

403(b) Retirement Plan Fee Litigation: April 2020 Update

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Despite the COVID-19 pandemic, retirement plan litigation remains largely uninterrupted. Since our last [comprehensive update](#) on the status of 403(b) retirement plan lawsuits, there have been some significant updates:

- The George Washington University litigation appeal was denied, as was the Northwestern University litigation appeal. Judges previously dismissed both cases.
- A judge dismissed two of the remaining three counts that had not been previously dismissed against Cornell University, leaving just one count to proceed to trial.
- Massachusetts Institute of Technology settled their lawsuit for \$18.1 million.
- Princeton and Emory Universities settled their lawsuits for amounts yet to be disclosed.
- The Supreme Court decided not to hear an appeal by the University of Pennsylvania to a 3rd Circuit partial reversal of a lower court ruling that had dismissed all claims.
- A motion for summary judgement by Columbia University was denied in their case.
- A new lawsuit against Ardent Health Services was filed in December of 2019.
- The terms of the \$2.4 million Allina Health System settlement were announced.

The 403(b) Retirement Plan Litigation Status Chart below provides detailed information on each case.

403(b) RETIREMENT PLAN LITIGATION STATUS (as of April 2020)			
STATUS	ORGANIZATION	DATE FILED	DETAILS
DISMISSED	Essentia Health	December 2016	Both parties agreed to dismiss the case in November 2017
	George Washington University	April 2018	Dismissed by a judge in July of 2019; appeal denied in March 2020
	Georgetown University	February 2018	Dismissed by a judge in January 2019
	Long Island University	May 2018	Voluntarily dismissed by plaintiffs in February 2019
	Northwestern University	August 2016	Dismissed by a judge in May of 2018; appeal denied in March 2020
	University of Rochester	May 2018	Voluntarily dismissed by plaintiffs in January 2019
	Washington University in St. Louis	June 2017	Dismissed by a judge in September 2018
PARTIALLY DISMISSED	Cornell University	August 2016	Four counts dismissed by a judge in September 2017; three remaining counts partially dismissed, with portions of each allowed to proceed. Motion of jury trial granted in September 2018, permitted to proceed as a class action suit in January 2019. Judge dismissed two of three remaining counts in September 2019, leaving just one count to proceed.
	Norton Healthcare	January 2018	Only a portion of one count dismissed by a judge in August 2019; otherwise, all seven counts allowed to proceed.
	University of Pennsylvania	August 2016	Dismissed by a judge in September 2017; partially overturned on appeal in May 2019. Appeal of that decision denied in July 2019 and Supreme Court decided not to review the appeal in March 2020.
	Yale University	August 2016	Three counts partially dismissed by a judge in March 2018; portions of each allowed to proceed, with four other accounts allowed to proceed in their entirety.
GONE TO TRIAL	New York University (NYU)	August 2016	Judge found in favor of NYU on all counts at trial in July 2018; decision affirmed on appeal in July 2019

SETTLED	Allina Health System	August 2017	Settled in April 2019 for \$2.4 million
	Brown University	July 2017	Settled in March 2019 for \$3.5 million
	Duke University	August 2016	Settled in January 2019 for \$10.65 million
	Emory University	August 2016	Settled in April 2020; terms not yet disclosed
	Johns Hopkins University	August 2016	Settled in August 2019 for \$14 million
	Massachusetts Institute of Technology (MIT)	August 2016	Settled in October 2019 for \$18.1 million
	Princeton University	May 2017	Settled in April 2020; terms not yet disclosed
	University of Chicago	May 2017	Settled in May 2018 for \$6.5 million
	Vanderbilt University	August 2016	Settled in February 2019 for \$14.5 million
	Providence Health	November 2017	Settled in January 2019 for \$2.25 million
OTHERWISE PENDING	Ardent Health Services	December 2019	
	Columbia University	August 2016	In March 2020, the trial judge, acting on the recommendation of a magistrate judge, denied Columbia's motion for summary judgement.
	Kaleida Health	October 2018	Survived motion to dismiss in August 2019
	TriHealth	July 2019	Note: This case happens to be a 401(k) lawsuit, not a 403(b)
	University of Southern California (USC)	August 2016	USC filed motion to compel arbitration in December 2016, which was denied by a judge in March 2017; USC appealed and the 9 th Circuit Court of Appeals upheld the denial in July 2018. USC then appealed to the Supreme Court, which declined to hear the case in February 2019.

The claims in these lawsuits cover a broad range of topics and issues. However, most are focused on the fees charged and investments used in retirement plans. We provide an in-depth exploration of the claims in our series, [Fiduciary Breach Lawsuit Issues](#).

While not all claims are successful, in order to manage risk, plan sponsors should understand the issues and keep track of the litigation surrounding retirement plans.

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For more information on our services, please contact **Mike Volo**, Senior Partner, at **781.997.1426** or **mvolo@cammackretirement.com**.

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