

Benefits Group Of The Year: Mayer Brown

By Irene Spezzamonte

Law360 (February 23, 2022, 2:02 PM EST) -- Mayer Brown LLP scored several wins this past year defending clients who had been accused of mismanaging pension plans, earning the firm a spot among **Law360's 2021 Benefits Groups of the Year**.



One of Mayer Brown's most significant wins came in April 2021, when the Ninth Circuit **unanimously dismissed** claims that Northrop Grumman Corp. breached its fiduciary duties under the Employee Retirement Income Security Act. The panel found that Northrop was not liable under ERISA for allegedly not monitoring benefit miscalculations made by its plan administrator, Hewitt Associates LLC, now known as Alight Solutions LLC.

The chair of the firm's ERISA litigation practice Nancy Ross, who was on the team that represented Northrop, told Law360 the appellate ruling was "a really big victory."

The plaintiffs in the case argued to a California district court first and then to the Ninth Circuit that Northrop was not allowed to adjust the benefits it allegedly misrepresented, Ross said.

The district court sided with Northrop in January 2020 and the Ninth Circuit affirmed that decision in April of the following year, finding that the company didn't commit any fiduciary breach because the fiduciaries were applying the plain terms, Ross said.

"Essentially, what the court said is, 'Look, mistakes happen,'" Ross said. "There were no allegations of any reliance on the mistake."

Mayer Brown achieved another important win in August 2021, when two Alabama federal courts

dismissed all claims in a pair of separate lawsuits accusing Envestnet Asset Management Inc. of breaching its fiduciary duties to the BBVA 401(k) plan.

The plaintiffs claimed in both matters that investment adviser Envestnet failed to properly monitor and remove some of the plan's underperforming investments.

The cases were unusual because "it named the usual suspects" — the company that established the plan and the fiduciary committee that ran the plan — but it also named Envestnet, Ross said.

"That's a very unusual circumstance to have the investment adviser named. It's not that it doesn't happen, but it doesn't happen on a regular basis," Ross said. "And the reason it doesn't happen is exactly the reason we won the case."

Ross said Mayer Brown argued that the plan committee of the company that set up the 401(k) plan was the fiduciary and that Envestnet's involvement was limited to making recommendations, which did not extend to a fiduciary function.

"So that was a very significant development, particularly for all the investment advisers who are out there, for the court to hold that, except in circumstances that are not present here, investment advisers typically are not acting as fiduciaries," Ross said.

Ross said that none of the wins Mayer Brown achieved would be possible without the firm's collaborative spirit, which has brought her to work on many cases with Maureen Gorman, the leader for the firm's employment and benefits practice.

Gorman and Ross are currently working together on a case that branched out from a victory Mayer Brown scored in September 2020, **when a California district court** dismissed a proposed ERISA class action that accused AT&T of shorting early retirees on pension benefits.

The district court said on that occasion that the lead plaintiff lacked standing, even though the worker had tried to save the case by adding more plaintiffs.

Some of those plaintiffs filed a separate lawsuit in October 2020, accusing AT&T of reducing workers vested accrued benefits if they retired before they were 65 years old by using "early retirement factors" and "joint and survivor annuity factors," according to the complaint.

"That is part of a fascinating class of cases involving challenges to define benefit plan actuarial assumptions that are used to take someone's accrued benefit that typically is expressed in the form of a single life annuity, and converting it to a joint and survivor annuity, or another alternative form of payment," Gorman said.

Gorman said such cases "are working their way through the courts" since there aren't yet any definitive decisions on the merits.

But Mayer Brown's accomplishment didn't stop in the courtroom.

Gorman said that in March of last year the firm was able to bring onboard **Erin K. Cho**, whose focus is advising banks, hedge funds and private equity clients on how to invest and manage investments.

"It's part of what makes Mayer Brown's private investment fund practice so sophisticated is that we have that kind of expertise," Gorman said about Cho's hiring. "She's very much a superb expert in that area, and I think we've been really lucky to bring her over."

The firm's employment and benefits practice has more than 100 attorneys, of which 30 are based in the United States and the remainder spread throughout Europe and Asia.

Ross said that no attorney is "isolated" and the team continuously works together, creating a "wealth of knowledge" that allows Mayer Brown to fight in big class actions that cover a wide range of issues.

"We make a lot of law because of that," Ross said.

--Editing by Gemma Horowitz.

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