

## Erin Weber Discusses Home Depot ERISA Win with Law360

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Winston & Strawn partner Erin Weber was quoted in a Law360 article analyzing the recent Eleventh Circuit ruling backing Home Depot's summary judgment win against a class of plan participants who argued that their 401(k) plan was mismanaged, violating the Employee Retirement Income Security Act ("ERISA"). The court held that the plaintiffs had not met their burden to show that the defendants' conduct caused losses to the plan. Thus, even if the plaintiffs ultimately showed that the defendants' conduct was imprudent, they could not prevail. The three-judge panel's decision adds to a split between circuit courts on the question of which party must prove loss causation to prevail on ERISA claims of retirement plan mismanagement. The Eleventh Circuit joined the Tenth Circuit in rejecting plan participants' theory that the burden of proving loss causation should shift to the employer if plaintiffs can show a fiduciary breach and that the plan suffered a loss.

The panel's decision cut through a semantic debate on ERISA fiduciary breach claims, where an outcome hinges on a court deciding whether a prudent fiduciary "would have" or "could have" made the same investment decision.

Erin said she appreciated "that the court said, if the plaintiffs have to prove the loss, which this court said they did, that the 'could have, would have' piece kind of goes away."

"I liked that they just kind of cut through that argument and said, 'We don't need to get into that,'" she said, agreeing there was a circuit split and saying "it would be great to get a decision from the Supreme Court" on the issue of the burden of proof on loss causation.

[Read the full article.](#)

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