
'Excessive fee' case against Yale to continue

By Editorial Staff *Thu, Apr 5, 2018*

Yale is among more than a dozen universities to be sued over the past 30 months for allegedly failing to reduce the costs of their 401(k) plans and the fees charged to participants.

A U.S. District Court judge in Connecticut has denied most of Yale University's motions to dismiss a suit, filed against it in August 2016, that accused the Ivy League school of running its 401(k) plan in a way that cost participants too much. The case was among several similar "excessive fee" cases filed by the St. Louis law firm, Schlichter Bogard & Denton against large 401(k) plan sponsors.

According to a report by NAPA Net, the suit alleged that Yale breached its fiduciary duties to plan participants (Yale employees) by "selecting and imprudently retaining funds which the plaintiffs claim have historically underperformed for years" and had high fees. The complaint also questioned the plan's decision to use multiple recordkeepers instead of single recordkeeper.

The plaintiffs had also charged Yale with failing to employ strategies that would lower recordkeeping fees, such as:

Installing a system to monitor and control fees

Periodically soliciting bids in order to compare cost and quality of recordkeeping services

Leveraging the plan's "jumbo" size to negotiate for cheaper recordkeeping fees

Consolidating from two recordkeepers to one

Implementing a flat fee rather than a revenue-sharing structure

Yale argued that the plaintiffs failed to allege "that the fees were excessive relative to the services rendered." The school's plan trustees moved to dismiss all seven counts for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) and for being time-barred.

Judge Alvin W. Thompson dismissed allegations that the Yale defendants acted disloyally in managing its retirement plan, and that participants were harmed by too many investment options.

Still active are claims that Yale was “locked-in” with recordkeeping services that kept the university from adequately monitoring the plan’s investments and fees, that the offering of retail class shares was a problem, and that there was a breach of fiduciary duty in failing to monitor the plan committee.

Yale is among more than a dozen universities to be sued over the past 30 months by 401(k) plan participants for not doing what the law requires to reduce the costs of the plans and the fees charged to participants.

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