DOL Fiduciary Rule Challengers Leave Nothing To Chance, *Law360, ft. Brendan McGarry*

Brendan P. McGarry of Kaufman Dolowich & Voluck in Chicago was quoted in an article written by Carmen Germaine on June 2, 2016 for Law360 regarding industry groups filing a lawsuit challenging a recent U.S. Department of Labor's fiduciary rule.

He comments on the U.S. Chamber of Commerce, the Securities Industry and Financial Markets Association and six other national and local industry groups filing a lawsuit late Wednesday to halt the final rule imposing a fiduciary duty on financial professionals who advise retirement account savers. They argue the DOL overstepped its authority and that the new regulations will harm retirement savers.

"Eugene Scalia's been successful in the past in this type of lawsuit," said Brendan P. McGarry, an attorney with Kaufman Dolowich & Voluck LLP.

The complaint hews closely to Scalia's July letter, echoing arguments that the fiduciary rule conflicts with ERISA, infringes on the SEC's authority and violates the Federal Arbitration Act by banning class action waivers.

But the suit also adds one new allegation that attorneys said is outside the box: a claim that the so-called best interest contract exemption violates the First Amendment by restricting advisers' ability to help clients. The exemption allows brokers to continue earning commissions from sales of investment products provided that they enter a contract with customers in which they pledge to act in the client's best interest and disclose any conflicts of interest.

McGarry noted that the constitutional argument is listed as the last of eight counts in the complaint, suggesting the industry groups included it as a "Hail Mary pass."

"The inclusion of a constitutional argument is a sign that they tried to put in there everything they could possibly think of that they believe has at least some merit," he said.