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NEW YORK LIFE PAYING $14 MIL. TO END ERISA SUIT

BY SHANNON P. DUFFY U.S. Courthouse Correspondent

A federal judge has granted final approval of a $14 million class action settlement in an ERISA suit against New York Life Insurance Co. brought by employees who claimed the company mismanaged its pension funds by exclusively investing billions in NYL's own mutual funds.

In his 30-page opinion in *Mehling v. New York Life Insurance Co.*, Senior U.S. District Judge Bruce W. Kauffman also awarded 30 percent of the settlement, or $4.2 million, to a team of plaintiffs lawyers from five firms.

According to the suit, the key problem with the practice was that it caused the NYL pension plans to pay investment management fees and expenses far in excess of what the plans should have paid.

The suit alleged that the company knew, or should have known, that the fees were far in excess of what the plans would have been charged if they had invested in non-NYL mutual funds, which must compete for the business of large institutional investors on the basis of price.

The NYL mutual funds, the suit said, "never had to compete" for the business of pension plans because the plans' trustees were NYL officers who had "conflicting loyalties" and "effectively rubber-stamped" the recommendations of their investment adviser.

But the investment adviser was the president of the NYL mutual funds, the suit said, and his compensation was tied to the amount of assets under the funds' management. According to the suit, he knew that withdrawal of the pension funds' assets from the mutual funds would be "disastrous" because the mutual funds depended on the pension plans "for their sustainability and profitability."

In court papers, plaintiffs lawyers argued that "the result of these conflicts was imprudent investing and the waste of millions of dollars each year in excessive investment fees and expenses."

Until the suit was filed, they argued, NYL did nothing to remedy the situation "even when the imprudence of their use of retail-priced mutual funds with associated excessive fees and expenses was directly brought to their attention by a third-party consultant."

According to court papers, the pension plan trustees hired DeMarche Associates in 1999 to conduct an "asset allocation" study for the plans.

DeMarche discovered that the majority of the pension plans' assets were invested in NYL's proprietary mutual funds and advised the trustees that the plans could save more than $7 million annually in fees "simply by moving their investments from the funds to NYL's separately managed account program, which was run by the identical portfolio managers and pursued the identical investment strategies as the funds but at a fraction of their cost," the plaintiffs team argued.

But the plaintiffs team said the trustees "did not act on DeMarche's recommendation for 18 months, and not until after the filing of this lawsuit," according to court documents. The plaintiffs team was led by attorneys Marc I. Machiz and R. Joseph Barton of Cohen Milstein Hausfeld & Toll in Philadelphia and Eli Gottesdiener of The Gottesdiener Law Firm in Brooklyn, along with Alan M. Sandals and Scott M. Lempert of Sandals & Associates in Philadelphia; Barry L. Gross and Clyde W. Waite of Stief Gross Sagoskin Gilman & Classetti in Newtown, Pa.; and Jennifer C. Jaff and Michael D. Lieder of Sprenger & Lang in Washington, D.C.
New York Life Insurance Co. was defended by attorneys Joseph J. Costello and Michael L. Banks of Morgan Lewis & Bockius in Philadelphia.

In a statement, William Werfelman, a spokesman for New York Life, said, "After the court dismissed several claims, the parties were able to move closer and resolve the remaining issues. The company's receptivity to a settlement centered on the fact that the bulk of the settlement monies would go to work for the affected employee and agent participants in the plans."

Under the terms of the settlement, 70 percent of the fund, or $9.8 million, will be allocated to the company's 401(k) plans and distributed to the eligible current and former participants who had account balances at any time between January 1994 and December 2005.
The remaining 30 percent, or $4.2 million, will be allocated between the company's two pension plans. Attorney fees and expenses will be deducted from the money allocated to both the 401(k) plans and the pension plans.

The settlement also calls for New York Life Insurance to take steps to prevent any future breaches of fiduciary duty by the pension plan trustees.

The trustees have agreed to hire an independent adviser, which will also have fiduciary responsibility to act prudently and to provide advice to the trustees about appropriate investments for each of the plans. Under the terms of the settlement, the independent adviser must be retained through May 2010.

In approving the settlement, Kauffman concluded that although the maximum recovery in the case was $70 million, and the plaintiffs were recovering only 20 percent of that amount, the settlement was "fair and reasonable" in light of the significant risks that further litigation posed.

"The risks of litigation could have negated or reduced any possible recovery," Kauffman wrote.

In court papers, the plaintiffs team conceded that they faced significant risks in establishing liability because the pension plans are currently "overfunded" due to recent contributions by NYL. As a result, they said, the company could argue that even if the pension plans were charged excessive fees, any loss suffered was to the plans' surplus and did not endanger benefits funding.

And for the 401(k) plans, the plaintiffs team said, the company could argue that even though alternative investment vehicles could have proven less costly, the use of mutual funds is generally common for 401(k) plans.

Kauffman agreed, saying that if the case had gone to trial, and if the defendants were able to prove that use of the mutual funds "was not so deficient as to preclude their use by a reasonable fiduciary," any recovery for the 401(k) plans "could be limited or negated."

Turning to the attorney fees, Kauffman found that the plaintiffs team had logged 8,400 hours on the case, and that their fees at their normal billing rates would be about $3.6 million.

As a result, Kauffman said, an award of $4.2 million represents a "multiplier" of 1.16.

"Given the complexity of this litigation, the efforts of and substantial risks assumed by class counsel, and the significant monetary and non-monetary benefits resulting from the settlement, the court finds that this comparatively low multiplier is reasonable," Kauffman wrote.