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## Northwestern University Defeats 403(b) Lawsuit

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A federal judge in the Northern District of Illinois recently dismissed a lawsuit against Northwestern University alleging that the University and its fiduciaries mismanaged its retirement and voluntary savings plans. This is the latest decision in a series of class action lawsuits against prominent universities in which plaintiffs allege fiduciary violations of the Employee Retirement Income Security Act of 1974, as amended (ERISA) for retirement plans governed by Internal Revenue Code Section 403(b). Northwestern is the second university to obtain a complete victory on a motion to dismiss in a 403(b) university case; the first university to do so was the University of Pennsylvania in *Sweda v. University of Pennsylvania*.

In *Divane v. Northwestern University et al.*, No. 16 C 8157 (N.D.

Ill. May 25, 2018), plaintiffs alleged that Northwestern University and its fiduciaries breached fiduciary duties, engaged in prohibited transactions under ERISA and failed to monitor other fiduciaries. Specifically, fiduciaries allegedly mandated the inclusion of particular stock accounts in the plans, imposing excessive record-keeping fees, improperly allowed payment for record-keeping expenses through revenue sharing, and included too many investment options. The Court rejected all of plaintiffs' fiduciary duty claims.

The Court also rejected plaintiffs' claims that defendants engaged in prohibited transactions. Namely, the Court held that there was no transfer of plan assets that would substantiate a prohibited transaction claim under ERISA Section 1106(a)(1)(D) and similarly rejected plaintiffs' Section 1106(a)(1)(C) argument that fiduciaries engaged in transactions that resulted in "furnishing of goods, services, or facilities between the plan and a party in interest" as a "circular" argument.

The Court denied plaintiffs' motion for leave to amend, amounting in a complete victory for Northwestern.

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