



Erin Weber Discusses ERISA Cases to Watch In October with Law360

OCTOBER 2, 2023

Winston & Strawn partner Erin Weber recently spoke with Law360 about Employee Retirement Income Security Act (ERISA) cases that are set to be heard in October. In one case, the U.S. Court of Appeals for the Fifth Circuit will hear arguments in an appeal where a dental office, D.L. Markham, is seeking to revive a proposed ERISA class action alleging that its recordkeeper, Variable Annuity Life Insurance Co (VALIC), breached its fiduciary duty by charging exit fees to 401(k) plans that left its platform. In October 2022, U.S. District Judge Sim Lake ruled that VALIC didn't violate ERISA by collecting a surrender fee against the plan's assets, a fee which D.L. Markham agreed to when it contracted with VALIC.

Erin said she's watching the case because it involves multiple questions about the application of federal benefits law.

"When is a service provider a party in interest? Under what circumstances? Is it a fiduciary action every single time a service provider accepts a fee from a plan, which is an allegation here?" she said.

"I think that this could be a very important decision," Erin said, predicting vendors could exit the market or raise their fees if the appellate court were to rule in favor of the proposed class.

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