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There are a number of other employer stock cases pending in district and circuit courts. Groom Law Group continues to monitor developments in this area. Please contact one of the following Groom attorneys if you have any questions:

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Seventh Circuit Affirms Trial Court's ERISA "Stock Drop" Judgment in Favor of Former Employee of Closely-Held Securities Trading Firm.

Scores of ERISA "stock drop" cases have been resolved by settlement or by pre-trial rulings in favor of defendants. But only a handful of such cases have been decided following a full-blown trial on the merits. There have been four trials involving stock of a publicly-traded company, and the defendants prevailed in each such case.

The numbers change if one also considers cases involving stock of a closely-held company. In *Peabody v. Davis*, No. 1:05-cv-05026 (N.D. Ill. Sep. 2, 2009), a trial court granted judgment in favor of a former employee of a closely-held securities trading firm on his claims that the firm's owners breached ERISA's standard of prudent care by not disposing of company stock held through the firm's ERISA-covered savings plan before the firm collapsed. Earlier this month, the United States Court of Appeals for the Seventh Circuit affirmed the trial court's judgment on that point. *Peabody v. Davis,* Nos. 09-3428, 09-3452, 09-3497, 10-1851, 10-2097 & 10-2091 (7th Cir. April. 12, 2011). In doing so, however, the Court of Appeals emphasized both the narrowness of its ruling as well as the unique circumstances involving Peabody's former employer, Rockford Investment Corporation or "RIC," and the RIC Plan.

The Court of Appeals noted that – unlike many eligible individual account plans – the RIC Plan did not affirmatively require or even encourage investment in employer securities. In fact, only two participants other than Peabody held RIC stock in the Plan, and those participants did so in a much lower concentration that Peabody. According to the Court of Appeals, divestment of RIC stock from the Plan therefore "would not have required any deviation from the Plan terms nor would it have been unusual in the context of RIC, so the barriers to divestment were low compared to many other [eligible individual account] plans."

Agreeing with the lower court, the Seventh Circuit also held that a prudent investor would not have remained so heavily invested in RIC's stock as the company's fortunes "declined precipitously over a five-year period for reasons that foretold further and continuing declines" (*i.e.*, an SEC rule change that, in the words of RIC's owners, "crushed" RIC's profit margins). The Plan's trustees, who founded the company and set the share value, themselves acknowledged this catastrophic decline in testifying that the effect of the SEC rule was felt as early as 2000, and that, by 2003 and 2004, RIC was "going downhill." The Court determined the facts of this "widely-known and permanent change in the regulatory environment had undermined RIC's core business model" and were "consistent with circumstances under which sister courts would find it imprudent to continue an investment

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in company stock." Emphasizing the narrowness of its ruling, however, the Court stressed that most business failures are "not so foreseeable, and a severe decline in company stock does not, without considerably more, create a duty to divest from company stock."

Despite the discrete holding of the *Peabody v. Davis* ruling, ERISA plaintiffs may use this case as a new template for building stock drop claims in other cases involving publicly-traded stock.

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