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Northrop Grumman Workers Can't DQ Expert In ERISA Suit

By **Emily Brill**

Law360 (July 24, 2019, 8:37 PM EDT) -- The founder of Wagner Law Group PC may testify as an expert in an Employee Retirement Income Security Act class action suit accusing Northrop Grumman Corp. of squandering workers' retirement savings through high pension plan fees, a California federal judge ruled Tuesday.

U.S. District Judge Andre Birotte Jr. rejected Northrop workers' bid to exclude Marcia Wagner's testimony from an upcoming ERISA trial, saying the workers can't disqualify Wagner just because her colleague once worked on a related case.

Wagner would only need to step down if Wagner Law Group partner Tom Clark told her the confidential information he learned while representing the Northrop workers in the related case between 2008 and 2013, the judge said.

But the workers didn't prove that Clark told Wagner anything, so the law firm founder and longtime benefits attorney is OK to testify, Judge Birotte ruled.

Judge Birotte also dismissed the workers' argument that California legal ethics rules bar Wagner from testifying, saying the rules would only ban Clark, and he is not the expert here.

The judge emphasized again that Clark and Wagner haven't talked enough about the related case, known as the Grabek matter, to give rise to a conflict of interest on Wagner's part.

"Mr. Clark and Ms. Wagner have had no interactions with each other with respect to this matter apart from Mr. Clark disclosing that he represented the plaintiffs in Grabek," Judge Birotte wrote. "Ms. Wagner also declares that she has received no confidential information from Mr. Clark."

Furthermore, Clark and Wagner are "geographically isolated" from each other — with Wagner in Boston and Clark in St. Louis — so the chances of them swapping information casually are low, Judge Birotte said.

The case came about in 2016, when a group of Northrop employee retirement plan participants accused the company and members of a plan oversight committee of breaching their fiduciary duty under ERISA. The plan participants **won certification** of a roughly 100,000-member class in 2017.

The participants claimed the company failed to reduce the allegedly unreasonably high fees that it paid to plan record-keeper Hewitt Associates LLC. The participants also claimed that the plan didn't consider a passive-management strategy for its emerging markets fund until 2014, even though that approach allegedly would have netted more financial gain for workers than the active-management strategy that was used instead.

The company moved for **partial summary judgment** in February, arguing that using an active-management strategy made more sense and no overpayment to plan recordkeepers occurred.

Northrop lost a previous bid to toss the ERISA claims in February 2018, **though it succeeded** in knocking a few claims off the class action suit.

Counsel for the parties were not immediately available for comment Wednesday.

The workers are represented by Jerome J. Schlichter, Michael A. Wolff, Nelson G. Wolff, Kurt C. Struckhoff and Sean S. Soyars of Schlichter Bogard & Denton LLP and William A. White of Hill Farrer & Burrill LLP.

Northrop Grumman Corp. is represented by Nancy G. Ross, Brian D. Netter, Andrew A. Lyons-Berg and Samuel P. Myler of Mayer Brown LLP.

The case is Clifton W. Marshall et al. v. Northrop Grumman Corp. et al., case number 2:16-cv-06794, in the U.S. District Court for the Central District of California.

--Additional reporting by Adam Lidgett. Editing by Connor Relyea.

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