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FOR IMMEDIATE RELEASE:

THIRD CIRCUIT COURT OF APPEALS ISSUES PRECEDENTIAL RULING ON SCOPE OF A TRUSTEE'S FIDUCIARY DUTIES UNDER ERISA

Livingston, N.J., September 22, 2020 – The Third Circuit Court of Appeals recently ruled on the nature and scope of a Trustee's fiduciary duties under the Employee Retirement Income Security Act ("ERISA") in *In Re Allergan ERISA Litigation*. In its ruling, the Court affirmed the New Jersey District Court's dismissal of a putative class action without leave to amend. In the appeal, the Court was requested to review whether Plaintiffs/Appellants Andrew J. Ormond and Jack Xie, former employees of Appellee Allergan plc ("Allergan") and participants in the Company's employee stock ownership plan ("ESOP" or "Plan") who had brought action individually, derivatively on behalf of the ESOP, and as representatives of a purported class of similarly situated Plan participants, had plausibly alleged that the trustees of that ESOP had breached certain fiduciary duties under ERISA. In their Complaint, Plaintiffs/Appellants alleged that the Trustees of the Plan knew or should have known that the Company's stock price was artificially inflated during the proposed class period as a result of an illegal price-fixing conspiracy yet they took no action to prevent the Plan participants from acquiring Allergan stock at falsely inflated prices to the Plan participants' detriment.

After reviewing the operative Complaint, the Court determined that the District Court Judge had properly ruled that, even when viewed in the light most favorable to the Plaintiffs/Appellants, the factual allegations failed to support a plausible inference that the Company conspired to fix prices and that the allegations only rose to a speculative level of misconduct on the part of the Trustees of the Plan. Furthermore, the Court concluded that the District Court had not abused its discretion in denying Plaintiffs/Appellants leave to amend their Complaint. The Court noted that Plaintiffs/Appellants had only made a perfunctory request to do so and that their request had failed to include a proposed amended complaint and any description of, or explanation about, the modifications that they may make to address the identified deficiencies. The Court's opinion, which was one of first impression for the Third Circuit with respect to various ERISA fiduciary duty related issues, correctly applied existing case law from various other Circuit Courts and the United States Supreme Court, including the Supreme Court's watershed decision in *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409 (2014) discussed in detail in Becker LLC's trial court and appellate briefs and the oral argument made at the hearing on the appeal.

Robert Towey, Joseph G. Harraka, Jr. (who argued the appeal), and Joseph Falgiani of Becker LLC represented Allergan at both the trial level and in the appeal. Please contact Joseph G. Harraka, Jr., Esq., a member of the Becker LLC Litigation Group for more information on this case and the range of legal services the group provides to ERISA plan trustees and administrators.

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