

DC Circ. Backs Georgetown's Defeat Of ERISA Suit

By **Patrick Hoff**

Law360 (April 23, 2024, 2:35 PM EDT) -- The D.C. Circuit on Tuesday upheld Georgetown University's win in a suit claiming the school packed its employee retirement plans with costly and poorly performing investment options, finding a lower court was correct in ruling that the workers failed to fix the faults in their case.

A unanimous three-judge panel affirmed the dismissal of Darrell Wilcox and Michael McGuire's Employee Retirement Income Security Act suit alleging Georgetown loaded retirement plans for faculty and staff with too many investment options and retained multiple record-keepers, which drove up costs. A D.C. federal judge dismissed the suit in April 2023, ruling the workers' proposed amended complaint didn't address the issues that caused the court to previously toss the case.

"The district court correctly held that the original complaint failed to adequately plead any claims, and that the proposed amended complaint would be futile because it did not cure any of the earlier-identified deficiencies," according to Tuesday's opinion.

The appeals panel also said the district court correctly held that Wilcox and McGuire lacked standing to challenge the inclusion of certain share classes of Vanguard mutual funds in two retirement plans and withdrawal restrictions on certain investments. During oral arguments April 9, the appeals panel questioned whether the workers had standing because they hadn't alleged they'd been prevented from withdrawing or transferring funds.

Wilcox and McGuire initially filed suit in February 2018. A trial court tossed the case less than a year later, saying fiduciaries weren't required to put just the top-performing funds in a plan's lineup, and in May 2019, the court rejected Wilcox and McGuire's request to amend their complaint.

A split D.C. Circuit panel revived the case in February 2021, saying the trial court should consider giving the workers a shot at updating their complaint. After Wilcox and McGuire filed a proposed amended complaint with the trial court, however, U.S. District Judge Amy Berman Jackson said they still didn't have a viable case.

In August, the workers asked the D.C. Circuit to give them yet another chance, asserting that Judge Jackson had held them to too high of a standard at the motion to dismiss phase and that their evidence should have been viewed in a more favorable light.

The U.S. Chamber of Commerce in a November amicus brief urged the appeals court to uphold the

dismissal of the case, arguing that Wilcox and McGuire's allegations were based on hindsight conclusions and cherry-picked details.

Counsel for Georgetown declined to comment Tuesday. Representatives of the workers did not immediately respond to a request for comment.

U.S. Circuit Judges J. Michelle Childs, Bradley N. Garcia and Douglas H. Ginsburg sat on the panel for the D.C. Circuit.

The employees are represented by Todd M. Schneider and James A. Bloom of Schneider Wallace Cottrell Konecky LLP, by Ellen T. Noteware, Abigail J. Gertner and Natalie Lesser of Berger Montague PC and by Eric Lechtzin of Edelson Lechtzin LLP.

Georgetown is represented by Nancy G. Ross, Nicole A. Saharsky, E. Brantley Webb and Minh Nguyen-Dang of Mayer Brown LLP.

The case is Darrell Wilcox et al. v. Georgetown University et al., case number 23-7059, in the U.S. Court of Appeals for the D.C. Circuit.

--Additional reporting by Jared Foretek. Editing by Amy Rowe.