint, holding that the named plaintiff lacked standing to bring suit. In particular, because the named plaintiff had neither purchased stock at an inflated price nor sold stock for a loss, he had not suffered a sufficient injury to possess standing. As a result of its holding, the court did not decide whether the complaint satisfied *Dudenhoeffer*’s pleading standard for public company stock drop cases. (*Forte v. U.S. Pension Committee et al.* (S.D.N.Y.))