GROOM LAW GROUP

University 403(b) Plan Litigation
Groom Law Group, Chartered

Updated as of: June 2019

Active cases are highlighted in yellow.

No.	Case Name	Motion to Dismiss	Motion for Class Certification	Motion for Summary Judgment	Allegations/ Noteworthy Items	Settlement/Judgment
First Circuit						
1.	*Tracey, et al. v. MIT et al.*, No. 16-cv-11620 (D. Mass.) Filed 08/09/16 by Schlichter, Bogard & Denton LLP Judge Nathaniel M. Gorton	10/4/17: **GRANTED in part** and **DENIED in part**. Duty of loyalty claim dismissed because allegation that Fidelity CEO served on board of MIT was too speculative to support duty of loyalty claim. Duty of prudence claim allowed to proceed because Plaintiffs plausibly alleged that Defendants failed to obtain identical lower-cost investment options. Defendants' failure to engage in competitive bidding also supported prudence claim. Finally, certain prohibited transaction claims dismissed to the extent they arose from mutual funds, which were exempt.	10/19/18: **CERTIFIED**.		Plaintiffs allege that Defendants breached their fiduciary duties of loyalty and prudence and committed prohibited transactions by hiring an MIT donor—Fidelity Investments—as the MIT 401(k) plan's recordkeeper and primary investment provider. Fidelity offered hundreds of its proprietary funds as investment options under the plan, allegedly allowing it to collect unreasonable and excessive fees. Plaintiffs allege that the plan included retail class options instead of institutional class options for Fidelity's proprietary funds and that MIT never engaged in a competitive bidding process for Fidelity's services.	
2.	*Short et al. v. Brown University*, No. 17-cv-00318 (D.R.I.) Filed 07/06/17 by Sonja L. Deyoe	7/11/18: **GRANTED in part** and **DENIED in part.** Duty of loyalty claims dismissed because they merely "piggy backed" off Plaintiffs' duty of prudence allegations.	3/11/19: Filed (unopposed). 4/15/19: Certified with preliminary settlement approval.		Plaintiffs allege that Defendant breached its fiduciary duties of loyalty and prudence by failing to use its bargaining power to negotiate reasonable fees and by selecting and retaining investment options that underperformed benchmarks and charged excessive fees. Plaintiffs paid an asset-based fee for administrative services that	4/15/19: Preliminary settlement **APPROVED**. Settlement fund $3,500,000.

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	Judge William E. Smith	Some duty of prudence claims allowed to proceed, and some dismissed. Claim that Defendant was imprudent for using asset-based fees and revenue sharing dismissed for failure to rebut Defendant's arguments. Claim that Defendant was imprudent for offering too many investment options dismissed because courts have continually rejected this argument and ERISA does not limit plan participant investment options. However, claims that Defendant was imprudent for using more than one recordkeeper, and not engaging in competitive bidding were plausible claims because courts have allowed similar claims to move past a motion to dismiss. In addition, claim that Defendant imprudently paid high recordkeeping fees survived because it involved question of fact. Finally, claim that Defendant imprudently selected more expensive funds with low historical performance survived because it involved questions of fact and courts have similarly allowed these claims to survive past motions to dismiss.			allegedly continued to increase even though no additional services were being provided. Plaintiffs also allege that Defendant breached its duty to monitor plan investments by retaining options that underperformed.	
Second Circuit						

