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Employer Stock Litigation Update: Ninth Circuit Court of Appeals Adopts "Moench" Presumption

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Companies that sponsor ESOPs, 401(k), and other forms of eligible individual account plans ("EIAPs") often are subjected to class action lawsuits under ERISA when the company stock held by the plan declines in value. One of the key bases for dismissal of these "stock drop" lawsuits at an early pre-trial stage is the so-called "*Moench*" presumption of prudence. This presumption, named after a 1995 decision issued by the Third Circuit Court of Appeals, treats a fiduciary's decision to continue offering company stock as a plan investment option as being consistent with ERISA, unless the plaintiff can show that the fiduciary knew during the relevant time period of an imminent corporate collapse or other dire financial situation. Where pleading and proof of that kind of knowledge is absent from the plaintiffs' complaint – which typically is the case for non-bankrupt plan sponsors that remain economically viable – the court may use the *Moench* presumption to throw the case out well before the trial stage.

After declining to adopt the *Moench* presumption in earlier cases, the United States Court of Appeals for the Ninth Circuit (which encompasses Alaska, Arizona, California, Hawaii, Idaho, Nevada, Montana, Oregon, and Washington) in *Quan v. Computer Sciences Corporation*, 2010 WL 3784702, No. 09-56190 (9th Cir. Sept. 30, 2010), last week joined the Third, Fifth, and Sixth Circuits in expressly adopting *Moench* as a tool for deciding ERISA stock drop cases. *Computer Sciences* is a very favorable decision for plan sponsors and will help many defendants litigating in district courts within the Ninth Circuit to dispose of ERISA stock drop claims at an early stage in the litigation. Please see the attached memo for further information.