

Publications

Fifth Circuit Oral Arguments – A New Hope for Fiduciary Rule Opponents?

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The Department of Labor (“DOL”) has faced a series of legal challenges to the Fiduciary Rule – DOL’s regulation defining when someone acts as a fiduciary by providing investment advice under ERISA and/or the Code. To date, the DOL has prevailed in each of these cases, as district courts have granted summary judgment to the DOL upholding the Fiduciary Rule and related prohibited transaction exemptions. However, at oral argument in *Chamber of Commerce v. Acosta*, Case No. 17-10238 (5th Cir.) (“*Chamber of Commerce*”), the first of these cases to reach the appellate level, the U.S. Court of Appeals for the Fifth Circuit signaled that it may rule against the DOL. During the hour and seven minutes of oral arguments, one of the appellate judges, Judge Edith Jones, dominated the discussion. Judge Jones not only peppered both parties with questions that appeared to be largely based on the Chamber of Commerce’s briefs, but also raised a new argument about why the Fifth Circuit need not defer to the DOL’s analysis. Should Judge Jones and at least one of the other members of the panel side with the Chamber of Commerce, the Fiduciary Rule could be vacated. Please see the attached memo for further information.