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3.	*Vellali, et al. v. Yale University, et al.*, No. 16-cv-01345 (D. Conn.) Filed 8/9/16 by Schlichter, Bogard & Denton LLP Judge Alvin W. Thompson	3/30/18: **GRANTED in part** and **DENIED in part**. Claims involving "bundling" allowed to proceed, as Plaintiffs sufficiently alleged that bundling arrangement prevented Defendants from removing imprudent investments and reducing exorbitant fees. Plaintiffs also sufficiently alleged excessive recordkeeping fees by specifying the deficient decision-making process that led to inflated revenue-sharing fees. The same was true for claims involving excessive investment fees because Plaintiffs sufficiently alleged that Defendants did not weigh benefits and burdens when selecting retail shares over institutional shares. However, duty of prudence claim based on "too many investment options" dismissed. Same for claim based on failure to reduce fees, as Plaintiffs failed to identify an alternative investment with lower fees. All duty of loyalty claims dismissed for failure to allege that fiduciaries acted in self-interest. Prohibited transaction and failure to monitor claims allowed to proceed.	1/15/19: Filed.		The complaint alleges that the plan at issue has $3.6 billion in assets and 37,939 participants. Plaintiffs claim that the plan had two recordkeepers until April 2015, selected without a competitive bidding process, which caused participants to pay excessive fees. Plaintiffs also allege that the plan fiduciaries selected expensive, underperforming, duplicative mutual funds, including retail mutual funds instead of less expensive institutional funds. Finally, Plaintiffs allege that Defendants locked the plan into a "bundling" arrangement that prevented Defendants from removing imprudent investments or seeking cost-effective recordkeeping services.	

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4.	*Sacerdote, et al. v. New York University*, No. 16-cv-06284 (S.D.N.Y.) Filed 8/9/16 by Schlichter, Bogard & Denton LLP Judge Katherine B. Forrest No. 18-2707 (2d Cir.)	8/25/17: **GRANTED in part** and **DENIED in part**. Duty of loyalty claims dismissed because Plaintiffs failed to allege facts that would show self-dealing. Duty of prudence claims based on "lock-in" arrangement with recordkeeper dismissed, as Defendant was not obligated to engage the lowest-cost recordkeeper. Prohibited transaction claims dismissed in large part because such rules did not apply to payments made to compensate recordkeeper. Finally, duty to monitor claim dismissed because Plaintiff alleged no facts at all. *Sacerdote v. New York Univ.*, No. 16-cv-6284, 2017 WL 3701482 (S.D.N.Y. Aug. 25, 2017). Certain prudence claims allowed to proceed.	2/13/18: **CERTIFIED**.	1/10/18: NYU MSJ filed.	Plaintiffs allege that Defendants breached fiduciary duties with regard to two plans, the Faculty Plan and the NYU Medical Plan, which had a total of $4.2 billion in assets and 24,164 participants. Specifically, Plaintiffs claim the fiduciaries caused participants to pay excessive fees by including 103 investment options in the Faculty Plan and 84 options in the Medical Plan as of 12/31/14. The fiduciaries also engaged two recordkeepers for the plans without a competitive bidding process, and they selected expensive, underperforming, duplicative mutual funds.	7/31/18: **JUDGMENT** for NYU on all claims. It was not imprudent for Committee to decide not to consolidate recordkeepers, as Committee was not obligated to follow consultant's recommendation to consolidate, and consolidating would have entailed administrative difficulties. NYU was not required to issue more frequent RFPs for recordkeeping because NYU had particular needs that warranted keeping TIAA as recordkeeper. Nor was NYU required to include non-annuity assets in RFP for recordkeeping, as other entities lacked the experience to recordkeep such assets. Finally, revenue-sharing model was not necessarily imprudent as compared with flat fee per-participant model. As for monitoring investment performance, Committee did not act imprudently. The Committee routinely

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						discussed investment performance at Committee meetings and scrutinized consultant's recommendations. Moreover, one of the two challenged funds closely tracked its benchmark, while the other generally overperformed. 9/11/18: **APPEALED** to Second Circuit. No. 18-2707.
5.	*Doe v. Columbia University, et al.*, No. 16-cv-06488 (S.D.N.Y.) Filed 8/16/16 by Sanford Heisler, LLP Judge Katherine B. Forrest Consolidated with *Cates*, No. 16-cv-06524 (S.D.N.Y.)				Plaintiff seeks to represent a class of participants in the Retirement Plan for Officers of Columbia University and the Columbia University Voluntary Retirement Savings Plan, which allegedly have more than 27,000 current and former participants and a total of approximately $4.6 billion in assets. Plaintiff claims the plan fiduciaries selected and retained more than 100 investment options in the plans, many of which carried high fees and performed poorly. The fiduciaries also allegedly engaged two recordkeepers for the plans without a competitive bidding process, which led to high fees. Consolidated with *Cates*, No. 16-cv-06524 (S.D.N.Y.)	
6.	*Cates, et al. v. Trustees of Columbia*	8/28/17: **GRANTED in part** and **DENIED in part**. All claims except certain prudence claims	9/7/18: Filed.	4/29/19: Filed by Columbia.	The complaint alleges that the two plans at issue, the Retirement Plan for Officers of Columbia University and the Columbia	

