Retirement Income
JOURNAL

Two settlements of 401(k) excessive fee cases, for a combined $89 million

By Editorial Staff *Wed, Nov 11, 2015*

The settlements, by Boeing and Novant Health, mean over $30 million in fees and expense for the firm of Schlichter, Bogart & Denton, which specializes in federal class action breach-of-fiduciary-responsibility lawsuits against 401(k) plan sponsors.

Broker-dealers are worried, perhaps with good reason, that the Department of Labor's fiduciary proposal will make them vulnerable to federal class action lawsuits like the two that have just been settled by Boeing (for $57 million) and Novant Health (for $32 million).

The terms of the **settlement agreement** between Boeing, Seattle-based aircraft giant, and participants in its retirement plan were announced November 5. The defendants agreed to pay $57 million payment. The law firm of Schlichter, Bogard, & Denton will receive $19 million and $1,845,000 in costs.

That case was settled in early August but the terms were not announced until last week. This settlement "is second in gross amount only to the settlement of the Lockheed Martin excessive fee case earlier this year," according to **Fiduciary Matters Blog**.

In the **second settlement agreement** filed in less than a week by Schlichter, Bogard & Denton, the parties in Kruger v. Novant Health agreed to settle their case for $32 million, including up to $10,666,666 in attorney's fees and $95,000 in costs.

The plaintiffs filed their federal lawsuit in March of 2014, accusing the fiduciaries of the multiple plans run by Novant Health, a non-profit North Carolina hospital system, of breaching their fiduciary duties by allowing excessive fees to be paid to the plans' broker, D.L. Davis & Co., Inc., to the recordkeeper, Great West, and including more expensive share classes for all of the plans' mutual funds.

The complaint also alleged that the broker, in just a few short years, saw its compensation rise from about $800,000 to as much as $6 million as the assets of the plans drastically increased.

The plaintiffs alleged that Davis had an extensive business and land development relationship with Novant Health, including companies owned, controlled, or substantially invested in by Mr. Davis, which entered into land development projects and office building leasing arrangements in the greater-Winston-Salem area with Novant Health.

A Davis-owned development company, East Coast Capital, was also accused of giving Novant Health a gift of more than $5 million just as East Coast Capital announced the plans of a large business development known as the Southeast Gateway, in which Novant Health would occupy 40,000 square feet for a call center.

The content for this story was drawn from Fiduciary Matters Blog*.*