

Benefits Group Of The Year: Mayer Brown

By **Tim Ryan**

Law360 (December 8, 2020, 5:55 PM EST) -- Mayer Brown LLP has been busy this year defending universities against Employee Retirement Income Security Act lawsuits and staging defenses for companies that could be the focus of the next wave of lawsuits over benefits plans, earning the firm a spot among Law360's 2020 Benefits Groups of the Year.

As part of their work in the type of cases that have become a fixture of ERISA litigation in recent years, the firm's litigation team notched wins in lawsuits alleging Cornell University and The George Washington University mismanaged their retirement plans.

The plaintiffs bar set its sights on universities about five years ago and filed roughly two dozen lawsuits making similar allegations. Brian Netter and Nancy Ross, who lead the firm's ERISA litigation team, said they recognized the trend in lawsuits against universities quickly and made the subject a focus, leading to more than a few high-profile wins.



"When those cases first got filed, Nancy and I sought to become experts in the unique characteristics of the university plans so that we could assist as many of the targeted universities as possible," Netter told Law360.

That paid off in March, when Mayer Brown won a D.C. Circuit ruling that upheld the dismissal of an ERISA lawsuit alleging the school's retirement plan charged excessive fees and was mismanaged. The court said while a settlement agreement the lead plaintiff signed with the university allowed her to bring claims regarding "vested benefits under employee benefit plans," it didn't include a carve-out for allegations against the school for the alleged mismanagement of her plan.

Netter said the win is important for future cases that involve similar releases of claims, as courts have interpreted them inconsistently.

"There's not much guidance at the appellate level, so getting the D.C. Circuit to affirm the dismissal and to construe the exception from the release narrowly I think will have an impact on how lots of similar agreements are interpreted," Netter said.

Beyond its wins in the courtroom, the firm has been advising companies on benefits challenges that

have cropped up as a result of the pandemic, including changes to distribution and funding rules in the CARES Act.

Also in March, Ross and Netter's team convinced a New York federal judge to **leave in place** a ruling granting Cornell summary judgment on the bulk of a lawsuit claiming its retirement plans came with unreasonable fees.

Outside of the university cases, the firm earned dismissal of an ERISA lawsuit that claimed Northrop Grumman and the administrator of its retirement plan provided workers with **inaccurate benefits calculations**. Ross said the case, now before the Ninth Circuit, presents an opportunity to develop guidance on how courts treat claims over miscalculated benefits.

"Mistakes do happen and if left uncorrected, they may well upset the actuarial soundness of a plan, as benefit payments would not be as predicted." she said.

Another victory on a developing litigation front was a March summary judgment ruling for an AT&T benefit plan in a dispute with a former technician who said he was improperly denied disability benefits after being diagnosed with chronic fatigue syndrome.

Richard Nowak, a partner at the firm's Chicago office, said cases involving the diagnosis of illnesses with largely subjective symptoms have become more common, and that the ruling is potentially significant because Mayer Brown convinced the judge to focus not on the subjectivity of the diagnosis, but on objective measures of whether the worker could still do his job.

The firm also earned dismissal of a severance benefits case against HSBC after a long preemption fight.

Between the ERISA litigation team and the traditional benefits unit led by partner Maureen Gorman, the practice group has 25 attorneys, and it plans to add more associates in the coming months. The partners said while they handle different issues, the relationship between the litigation and advisory teams is symbiotic.

"We of course have clients who come to us with all kinds of benefits claims under their plans, and many times we'll pull in Nancy or Brian to help discuss how to look at the claim from the perspective that it may turn into litigation," Gorman said. "We consult with them to ensure that our client is in the best possible position in the event that the claim ends up in court."

Ross said part of the reason firm's benefits team succeeds is that its attorneys have specialized in ERISA, giving them a deeper expertise than general employment attorneys who also handle ERISA suits.

"Many of the firms in this area developed their ERISA litigation practice as an outgrowth of their employment practice. That is not us," Ross said. "We are not employment attorneys; our practice focuses exclusively on the interpretation and application of a particular federal statute."

--Editing by Adam LoBelia.