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	University, et al., No. 16-cv-06524 (S.D.N.Y.) Filed 8/17/16 by Schlichter, Bogard & Denton LLP Judge Analisa Torres	dismissed for same reasons set forth in *Sacerdote*.	11/8/2018: **CERTIFIED in part** – pertaining to Count III and parts of Count V (excluding CREF Stock or TIAA Real Estate Account) 3/13/19: Motion to appeal class certification **DENIED**.		University Retirement Savings Plan, had a total of $4.6 billion in assets and 27,309 participants. The fiduciaries' selection of 116 investment options in both plans and the use of two recordkeepers without a competitive bidding process allegedly led to the participants' payment of excessive fees. The fiduciaries further allegedly selected expensive, underperforming, duplicative mutual funds, and retail instead of institutional funds that are less expensive.	
7.	*Cunningham v. Cornell University, et al.*, No. 16-cv-06525 (S.D.N.Y.) Filed 8/17/16 by Schlichter, Bogard & Denton LLP Judge P. Kevin Castel	9/29/17: **GRANTED in part** and **DENIED in part**. Duty of loyalty and prudence claims largely dismissed for the same reasons set forth in *Sacerdote*. However, allegation that Defendants selected specific retail funds over lower-cost, identical institutional funds was sufficient to state claim for fiduciary breach. Prohibited transaction claims dismissed for same reasons set forth in *Sacerdote*.	5/2/18: Filed. 1/29/19: **GRANTED.**	1/25/19: Filed by CapFinancial Partners. 1/25/19: Filed by Cornell.	The complaint alleges that the two plans at issue, the Retirement Plan and the Tax Deferred Annuity Plan, have $3.1 billion in assets and 29,452 participants. The plans' fiduciaries allegedly caused the participants to pay excessive fees by selecting 299 investment options in the Retirement Plan and 301 investment options in the Tax Deferred Annuity Plan as of 12/31/14. The fiduciaries also allegedly engaged two plan recordkeepers without a competitive bidding process, which led to unreasonable and excessive fees for plan administration. Plaintiffs also allege that the fiduciaries selected expensive, underperforming, duplicative mutual funds and retail rather than institutional mutual funds.	
8.	*D'Amore v. University of Rochester*, No. 18-cv-06357 (W.D.N.Y.)	1/21/19: Voluntarily **DISMISSED**.			Plaintiff alleges that Defendant breached its fiduciary duties by paying excessive recordkeeping, distribution, and mortality risk fees through its contract with TIAA. TIAA allegedly charged an excessive asset-	

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	Filed 05/11/18 by Carlson Lynch Sweet Kilpela & Carpenter LLP Judge Michael A. Telesca				based fee, which allowed it to collect increased fees at the same level of service.	
Third Circuit						
9.	*Sweda, et al. v. The University of Pennsylvania, et al.*, No. 16-cv-04329 (E.D. Pa.) Filed 8/9/16 by Schlichter, Bogard & Denton LLP Judge Gene E.K. Pratter No. 17-3244 (3d Cir.)	9/21/17: **GRANTED**. Claims based on "lock-in" arrangement with recordkeeper dismissed because such arrangements are common and can often reduce costs. Unreasonable fee claims dismissed, as fees were not unnecessarily high and fiduciaries must strike balance between providing benefits to participants and defraying administration expenses. Claim based on "asset-based" fee dismissed, as Plaintiffs needed to allege more than the availability of cheaper arrangements. Finally, unnecessary fee claim dismissed, as institutional share class investments came with certain drawbacks that fiduciaries were permitted to disfavor. *Sweda v. Univ. of Pennsylvania*, No. 16-cv-4329, 2017 WL 4179752 (E.D. Pa. Sept. 21, 2017). **APPEALED** to Third Circuit. No. 17-3244.			Plaintiffs allege that the plan at issue has $3.88 billion in assets and 26,904 participants. They claim the fiduciaries included 78 investment options in the plan as of 12/31/14 and engaged two recordkeepers without any competitive bidding process, leading to excessive fees. Plaintiffs also allege that the plan fiduciaries selected expensive, underperforming, duplicative mutual funds and retail mutual funds.	

