

# Multiple Recordkeepers at Heart of Excessive Fee Suit

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The complaint argues that, had an investigation and analysis of the market for recordkeeping services been conducted in the 2009 to 2011 timeframe, the plans “should have been able to procure comprehensive recordkeeping services for between \$60 and \$80 per participant.”

“In 2009, defendants caused the Retirement Plan to pay BMO Harris a grossly excessive \$127 per participant, more than 50% above a reasonable amount,” plaintiffs suggest. “Moreover, the Retirement Plan’s excess was exclusive of revenue sharing. The Retirement Plan’s Form 5500s during these years stated that BMO Harris was receiving additional indirect compensation (a/k/a revenue sharing), but did not disclose the amount or formula.”

For the 403(b) plan, defendants’ compensation arrangement with Lincoln from 2009 to 2011 was based entirely on Lincoln’s receipt of revenue sharing payments from the 403(b) plan’s investments, according to the complaint. Plaintiffs “do not know the amount received by Lincoln, because Essentia did not disclose the amount or formula, nor can the amount be discerned from the plan’s investments, given that the 403(b) Plan’s 5500s during this period did not disclose the share class of its mutual fund investments.”

The complaint continues: “Based on Defendants’ disregard for BMO Harris’ excessive compensation (and defendants’ other failures described herein), it is reasonable to infer the revenue sharing payments collected and retained by Lincoln exceeded the reasonable value of Lincoln’s recordkeeping services.”

“The problem worsened in the 2010 plan year,” plaintiffs suggest. “Defendants permitted BMO Harris to collect \$142 per participant in direct compensation, in addition to the revenue sharing BMO Harris was receiving. The amount of revenue sharing received by BMO Harris in 2010 is unknown, because Essentia again reported extra indirect compensation to BMO Harris on its Form 5500 but not the amount or formula. The 403(b) plan’s payments to Lincoln also remained a black box ... Essentia disclosed only that Lincoln’s compensation was paid almost entirely through revenue sharing, which Essentia refused to quantify. Reasonable recordkeeping services remained available, for plans the same size as the Plans, for between \$60 and \$80 per participant—and trending downward.”

Similar patterns are alleged for the years leading up the 2012 plan reforms, and participants further call into question the quality of the fiduciary process used to select current service providers. While fees have ostensibly come down in the plans, participants suggest they are still not being fully informed of the all-in costs once revenue-sharing is considered.