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And Then There Was One: SCOTUS on Path to Benefits-Free Term

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- Justices expressed interest in one remaining employee benefits case
- 'Anomalous' ERISA-free term was first in six years

The U.S. Supreme Court is wrapping up the first term in six years in which it didn't hear an Employee Retirement Income Security Act case. The odds that trend continues next term are increasing.

ERISA, the federal law that regulates how employers offer employee benefits to their workers, is a frequent guest of the Supreme Court. The justices have taken up and decided 129 employee benefits cases since the year ERISA was enacted, making the federal statute one of the most litigated issues before the high court.

"The lack of ERISA cases on the docket this term was anomalous," Brian D. Netter, an ERISA litigation lawyer at Mayer Brown's Washington office, told Bloomberg Law. The Supreme Court frequently takes up questions relating to the 44-year-old law because Congress stressed the importance of uniformity in employee benefits regulation, Netter said.

The court has declined to hear every ERISA petition filed this year. One case still awaiting word on its high court review could make it to next year's docket. That case is *Pioneer Centres Holding v. Alerus Financial.*

Pioneer Centres is a dispute between a car dealership's employee stock ownership plan and the plan's trustee. The petition for review poses the question: How do benefit plan participants prove they've been harmed by plan fiduciaries?

Waiting on U.S.

The justices asked the U.S. Solicitor General to weigh in on the *Pioneer Centres* petition in March, indicating their interest in the issue. The solicitor general has yet to file his brief.

Pioneer Centres was one of two employee benefits cases the Supreme Court asked the solicitor general to weigh in on. The other case, *Strang v. Ford Motor Co.*, was denied review on June 25.

Of those two ERISA cases, *Pioneer Centres* seemed more likely to get a grant, Heather M. Mehta, an associate with Greensfelder Hemker & Gale PC in St. Louis, Mo., told Bloomberg Law.

The U.S. Court of Appeals for the Tenth Circuit in *Pioneer Centres* deepened an existing circuit split on the issue when it chose not to adopt a burden-shifting framework in cases alleging fiduciary breach under ERISA, Mehta said.

The Sixth, Ninth, Eleventh, and now Tenth circuits have favored the employer and benefit plan defendants, holding that the burden rests with the party bringing the claim. The Fourth, Fifth, and Eighth have held that the burden falls on the employer and benefit plan defendants.

Change in Tune

The court saw a similar question to that presented in *Pioneer Centres* in a 2015 appeal of a case from the Fourth Circuit.

The court followed the solicitor's advice then to deny the petition for *RJR Pension Investment Committee v. Tatum* and leave standing the Fourth Circuit's judgment that placed the burden on the fiduciaries to prove their conduct didn't hurt the plan. The solicitor general said in that case that the high court shouldn't intervene because there wasn't a clear division among the circuits.

"It will be interesting to see if the solicitor general changes its opinion now that there is a true circuit split," Mehta said.

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