

ERISA Stories

During the first quarter of 2019, 23 ERISA-related lawsuits have been filed and/or updated with 30 stories written. Seventy-nine stories were written on 65 ERISA cases in 2018. The involved parties either reached a settlement, filed an appeal or a court decision was made. The parties involved in the ERISA lawsuits in the first quarter included six universities, five insurance companies, three asset managers, and prominent companies such as IBM Corp., Intel Corp., Johnson & Johnson, Walt Disney Co. and Kraft Heinz Co. *Pensions & Investments* is creating a legal and regulatory database that will be available later this year.

Key highlights include:

UNIVERSITIES

- Brown University agreed to a \$3.5 million settlement in response to claims alleging that the university's 403(b) plans' managers offered too many similar investment options and paid excessive fees for investments.
- Duke University agreed to pay \$10.65 million to settle fiduciary breach claims in two similar cases filed in 2016 as well as in 2018.
- The U.S. Supreme Court declined the University of Southern California's request to review adverse rulings by lower courts. Participants in two 403(b) plans filed complaints in 2016, alleging that plan managers failed to conduct competitive bidding for record keepers. The university appealed and claimed that university employees had signed arbitration agreements as a condition of employment.
- An ERISA complaint against two Georgetown University 403(b) plans was dismissed by a U.S. District Court judge in Washington.
- 403(b) plan participants in ERISA lawsuits against Long Island University and University of Rochester have dropped their suits as well.

INSURANCE COMPANIES

- Anthem 401(k) plan participants filed a fiduciary breach claim alleging that the plan managers failed to explore capital preservation alternatives to a money market fund and instead paid excess investment management fees and administrative fees to Vanguard Group. A dismissal request from health insurer Anthem Inc. was rejected by a federal judge in February.
- Participants in Transamerica Corp.'s 401(k) plan in January sued the company and plan fiduciaries in *Karg et al. vs. Transamerica Corp et al.*, alleging they breached their duties by failing to remove under performing proprietary investments.
- Mutual of Omaha Insurance Co. and its affiliate United of Omaha Life Insurance Co., were both named in two fiduciary breach lawsuits in January. A Festival Fun Parks LLC 401(k) plan participant filed a class-action lawsuit in January against Stadion Money Management and insurer United of Omaha Life Insurance Co regarding investment options. In *Lechner et al. vs. Mutual of Omaha Insurance Co. et al.*, plan participants alleged the company's 401(k) plan fiduciaries violated their ERISA duties in managing the plan.

- MetLife Inc. agreed to pay an additional \$19.75 million settlement in January for failing to make payments to 13,500 participants in its group annuity population over the past 25 years following an investigation by the New York State Department of Financial Services in January. MetLife has already paid \$123 million in retroactive benefits to New York state policyholders. However, a similar lawsuit against MetLife filed by a group annuity contact beneficiary named Edward Roycroft was dismissed.

ASSET MANAGERS

- Fidelity Investments and several of its affiliates were involved in four lawsuits during the first quarter of 2019. In March, a \$55 million settlement was reached in an ERISA breach case involving ABB Inc., Fidelity and participants in two ABB 401(k) plans after more than 12 years in court. In Summers et al. vs. FMR LLC et al., 401(k) plan participants claimed the record keeper secretly charged mutual fund companies a fee for having their funds on Fidelity's platform. A similar lawsuit was filed against Fidelity on Feb. 21 by an investor in T-Mobile USA's 401(k) plan. The so-called infrastructure fees and disclosure are investigated by the U.S. Labor Department, and the Massachusetts Secretary of the Commonwealth requested additional information on Feb. 27. At the same time, Franklin Resources Inc. agreed to pay \$13.85 million in February to settle fiduciary breach claims by Franklin Templeton 401(k) plan participants. Franklin Resources had also been sued in July 2016 and again in November 2017. Public companies
- The 10th U.S. Circuit Court of Appeals upheld the dismissal of a class-action lawsuit against Great-West Life & Annuity Insurance Co. regarding investment decisions made on Farmers' Rice Cooperative 401(k) Savings Plan. An Empower Retirement 401(k) plan participant dropped the fiduciary breach lawsuit against Great-West Life & Annuity Insurance Co. in January.
- In early March, the 9th U.S. Circuit Court of Appeals rejected a complaint lodged by participants in a Walt Disney Co. 401(k) plan. Participants alleged that plan managers violated their duties by offering Sequoia Fund as an investment option, which plummeted in net asset value due to the heavy investments in Valeant Pharmaceuticals.
- IBM 401(k) plan participants filed a stock-drop lawsuit arguing that plan fiduciaries failed to prudently manage an IBM company stock fund within the plan's investment lineup, and IBM's request to halt the lawsuit was rejected by New York federal appeals court in February.
- Johnson & Johnson was also sued in January by participants in three company 401(k) plans alleging that fiduciaries violated their duties in managing a company stock fund within the plans, causing investment losses on company stocks due to the negative news associated with the company's baby powder.

