

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

RICHARD G. TATUM, individually and on behalf of a class of  
all other persons similarly situated,  
*Plaintiff-Appellant,*

v.

RJR PENSION INVESTMENT COMMITTEE; RJR EMPLOYEE BENEFITS  
COMMITTEE; R.J. REYNOLDS TOBACCO HOLDINGS, INC.; R.J.  
REYNOLDS TOBACCO COMPANY,  
*Defendants-Appellees.*

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On Appeal from the United States District Court  
for the Middle District of North Carolina

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**MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* OF  
THE CHAMBER OF COMMERCE OF THE UNITED STATES  
OF AMERICA AND AMERICAN BENEFITS COUNCIL  
URGING REHEARING EN BANC**

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**MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* OF  
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The Chamber of Commerce of the United States of America (the “Chamber”) and the American Benefits Council (the “Council”) respectfully move for leave to file a brief *amici curiae* urging rehearing en banc in this case and, in support thereof, represent as follows:

1. Counsel for Appellees (RJR Pension Investment Committee *et al.*) consents to the filing of this brief. Counsel for Appellant (Tatum) consented to the *amici* brief the Chamber and the Council filed before the panel in this case, but has not consented to the filing of this brief.

2. The Chamber is the world’s largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases that raise issues of concern to the nation’s business community.

3. The Council is a broad-based nonprofit organization dedicated to protecting and fostering privately sponsored employee benefit plans. The Council's approximately 350 members are primarily large U.S. employers that provide employee benefits to active and retired workers. The Council's membership also includes organizations that provide services to employers of all sizes regarding their employee benefit programs. Collectively, the Council's members either directly sponsor or provide services to retirement and health plans covering more than 100 million Americans. The Council frequently participates as *amicus curiae* in cases that have the potential for far-reaching effects on employee benefit plan design or administration.

4. The businesses represented by the Chamber and the Council sponsor hundreds of thousands of employee benefit plans, both pension and welfare, that are subject to the Employee Retirement Income Security Act of 1974 ("ERISA"), including its fiduciary responsibility provisions. It is vital to the continued operation of these employee benefit plans that the fiduciary responsibility provisions of ERISA continue to be applied as written and as they have been applied for nearly forty years since ERISA was enacted.

5. The Chamber and the Council have already filed an *amicus* brief before the panel. The interest of the Chamber and the Council at this stage is to support the petition for rehearing en banc in this exceptionally important case. The

accompanying brief identifies the significant practical implications for plan fiduciaries and sponsors, and apprises the full Court of the substantial interests of employers—and also employees and their dependents—in correcting the erroneous decision of the panel majority regarding ERISA’s “prudent man” rule. For these reasons, the Chamber and the Council believe that their brief *amici curiae* will assist the Court in deciding whether en banc review is warranted.

For all the foregoing reasons, the Chamber and the Council respectfully ask the Court to grant their motion for leave to file the accompanying brief *amici curiae*.

Respectfully submitted,

/s/ Hollis T. Hurd

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 25, 2014, I electronically filed the foregoing **MOTION FOR LEAVE TO FILE BRIEF *AMICI CURIAE* OF THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND AMERICAN BENEFITS COUNCIL URGING REHEARING EN BANC** with the Clerk of Court using the CM/ECF System. Counsel for all parties are registered CM/ECF users and will be served with the foregoing document by the Court's CM/ECF System.

/s/ Hollis T. Hurd \_\_\_\_\_

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