

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

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Despite the COVID-19 pandemic, there have been no signs of a slowdown in the litigation arena. Since our last [comprehensive update](#) on 403(b) retirement plan fee litigation in April, there have been some significant updates, including the following:

- For the first time in nearly two years, a new lawsuit was filed against a university (University of Miami)
- Four new healthcare lawsuits were filed, two against Sutter Health of California, and one each against Mercy Health of Illinois and MedStar Health of Maryland
- Cornell University settled on the one remaining count in their lawsuit that was scheduled to proceed to trial this month; terms have yet to be disclosed
- The 8th Circuit Court of Appeals overturned a trial court's dismissal of one of the two claims in the Washington University in St. Louis case, while affirming the dismissal of a second claim
- The terms of the Emory University settlement were disclosed; Emory agreed to pay \$16.75 million
- The terms of the Princeton University settlement were disclosed; Princeton agreed to pay \$5.8 million

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

403(b) RETIREMENT PLAN LITIGATION STATUS (as of September 2020)			
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; appeal denied in March of 2020
	Georgetown University	February 2018	Dismissed by a judge in January 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; appeal denied in March of 2020
	University of Rochester	May 2018	Voluntarily dismissed by plaintiffs in January of 2019
PARTIALLY DISMISSED	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; the parties pursued mediation in February of 2020, but it did not result in a settlement
	University of Pennsylvania	August 2016	Dismissed by a judge in September of 2017, partially overturned on appeal in May of 2019; appeal of that decision denied in July of 2019, and Supreme Court decided not to review the appeal in March of 2020
	Washington University in St. Louis	June 2017	Dismissed by a judge in September of 2018, partially overturned on appeal in May of 2020
	Yale University	August 2016	Three counts partially dismissed by a judge in March of 2018, portions of each allowed to proceed; 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
	Allina Health System	August 2017	Settled in April of 2019 for \$2.4 million
	Brown University	July 2017	Settled in March of 2019 for \$3.5 million
	Cornell University	August 2016	Settled in September of 2020; terms not yet disclosed

SETTLED	Duke University	August 2016	Settled in January of 2019 for \$10.65 million
	Emory University	August 2016	Settled in April of 2020 for \$16.75 million
	Johns Hopkins University	August 2016	Settled in August of 2019 for \$14 million
	Massachusetts Institute of Technology (MIT)	August 2016	Settled in October of 2019 for \$18.1 million
	Princeton University	May 2017	Settled in April of 2020 for \$5.8 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
OTHERWISE PENDING	Ardent Health Services	December 2019	
	Columbia University	August 2016	In March of 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 of 2019
	MedStar Health	July 2020	
	Mercy Health	August 2020	
	Sutter Health	July 2020	Second lawsuit filed in September of 2020
	TriHealth	July 2019	Note: this case happens to be a 401(k) lawsuit, not a 403(b)
	University of Miami	April 2020	
University of Southern California (USC)	August 2016	USC filed 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](#).

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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