

Law360 Quotes Mark Boyko on Recent ERISA Related Cases Before US Supreme Court

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Law360 quoted Bailey Glasser Attorney Mark Boyko in a January 1 article titled “ERISA Cases to Watch in 2020: All Eyes on the High Court.” The article discusses how 2020 is shaping up to be a big year for the Employment Retirement Income Security Act (ERISA) as the US Supreme Court has three ERISA related cases on its docket and a number of other high-profile ERISA cases at the circuit court level.

Boyko was quoted on the upcoming US Supreme Court decision in the *Jander v. IBM* case. Oral arguments occurred in November 2019 and the plaintiff alleged IBM's retirement plan managers breached their ERISA fiduciary duty by failing to remove IBM stock from the plan when they learned the shares were on track to lose value. A ruling on the side of management in this case would shut the door once again on ERISA stock-drop suits, which were relatively common until the Supreme Court's 2014 ruling in *Fifth Third Bancorp v. Dudenhoeffer*. “When it comes to IBM, I think of the ‘Princess Bride’ quote where he’s dead, but he’s not fully dead,” Boyko said. “I think it’s going to be a statement to the effect of ‘We thought *Dudenhoeffer* settled this issue.’”

The article went to discuss *Intel v. Sulyma*, a case where Boyko and Bailey Glasser Partner Gregory Porter represent Plaintiffs. That case was also recently argued before the US Supreme Court and raised concerns about the issue of whether plan participants have “actual knowledge” of all information available on a 401(k) plan website.

Boyko was also quoted on the University of Pennsylvania’s (UPenn) petition to the US Supreme Court regarding the proposed ERISA class action challenging the school’s management of its retirement plan. The Third Circuit ruled that the university breached its fiduciary duty by letting its plan charge high fees and retain underperforming investments. UPenn’s petition argued that its workers case was rightly dismissed by a Pennsylvania federal judge in 2017 and the Third Circuit incorrectly overturned the dismissal. “UPenn is asking the Supreme Court to require a plaintiff to know and allege in her complaint specific conduct she could not have witnessed,” Boyko said.

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Bailey Glasser was mentioned in the article saying the firm recently brought a number of ERISA suits against companies accusing them of using outdated mortality rates to calculate pension benefits. One of the more significant cases related to this is the *Torres et al. v. American Airlines Inc. et al.* case in the US District Court for the Northern District of Texas. Bailey Glasser is representing the pensioners alongside IZARD KINDALL & RAABE LLP and the Kendall Law Group PLLC.

The full article can be read at *Law360* (subscription required).

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Practice Areas

ERISA, Employee Benefits & Trust Litigation