



## Erin Weber Highlights Two Employee Benefits Cases for Attorneys to Watch in March with Law360

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Winston & Strawn partner Erin Weber was quoted in a Law360 article analyzing two appellate arguments happening in March that employee benefits attorneys should watch for. Erin discussed a Johnson & Johnson case presenting arguments to a Third Circuit panel, and a case where the Second Circuit will hear arguments from pensioners at IBM.

In the first of the two cases, Johnson & Johnson will ask a Third Circuit panel to reverse a New Jersey federal court's December 2023 class certification order in an investor action alleging the company artificially inflated its stock price by failing to disclose cancer risks associated with its talcum powder products. Erin said the case follows a "trend of having the pension plans as named lead plaintiffs in these cases."

"I think that it really underscores how important these cases are to pension plans that invest in these companies, because pension plans are such significant shareholders," Erin said. "So the standards of disclosure, whether the shareholders have been misled, it's so important to plans, and accordingly, to plan participants and plan sponsors."

In the second case, the Second Circuit will hear from pensioners at IBM seeking to revive their proposed class action alleging the company used outdated mortality tables that lowered their overall annuity payouts. In a brief filed by the U.S. Department of Labor in support of the IBM retirees, the DOL argued that the retirees didn't have actual knowledge about the mortality data despite the information's inclusion in participant disclosures. Erin said the appeal emphasizes a frequent occurrence with benefits cases where "the substantive issue at the root of the case becomes secondary to the implications of the procedural holdings."

"Even though the mortality table issues certainly are important, ... in my opinion they're not as impactful as the question of whether participants must have actual knowledge, versus the 'known or should [have] known' standard, to start a statute of limitations running," Erin said. "And whether disclosure equals constructive knowledge."

Erin noted that the DOL's amicus brief in support of the workers, along with an amicus brief in support of IBM jointly filed by industry trade groups the American Benefits Council, the ERISA Industry Committee and the U.S. Chamber of Commerce, "puts even more of a spotlight on this case."

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