

# Georgetown Prevails In ERISA Fee Litigation Case

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A federal district court in the District of Columbia dismissed ERISA fiduciary-breach claims by participants in Georgetown's 403(b) retirement plans that were predicated on allegations that the trustees invested in funds that allegedly charged excessive fees and underperformed relative to alleged comparable funds, and that the fund paid excessive recordkeeping fees. To begin with, the court concluded that plaintiffs lacked Article III standing, *i.e.*, they had not experienced any harm, as to three of the challenged funds because they failed to allege that: (i) they were invested in the challenged funds, (ii) the challenged funds outperformed plaintiffs' alleged comparable investment fund, and/or (iii) that they had withdrawn, or planned to withdraw from, one of the funds that charged an allegedly excessive 2.5% early-withdrawal fee in exchange for a lump-sum payout.

Next, the court rejected plaintiffs' arguments that the plan's fiduciaries acted imprudently by retaining a fund that allegedly had underperformed because: (i) a fiduciary is not required to select the best performing fund, and (ii) plaintiffs' alleged comparable fund had a different underlying allocation of domestic investments. Lastly, the court rejected plaintiffs' excessive recordkeeping fee claim because plaintiffs did not show that the fees were excessive relative to the services that were being offered. In so ruling, the court stated that since fiduciaries may structure their plans in different ways, the plaintiffs' allegations that the funds could hypothetically be structured to charge a lower fee did not state a viable claim for an imprudent process with respect to the record-keeping fees. The case is *Wilcox v. Georgetown University*, 2019 WL 132281 (D.D.C. Jan. 8, 2019).

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