

## 403(b) Retirement Plan Fee Litigation: February 2021 Update

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As the COVID-19 pandemic wears on, existing 403(b) retirement plan fee litigation has seen a decline in activity. However, since our last update in September, there have been a few significant updates of note:

- A new lawsuit against Piedmont Healthcare was filed. This is the first of its type, since the plan in question has since been terminated, due to Piedmont Healthcare's acquisition of Columbus Regional Healthcare.
- A new lawsuit was filed again Barnabas Health in September of 2020.
- Georgetown University's previously dismissed lawsuit was sent back to the trial court on appeal to determine whether the plaintiffs could file an amended complaint.
- The University of Pennsylvania settled for \$13 million in January of 2021.
- Norton Healthcare settled for \$5.7 million in December of 2020.

The chart below provides detailed information on each case.

403(b) RETIREMENT PLAN LITIGATION STATUS (as of February 2021)			
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
	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; plaintiffs appealed to the Supreme Court in June of 2020
	University of Rochester	May 2018	Voluntarily dismissed by plaintiffs in January of 2019
PARTIALLY DISMISSED	Georgetown University	February 2018	Dismissed by a judge in January of 2019, with allowance for plaintiffs to file amended complaint; judge ruled in May of 2019 that amended complaint was filed two days too late; that decision was appealed and sent back to the trial court on appeal in February 2021
	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, with 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
SETTLED	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
	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
	Norton Healthcare	January 2018	Settled in December of 2020 for \$5.7 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
	University of Pennsylvania	August 2016	Settled in January of 2021 for \$13 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	
	Barnabas Health	September 2020	
	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	Survived motion to dismiss in February of 2021
	Mercy Health	August 2020	
	Piedmont Healthcare	February 2021	Only lawsuit to date filed against a terminated plan (the plan in question is that of Columbus Regional Healthcare, which was acquired by Piedmont in 2018)
	Sutter Health	July 2020	Second lawsuit filed in September of 2020
	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 <sup>th</sup> 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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