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		5/2/19: **AFFIRMED in part** and **REVERSED in part**. Affirmed: Prohibited transaction claims – Counts I, II, IV, VI, and VII. Reversed: Breach of fiduciary duty claims – Counts III (excessive admin fees, failed to solicit bids, failed to monitor revenue sharing) and V (paying unreasonable investment fees, retaining high cost investment options w/ poor performance, lack of diversification).				
10.	*Nicolas v. Trs. Of Princeton Univ.*, No. 17-cv-03695 (D.N.J.) Filed 05/23/17 by Lite, Depalma, Greenberg, LLC Judge Anne E. Thompson	9/19/17: Defendant's MTD/MSJ **GRANTED in part** and **DENIED in part**. Duty of loyalty claim dismissed because claim merely piggybacked off prudence claim. Allegations that Defendant failed to conduct competitive bidding process, failed to use significant bargaining power to negotiate lower fees, retained two recordkeepers, and failed to remove two particularly unreasonable funds were sufficient to state a prudence claim. Duty to monitor investments claim survived due to factual dispute. Duty to monitor fiduciaries claim dismissed because Plaintiff failed to allege how the monitoring process was deficient.		9/19/17: *See* MTD.	Plaintiff alleges that Defendant breached its fiduciary duties by (1) failing to use plan's leverage to negotiate lower investment and administrative fees, (2) paying an asset-based fee that increased even though no additional service were provided, (3) selecting and retaining investment options and underperformed and charged excessive management fees; (4) selecting retail share classes instead of institutional share classes, and (5) selecting an imprudent annuity option. 12/20/17: Case stayed pending outcome of *Sweda* appeal. 6/10/19: Renewed motion to reconsider (after outcome of *Sweda* appeal – denied in part affirmed in part)	

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Fourth Circuit						
11.	*Clark, et al. v. Duke University, et al.*, No. 16-cv-01044 (M.D.N.C.) Filed 8/10/16 by Schlichter, Bogard & Denton LLP Judge Catherine C. Eagles Consolidated with Lucas (No. 18-cv-00722)	5/11/17: **GRANTED in part** and **DENIED in part**. Claims based on "lock-in" arrangement with recordkeeper dismissed because contract with recordkeeper was executed outside of statute of limitations period. Certain other claims allowed to proceed.	4/13/18: **CERTIFIED**.	11/16/18: MSJ filed by Duke University et al.	The complaint alleges that the plan has $4.7 billion in assets and 37,939 participants. Plaintiffs claim that the Plan has more than 400 investment options and four recordkeepers and providers, which the fiduciaries did not select in a competitive bidding process, leading to excessive fees. Plaintiffs also allege that the fiduciaries selected expensive, underperforming, duplicative mutual funds, and retail share classes instead of institutional.	2/7/19: Preliminary certification for settlement class. Settlement fund $10,650,000. 6/18/19: **APPROVED.**
12.	*Kelly, et al. v. Johns Hopkins University*, No. 16-cv-02835 (D. Md.) Filed 8/11/16 by Schlichter, Bogard & Denton LLP Judge George Levi Russell, III No. 18-2075 (4th Cir.)	9/28/17: **GRANTED in part** and **DENIED in part**. Claim based on "too many investment options" dismissed for reasons set forth in *Henderson*, *Sacerdote*, and *Sweda*. Claim based institutional vs. retail share classes dismissed for reasons set forth in *Sacerdote* and *Sweda*. Plaintiffs sufficiently stated claim for fiduciary breach by alleging that university imprudently offered actively managed funds and that university should have chosen fewer recordkeepers and run a competitive bidding process. Prohibited transaction claims dismissed to the extent they were based on mutual funds, which were exempt by statute.			Plaintiffs allege that the plan at issue has $4.3 billion in assets and 24,561 participants. Before January 2016, they claim, the fiduciaries included 440 investment options in the plan, causing participants to pay excessive fees. Moreover, they allege, before January 2016, the plan had five recordkeepers, which were selected without a competitive bidding process, and the fiduciaries chose expensive, underperforming, duplicative mutual funds.	

