



## eBenefits Alert: NYU Prevails in 403(b) ERISA Lawsuit

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New York University (NYU) won on all claims in an ERISA class action lawsuit alleging mismanagement of the university's two retirement plans. In an opinion filed yesterday, the court rejected claims that NYU violated ERISA fiduciary duties by having two record keepers for the plan and by keeping two allegedly underperforming funds in the investment lineup. Although the court found deficiencies in the retirement plan committee's processes, it concluded that the processes were prudent. It further concluded that evidence did not support the plaintiffs' assumption that a single record keeper would have been better, or that the allegedly underperforming investments were imprudently retained in the plans. The plaintiffs have indicated they intend to appeal.

This case was the first to go to trial in a wave of litigation that commenced in 2016 against private universities with large 403(b) plans, alleging breaches of fiduciary duty and imprudent plan management costing employees millions in retirement savings. The result is good news for colleges, universities, and other nonprofit organizations that sponsor 403(b) plans, because the court recognized prudent processes used by the retirement plan committee. In similar cases, the University of Pennsylvania and Northwestern University were successful in having their cases entirely dismissed without going to trial. Those cases are being appealed. The University of Chicago settled out of court. Other defendants, including Columbia University, Duke University, and Emory University, managed to get some, but not all, claims dismissed and are in various stages of preparing for trial.

Gray Plant Mooty is following those cases. If you have questions about how to ensure your retirement plan committee has prudent processes in place for the governance of your 403(b) plans, contact **Monica Kelley**.