

## Tess Gee Comments on 401(k) Retirement Plan Case in Bloomberg Law

### **"Rejecting 401(k) Case Risks Skewing Investments, Justices Told"**

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Tess Gee commented on a court case some attorneys say endorsed one type of investment over another in 401(k) retirement plans. In *Putnam Investments, LLC v. Brotherston*, the U.S. Court of Appeals for the First Circuit said any plan fiduciary could protect itself from liability by choosing "well-established, low-fee and diversified marketing index funds" in an investment portfolio. Lawyers like Gee, who litigate disputes under the Employee Retirement Income Security Act (ERISA), saw the ruling as the court advising fiduciaries to select passively managed investments over actively managed ones, which is unusual. According to Gee, courts in general are typically pretty careful about not taking sides in the controversy over active versus passively managed funds. The U.S. Supreme Court will decide whether to hear the case in January 2020.