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		APPEALED to Fourth Circuit. No. 18-2075.				
13.	*Lucas, et al. v. Duke University*, No. 18-cv-00722 (M.D.N.C.) Filed 8/20/18 by Schlichter Bogard & Denton LLP Judge Catherine C. Eagles Consolidated with *Clark* 1/16/19	9/25/18: Filed.			Plaintiffs allege that Defendant breached its fiduciary duties and committed prohibited transactions by engaging recordkeepers who included proprietary funds as investment options in the plan. These funds allegedly overpaid revenue sharing to recordkeepers; Defendant allegedly used that revenue sharing to pay its own administrative expenses instead of returning excess revenue sharing to the plan.	
Sixth Circuit						
14.	*Cassell, et al. v. Vanderbilt University, et al.*, No. 16-cv-02086 (M.D. Tenn.) Filed 8/10/16 by Schlichter, Bogard & Denton LLP Judge Waverly D. Crenshaw, Jr.	1/5/18: **GRANTED in part** and **DENIED in part**. Duty of loyalty claims dismissed because Plaintiffs failed to allege that Defendants acted for the purpose of self-dealing. Claims based on "lock-in" arrangement with recordkeeper dismissed because initial commitment occurred before statute of limitations period. Claim based on failure to solicit competitive bids also dismissed as time-barred. However, Plaintiffs sufficiently alleged that Defendants failed to monitor recordkeeping fees and failed to consolidate number of recordkeepers used. Prohibited	10/23/18: **CERTIFIED**.		The complaint alleges that two Vanderbilt plans at issue, the Retirement Plan and the New Faculty Plan, had a total of $3.4 billion in assets and 41,863 participants. Plaintiffs claim that before April 2015, the plan had 340 investment options, which caused the participants to pay excessive fees, as did the engagement of four recordkeepers without a competitive bidding process. The fiduciaries allegedly selected expensive, underperforming, duplicative mutual funds, and retail instead of institutional class mutual funds.	5/30/19: Preliminary approval for settlement. Settlement fund - $14,500,000.

