

Rochester Univ. Talks Workers Out Of Litigating ERISA Suit

By **Emily Brill**

Law360 (January 22, 2019, 8:20 PM EST) -- A proposed class of participants in the University of Rochester's retirement plan dropped a suit Monday that claimed the school violated the Employee Retirement Income Security Act by letting the plan charge excessive fees.

The university did not change anything about the way it handles its retirement plan as a result of the negotiations, which put to bed allegations that the university's retirement plan charged workers 10 times the administrative fees that it should have, the attorney, Nancy Ross of Mayer Brown LLP, said Tuesday. She attributed the voluntary dismissal to the workers' acknowledgement of "substantial mistakes" in their complaint.

"From the beginning, there were discussions between counsel concerning substantial mistakes in the complaint, which resulted in the plaintiff agreeing to voluntarily dismiss the lawsuit before any response to the complaint was filed," Ross said in an emailed statement to Law360.

In a proposed class action filed in May, the plan participants accused the University of Rochester of breaching its ERISA-imposed duty of prudence by allowing its plan to charge unreasonable fees. The suit also accused the university of failing to properly notify the U.S. Department of Labor of the amount of indirect compensation it paid TIAA, the plan's record-keeper.

The proposed class estimated that they had paid \$72 million in fees to plan administrators over six years and that they would "continue to pay grossly excessive fees unless this action moves forward." The suit estimated that more than 36,000 university employees invested in the plan.

The university did not file an official response to the complaint or an amended complaint that followed in November. Rather, negotiations began that led to the proposed class agreeing to drop the suit, Ross said.

The university cheered the suit's dismissal in a statement provided to Law360 on Tuesday.

"We are pleased that the ERISA class action suit against the university was discontinued by the plaintiff. This happened early in the litigation process before the university was required to respond to the complaint," said university spokesperson Sara Miller. "We believe this discontinuance confirms that there is no basis for a suit against the university since the university has been a good fiduciary on the management of the employees' retirement funds."

Attorneys for the proposed class did not respond to a request for comment on Tuesday.

The plan participants are represented by Benjamin J. Sweet, Edwin J. Kilpela Jr. and Edward W. Ciolko of Carlson Lynch Sweet Kilpela & Carpenter LLP, and Michael J. Klein of Stull Stull & Brody.

The university, its retirement plan committee and 30 individual defendants are represented by Brian D. Netter, Nancy G. Ross and Samuel P. Myler of Mayer Brown LLP.

The case is D'Amore et al. v. University of Rochester et al., case number 6:18-cv-06357, in the U.S. District Court for the Western District of New York.

--Additional reporting by Danielle Nichole Smith. Editing by Adam LoBelia.