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MIT, Yale and NYU sued over charging excessive DC plan fees

By **JAMES COMTOIS** | August 9, 2016 3:23 pm | Updated 3:27 pm

Three class-action lawsuits have been filed against [Massachusetts Institute of Technology](#), New York University and [Yale University](#) for excessive defined contribution retirement plan fees.

The law firm Schlichter Bogard & Denton on Tuesday filed separate class-action lawsuits against the three universities in the U.S. District Courts in Boston, New York and Hartford, Conn., respectively. The suits have been filed on behalf of more than 60,000 plan participants.

“We contend that these universities, as fiduciaries, have breached their duties under the law to protect the retirement assets of their employees and retirees,” Jerry Schlichter, founding and managing partner of Schlichter Bogard & Denton, said in a news release issued by the law firm.

Common to all three complaints are allegations that each university, as an employee retirement plan sponsor, breached its duties of loyalty and prudence under the Employee Retirement Income Security Act by causing plan participants to pay millions of dollars in unreasonable and excessive fees for record-keeping, administrative and investment services of the plans.

The complaints further allege the universities breached their fiduciary duties by selecting and retaining numerous high-cost and poor-performing investment options compared to available alternatives, which substantially reduced the retirement assets of the active participants and retirees.

In the case of MIT, a 401(k) plan based in Cambridge, Mass., the complaint alleges MIT's close relationship with [Fidelity Investments](#) led to Fidelity's selection as plan record keeper, without any competitive bidding process in violation of the university's duty to act in the exclusive interest of its employees and retirees. Abigail Johnson has been a member of the MIT board of trustees for years and is also CEO of Fidelity, which her family controls. Fidelity is not a defendant in the lawsuit.

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It also alleges MIT placed more than 150 Fidelity funds, including high-priced retail funds, in the \$3.5 billion plan, despite being a big enough plan to be able to command lower fees. This has allegedly caused participants to pay unreasonable administrative and investment management expenses.

In the cases of NYU and Yale, both 403(b) type plans, based in New York and New Haven, Conn., respectively, the complaints allege employees paid excessive record-keeping fees in addition to selecting and imprudently retaining funds that historically underperformed for years.

The complaints also state that in contrast to actions by prudent fiduciaries of other similarly sized defined contribution plans, these universities each used multiple record keepers, rather than a sole provider. Consequently, by using multiple record keepers, the universities caused plan participants to pay duplicative, excessive and unreasonable fees for plan record-keeping services, the complaint said.

“NYU only first saw the papers this morning, so we cannot comment at length. But it seems worth noting that, first, decisions about our retirement choices are influenced by feedback from our faculty and other employees, and second, that the named plaintiffs in this case notably include several faculty members who recently lost unrelated court cases they brought against NYU,” NYU spokesman John Beckman said in an e-mail.

Mr. Beckman added: “NYU takes seriously the welfare of our faculty and employees — very much including a dignified retirement — and the retirement plans offered to them are chosen and administered carefully and prudently. We will litigate this case vigorously and expect to prevail.”

MIT spokeswoman Kimberly Allen declined to comment, while Yale spokesman Tom Conroy could not be immediately reached for comment by press time.

Yale's plan has about \$3 billion in assets, while NYU's plan has about \$1 billion.