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		transaction claim dismissed as time-barred.				
Seventh Circuit						
15.	*Divane, et al. v. Northwestern University, et al.*, No. 16-cv-08157 (N.D. Ill.) Filed 8/17/16 by Schlichter, Bogard & Denton LLP Judge Jorge L. Alonso No. 18-2569 (7th Cir.)	5/25/18: **GRANTED**. Lock-in claim dismissed because the plans had good reasons for using TIAA-CREF as recordkeeper for TIAA-CREF's products and to offer the CREF stock account—namely, that TIAA-CREF required the plans to use it as recordkeeper for its own products. The fact that index funds might have been a better long-term investment did not necessarily imply that it was a fiduciary breach to offer stock fund. Excessive fee claim dismissed because certain investments options charged minimal expenses. "Too many options" claim dismissed. Overall, fees were reasonable as a matter of law, and low-cost options were available under the plans. *Divane v. Nw. Univ.*, No. 16-cv-8157, 2018 WL 2388118 (N.D. Ill. May 25, 2018). **APPEALED** to Seventh Circuit. No. 18-2569.			Plaintiffs allege that the two Northwestern University plans at issue, the Retirement Plan and Voluntary Savings Plan, had $2.87 billion in assets and 33,915 participants. Plaintiffs claim that the plans' fiduciaries caused participants to pay excessive fees because they included 242 investment options in the Retirement Plan and 187 investment options in the Voluntary Savings Plan as of 12/31/15. The fiduciaries also selected two recordkeepers without a competitive bidding process, causing the participants to pay excessive administration fees. Finally, the fiduciaries allegedly selected expensive, underperforming, duplicative mutual funds and retail instead of institutional funds.	
16.	*Daugherty et al. v. The University of Chicago*, No. 17-cv-03736	9/22/17: **GRANTED in part** and **DENIED in part**. Certain claims dismissed for lack of standing. Duty of prudence claim allowed to			Plaintiffs allege that Defendant breached its fiduciary duties by (1) retaining retail rather than institutional share classes, (2) paying an asset-based fee that increased without	9/12/18: Settlement **APPROVED**. $6.5 million settlement fund. Defendant also agreed to

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	(N.D. Ill.) Filed 05/08/17 by Berger & Montague, P.C. Judge Ruben Castillo	proceed, as Plaintiffs sufficiently alleged that Defendant selected investment options that incurred excessive administrative expenses and underperformed. Duty of loyalty claim dismissed because Plaintiffs did not allege facts that would show self-dealing. 1/10/18: **DENIED**. Amended Complaint sufficiently established standing.			additional services being provided, (3) retaining investment options that underperformed benchmarks and charged excessive fees, and (4) offering an imprudent annuity option.	make certain structural changes to plan.
Eighth Circuit						
17.	*Davis et al. v. Washington University in St. Louis*, No. 17-cv-01641 (E.D. Mo.) Filed 06/08/17 by Edgar Law Firm LLC Judge Ronnie L. White	9/28/18: **GRANTED**. Fiduciary breach claim dismissed because Plaintiffs failed to allege that Defendant acted to benefit itself or a third party at the expense of plan participants. Moreover, Plaintiffs failed to allege that the process for choosing investment options was flawed. In any event, participants had a diverse selection of funds available to them. Asset-based fee and multiple recordkeepers claims dismissed as implausible. Bundling services and revenue sharing are common, acceptable practices for ERISA plans. Underperformance claim dismissed because the court cannot analyze individual funds but must assess the portfolio as a whole. *Davis v. Washington Univ. in St. Louis*, No. 17-cv-1641, 2018 WL 4684244 (E.D. Mo. Sept. 28, 2018).			Plaintiffs allege that Defendant breached its fiduciary duties by (1) retaining retail rather than institutional share classes, (2) paying an asset-based fee that increased without additional services being provided, (3) retaining investment options that underperformed benchmarks and charged excessive fees, and (4) offering an imprudent annuity option.	

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		Appealed to Eighth Circuit. No. 18-3345.				
18.	*Sims-King v. Washington University et al.*, No. 17-cv-01785 (E.D. Mo.) Filed 06/23/17 by Carey and Danis Judge John A. Ross Consolidated with *Davis*, No. 17-cv-01785 (E.D. Mo.)				Plaintiff alleges that Defendants breached their fiduciary duties by (1) allowing TIAA and Vanguard to invest in duplicative, expensive, and underperforming proprietary funds, (2) paying an asset-based fee that increased without additional services being provided, (3) retaining retail rather than institutional share classes, and (4) agreeing to a "bundling" arrangement that generated higher fees and poorer investment returns. Consolidated with *Davis*, No. 17-cv-01785 (E.D. Mo.)	
Ninth Circuit						
19.	*Munro, et al. v. University of Southern California, et al.*, No. 16-cv-06191 (C.D. Cal.) Filed 8/17/16 by Schlichter, Bogard & Denton LLP Judge Virginia A. Phillips No. 17-55550 (9th Cir.)				The 403(b) plan at issue allegedly had $2.19 billion in assets and 28,423 participants as of 12/31/14. Plaintiffs claim that the fiduciaries caused participants to pay excessive fees by including 340 investment options in the plan before overhauling the lineup in March 2016, and by engaging four recordkeepers without conducting a competitive bidding process. The fiduciaries also allegedly selected expensive, underperforming, duplicative mutual funds, and retail rather than institutional shares of mutual funds. 5/11/18: **STAYED** pending appeal of denial of mandatory arbitration.	

