

403(b) Retirement Plan Fee Litigation: An Update

Michael A. Webb, CEBS, Vice President
 Cammack Retirement Group

Retirement plan litigation continues to plague the retirement plan space. Earlier this year, we provided a [comprehensive update](#) on the status of the 403(b) retirement plan fee litigation. While only one new lawsuit has been announced (against TriHealth of Cincinnati), there have been some significant updates, including:

- The George Washington University litigation was dismissed
- The Johns Hopkins University litigation was settled for \$14 million
- The trial court dismissal of the University of Pennsylvania litigation was partially overturned on appeal
- The New York University trial court decision in favor of the defendants was upheld on appeal
- The Allina Health lawsuit was settled for a yet-to-be-disclosed amount
- The Kaleida Health lawsuit survived a motion to dismiss
- The Norton Healthcare lawsuit largely survived a motion to dismiss (only a portion of one count was dismissed)
- The terms of the Vanderbilt University \$14.5 million 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 August 2019)			
STATUS	ORGANIZATION	DATE FILED	DETAILS
DISMISSED	Essentia Health	December 2016	Both parties agreed to dismiss the case in November of 2017
	George Washington University	April 2018	Dismissed by a judge in July of 2019
	Georgetown University	February 2018	Dismissed by a judge in January of 2019
	Long Island University	May 2018	Voluntarily dismissed by plaintiffs in February of 2019
	Northwestern University	August 2016	Dismissed by a judge in May of 2018
	University of Rochester	May 2018	Voluntarily dismissed by plaintiffs in January of 2019
	Washington University in St. Louis	June 2017	Dismissed by a judge in September of 2018
PARTIALLY DISMISSED	Cornell University	August 2016	Four counts dismissed by a judge in September of 2017, three remaining counts partially dismissed, with portions of each allowed to proceed; motion of jury trial granted in September of 2018; permitted by a judge to proceed as a class action suit in January of 2019
	Massachusetts Institute of Technology (MIT)	August 2016	All four counts partially dismissed by a judge in September of 2017, with portions of each allowed to proceed; class certified in October of 2018, and motion for a jury trial denied in February of 2019; <i>Note: this case happens to be a 401(k) lawsuit, not a 403(b)</i>
	Norton Healthcare	January 2018	Only a portion of one count dismissed by a judge in August of 2019, otherwise, all seven counts allowed to proceed
	University of Pennsylvania	August 2016	Dismissed by a judge in September of 2017, partially overturned on appeal in May of 2019
	Yale University	August 2016	Three counts partially dismissed by a judge in March of 2018, with 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 of 2018 decision affirmed on appeal in July of 2019
SETTLED	Allina Health System	August 2017	Settled in April of 2019; terms not yet disclosed
	Brown University	July 2017	Settled in March of 2019 for \$3.5 million
	Duke University	August 2016	Settled in January of 2019 for \$10.65 million
	Johns Hopkins University	August 2016	Settled in August of 2019 for \$14 million
	University of Chicago	May 2017	Settled in May of 2018 for \$6.5 million
	Vanderbilt University	August 2016	Settled in February of 2019 for \$14.5 million
	Providence Health	November 2017	Settled in January of 2019 for \$2.25 million
MEDIATION	Emory University	August 2016	Both parties agreed to mediation in March of 2019
STAYED (Pending Outcome of Other Cases)	Princeton University	May 2017	Stayed by a judge in December of 2017, pending the outcome of an appeal in the University of Pennsylvania lawsuit (note: that appeal has been decided, but there have been no further public updates on this case)
OTHERWISE PENDING	Columbia University	August 2016	
	Kaleida Health	October 2018	Survived motion to dismiss in August of 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 a motion to compel arbitration in December of 2016, which was denied by a judge in March of 2017; USC appealed, and the 9 th Circuit Court of Appeals upheld the denial in July of 2018; USC then appealed to the Supreme Court, which declined to hear the case in February of 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. To read Topic 1: Active vs. Passive Investments, [click here](#). To read Topic 2: Asset-Based vs. Per-Participant Fees, [click here](#). Stay tuned to [our website](#) for additional articles in this series.

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.

ABOUT CAMMACK RETIREMENT GROUP

Cammack Retirement Group has been helping retirement plan sponsors meet their goals for half a century. Solely focused on serving retirement plan sponsors, we provide a tailored approach to investment advisory and consulting services. We work with some of the nation's leading academic and research institutions, healthcare providers, corporations, non-profit organizations and public sector employers to help them manage fiduciary risk.

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

***Note:** This feature is to provide general information only, does not constitute legal advice, and cannot be used or substituted for legal or tax advice. The information contained herein has been obtained from sources that are believed to be reliable. However, Cammack Retirement Group does not independently verify the accuracy of this information and makes no representation as to its accuracy or completeness. Information is as of the date indicated, based on the information available at that time.*

Investment products available through Cammack LaRhette Brokerage, Inc. Investment advisory services available through Cammack LaRhette Advisors, LLC. 100 William Street, Suite 215, Wellesley, MA 02481 | p 781-237-2291