NON-ERISA STORIES

- During the first quarter of 2019, 46 stories were written about non-ERISA lawsuits and the cases that involve legal prosecution or settlements; 257 non-ERISA lawsuit and legal prosecution stories were written in 2018. Key highlights include: March
- A group of institutional investors including Asian, Australian, European and North American pension funds filed a lawsuit against Danske Bank, seeking \$475 million in damages for the firm's involvement in the \$230 billion money laundering scandal.

- Public Investment Corp. suspended acting CEO Matshepo More, who was placed in an acting capacity in November after the board removed Dan Matjila. Nine directors have resigned, including Chairman Mondli Gungubele, deputy finance minister of Public Investment Corp..
- Several financial professionals were reported to be involved in the nationwide conspiracy that facilitated admissions to top universities, including Stanford University, University of California at Los Angeles and Yale University. William McGlashan Jr., co-founder and CEO of TPG's The Rise Fund and founder and managing partner of TPG Growth, was terminated by his firm following the investigation. Douglas Hodge, former CEO of Pacific Investment Management Co. LLC, Manuel Henriquez, founder, chairman and CEO of venture debt manager Hercules Capital, and Robert Zangrillo, the founder of private investment firm Dragon Global Management, were all charged by the U.S. attorney's office in Massachusetts.
- Wells Fargo agreed to settle allegations of improper sales practices against several current and former senior executives of the firm in a shareholder derivative lawsuit, with \$240 million cash obtained from its insurers.
- Tesla Inc. and CEO Elon Musk were sued for allegedly violating their fiduciary duty, based on tweets made by Mr. Musk over the past year. The Securities and Exchange Commission accused Mr. Musk of misleading investors in September, forced him to step down as chairman, and fined both him and Tesla \$20 million each. February • One of China's biggest brokerages, GF Holdings (Hong Kong) Corp. was investigated by the nation's securities regulators after suffering large trading losses. The trades also caused Citigroup to face as much as \$180 million in losses on a loan to the hedge fund.
- A U.S. District Court judge in New York denied Credit Suisse Group's request to dismiss a class-action securities lawsuit regarding Credit Suisse's misrepresentation of its trading and risk-limit controls. Credit Suisse allegedly accumulated nearly \$3 billion in illiquid distressed debt and U.S. collateralized loan obligations, causing an 11% drop in stock value due to the \$633 million write-down on the sales position. January
- PG&E Corp. announced its plan to enter Chapter 11 bankruptcy protection on Jan. 29 after months of stock losses due to infrastructure fire damage.
- A shareholder class-action lawsuit against Alphabet Inc. was filed with the \$8.1 billion Rhode Island Employees' Retirement System appointed as the lead plaintiff. Rhode Island state Treasurer Seth Magaziner, who oversees the Rhode Island State Investment Commission, alleged that Alphabet's senior leadership knew about, but did not disclose, a breach in its Google Plus platform that compromised the personal information of 500,000 users.
- A federal appeals court in Manhattan upheld a lower-court ruling on former Goldman Sachs Group director Rajat Gupta's 2012 insider-trading conviction. Mr. Gupta, who has served 19 months in prison, argued that U.S. prosecutors failed to prove he received a personal benefit for passing tips to hedge fund manager Raj Rajaratnam and his conviction should be cleared from his record. Mr. Gupta was found guilty by a New York federal judge for passing tips to Mr. Rajaratnam about Berkshire Hathaway's \$5 billion investment in Goldman Sachs and the bank's financial results for two quarters in 2008.
- Lightyear Capital has paid \$400,000 to settle claims that it overcharged investors in its flagship funds for 16 years. From 2000 to 2016, investors in Lightyear's flagship funds paid more than their fair share of expenses such as those associated with broken deals, legal services and consulting fees, roughly \$338,000 more than they should have been charged over that time period.