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					7/24/18: **AFFIRMED by Ninth Circuit –** District court's denial of Defendant's motion to compel arbitration. Employees entered into arbitration agreements in their individual capacities. Therefore, the Plan was not bound because the Plan did not consent to arbitration. 2/19/19: Supreme Court petition denied.	
Eleventh Circuit						
20.	*Henderson, et al. v. Emory University, et al.*, No. 16-cv-02920 (N.D. Ga.) Filed 8/11/16 by Schlichter, Bogard & Denton LLP Judge Charles A. Pannell, Jr.	5/10/17: **GRANTED in part** and **DENIED in part**. Plaintiffs sufficiently alleged that choosing retail-class shares over institutional-class shares was imprudent. Plaintiffs also sufficiently alleged that process for choosing and analyzing certain funds was flawed. Excessive fee, underperformance, duty of loyalty, and "too many recordkeepers" claims also permitted to proceed. Prohibited transaction claims permitted to proceed to the extent not dependent upon mutual funds. Claim that it was imprudent for plan to offer too many investment options was dismissed.	9/13/18: **CERTIFIED**.		Plaintiffs allege that the two plans at issue, the Retirement Plan and the Emory Healthcare, Inc. Retirement Savings and Matching Plan, have a total of $3.66 billion in assets and 51,797 participants. The plan fiduciaries allegedly caused the participants to pay excessive fees by including 111 investment options in the plans, and by engaging three recordkeepers without a competitive bidding process. The fiduciaries also allegedly selected expensive, underperforming, duplicative mutual funds and retail mutual funds.	
D.C. Circuit						

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21.	*Wilcox v. Georgetown University*, No. 18-cv-00422 (D.D.C.) Filed 2/23/18 by Schneider Wallace Cottrell Konecky Wotkyns LLP Judge Rosemary M. Collyer	4/24/18: Filed. 1/18/19: **GRANTED.** No net loss in value, so no injury claimed. Merely claiming that the fund didn't do as well as others is not enough, and recordkeeping fees do not have supported factual basis for claim. 5/29/19: **DENIED** motion to amend complaint.			Plaintiffs allege that Defendants breached their fiduciary duties by (1) retaining too many recordkeepers, (2) allowing recordkeepers to offer funds that charged higher fees than alternatives, (3) retaining retail rather than institutional shares classes, (4) paying an asset-based fee that increased without additional services being provided, (5) failing to monitor and evaluate the plan's 300 total investment choices, and (6) selecting investment options that underperformed benchmarks and charged excessive fees.	
22.	*Stanley v. George Washington University*, No. 18-cv-00878 (D.D.C.) Filed 4/13/18 by Migliaccio & Rathod LLP, Chimicles & Tikellis LLP, Franklin D. Azar & Associates, P.C. Judge Emmet G. Sullivan	6/25/18: Filed. 3/29/19: **DENIED WITHOUT PREJUDICE** – requested supplemental briefs to determine subject matter jurisdiction – P signed release of all claims in 2016.			Plaintiff alleges that Defendants breached their fiduciary duties by (1) allowing TIAA and Vanguard to invest in duplicative, expensive, and underperforming proprietary funds, (2) paying unreasonable and excessive fees for investment and administrative services, (3) selecting and retaining investment options that underperformed benchmarks and charged excessive investment fees, (4) retaining retail rather than institutional share classes, (5) paying an asset-based fee that increased without additional services being provided, (6) offering too many investment choices, and (7) agreeing to a "bundling" arrangement that generated higher fees and poorer investment returns.	