

Benefits Group Of The Year: Mayer Brown

By **Abby Wargo**

Law360 (January 26, 2023, 2:02 PM EST) -- Mayer Brown LLP found success defending corporations' right to deny or award workers severance benefits and helping administer their benefit plans, creating "ripple effects" across corporate America that earned the firm a spot among Law360's 2022 Benefits Groups of the Year.

The firm started out the year strong with a summary judgment win representing Northrop Grumman Corp. in a class action, *Carlson et al. v. Northrop Grumman Corp. et al.*, challenging the company's ability to award or deny severance benefits to workers.

In January, a California federal court held that withholding severance does not constitute an interference in benefits or a breach in fiduciary duty under the Employee Retirement Income Security Act.

Nancy Ross, chair of the firm's ERISA litigation practice, said the case was hard-fought for nearly a decade, and its resolution answered an important question for employers, who can use severance denial to incentivize employees to stay on the job.

"We finally won the war, and the judge who really gave the plaintiffs' counsel every possible benefit of the doubt, finally accepted our argument that this is really a business judgment that courts don't step into," Ross, who was on the team, told Law360.

Ross said that now, other corporations with similarly structured severance arrangements, or those that want to implement such arrangements, can do so comfortably in that jurisdiction.

Mayer Brown notched another victory in May after the plaintiffs in a class action against Duke Energy Corp. voluntarily dismissed their case in North Carolina federal court challenging the investments selected and fees in the company's 401(k) plan.

Ross, who also worked on the Duke Energy lawsuit, said that after the judge allowed the case to survive a dismissal bid, they sent the plaintiffs a series of documents regarding the plan, and they voluntarily dismissed the suit soon after.

"These are victories that, little by little, chip away at a very aggressive plaintiffs' bar interest in bringing



these cases. So we fight them hard, and we don't throw in the towel early," Ross said.

In the appeals courts, Mayer Brown achieved a Fourth Circuit win in March for Planned Parenthood and Medicaid patients in South Carolina when the court reversed the state's disqualification of Planned Parenthood as a Medicaid provider in 2018.

The firm said the appellate ruling — which is pending review before the U.S. Supreme Court — will help some of the state's poorest residents obtain health care and sets a legal precedent about private rights of action and about the law-of-the-case and law-of-the-circuit doctrines.

Beyond the courtroom, Mayer Brown's benefits group also aided dozens of corporations in navigating benefits and compensation aspects of corporate transactions.

"In our benefits group, we also have a major pension investment practice and generally, our ERISA attorneys work with the attorneys that structure real estate funds and the private equity funds that pension plans invest in," Maureen Gorman, leader of Mayer Brown's employment and benefits practice, told Law360.

"Those lawyers also advise the asset managers and financial institutions on their fiduciary duties and avoiding prohibited transactions, and that's a very substantial part of the practice," she said.

In August, Mayer Brown advised the trustee of the WH Smith Pension Trust on a £1 billion (\$1.2 billion) bulk annuity buy-in transaction with Standard Life, covering the stationery company trust's liability to pay benefits to all 13,000 of its members.

In that transaction, the insurance cover — which removes the risks associated with liabilities — extends beyond the benefits as defined in the policy to certain additional risks in the event that a beneficiary can prove entitlement to a higher benefit.

"Maureen is essentially taking their pension plan and basically transitioning it to an insurance company so that she completely eliminates the risk the company has to carry on its books for those pension benefits," Ross said of Gorman's contributions.

The firm said its pensions and insurance practices regularly work together on these kinds of deals and have acted for pension scheme trustees on more than 50 similar deals in the past few years.

"We have a really strong benefits and M&A team that's a very deep bench of attorneys who thoroughly understand the various types of benefit plans and the liabilities that they pose in deals," Gorman said.

In 2022, Mayer Brown also represented power technology company Cummins in its February \$3.7 billion acquisition of supplier Meritor Inc. and poultry producer Foster Farms in its sale to private equity firm Atlas Holdings LLC.

Additionally, the firm represented steel sink manufacturer Elkay Manufacturing in its \$1.56 billion sale to Zurn Water Solutions Corp., which created one of the largest providers of water management solutions in the U.S.

Mayer Brown's strength as a firm is its attorneys' cohesiveness, Ross and Gorman said, and its large size

and emphasis on collaboration allow practice groups to draw from partners with expertise in different areas.

"Maureen and I work very closely together; Maureen brings technical expertise to litigation matters and I bring courtroom expertise, so together we have a full team," Ross said.

Mayer Brown has around 25 benefits lawyers in the U.S. at offices in Chicago, Washington, D.C., northern and southern California, Salt Lake City and New York City and more than 100 benefits attorneys worldwide, Ross and Gorman said. The U.S.-based benefits team has 10 partners who dedicate over half their practice to ERISA litigation, Ross added.

"A company can come to us, and we're not going to look at their circumstances in a vacuum; we're going to go broader. We work very hard to understand our clients and the industry they're in. I don't think you can represent a company if you don't understand the business and their culture, and we prioritize that," Ross said.

--Editing by Linda Voorhis.