

# Litigator of the (Past) Week Runners-Up and Shout-Outs

By Ross Todd

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An appellate team led by **Roman Martinez** of **Latham & Watkins** got the Eleventh Circuit to uphold a summary judgment win for Home Depot. Members of the retailer's 401(k) plan sued alleging fiduciary breaches under the Employee Retirement Income Security Act. In a 30-page published opinion issued earlier this month, the appellate court held that ERISA plaintiffs bear the burden of proof on loss causation. The court further found that to meet that burden, plaintiffs must show "a hypothetical prudent fiduciary in the same circumstances as the defendant, armed with the information that a proper evaluation would have yielded, would not (or could not) have made the same choice." Martinez argued the appeal. He was joined by associates **Charles Dameron** and **Brent Murphy** and co-counsel David Tetrick Jr. and Darren Shuler of King & Spalding.