

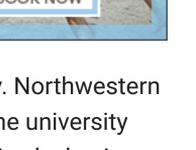
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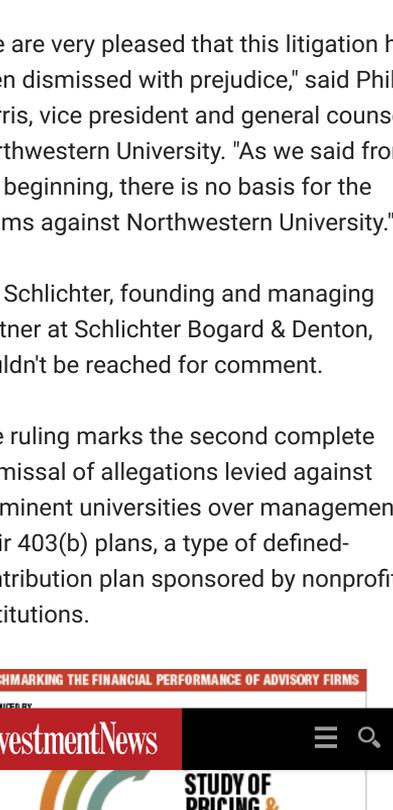
Northwestern University beats Jerry Schlichter 403(b) lawsuit

It's the second university to get a complete dismissal, but lawyers say it's too early to tell if this is a harbinger for pending cases

May 29, 2018
 By [Greg Iacurci](#)



Northwestern University has become the second college to beat back allegations of retirement-plan mismanagement, prevailing in a lawsuit brought by prominent plaintiffs' attorney Jerry Schlichter.



The lawsuit, *Divane et al v. Northwestern University et al*, claimed the university breached its fiduciary duties by having participants in two retirement plans pay excessive fees for record keeping and investment management, thereby eroding their savings. It was originally filed in August 2016.

Judge Jorge L. Alonso, of the U.S. District Court for the Northern District of Illinois, dismissed all seven counts with prejudice, meaning plaintiffs, who are retirement-plan participants, cannot file another complaint in district court. They can, however, still appeal to a higher court.

"We are very pleased that this litigation has been dismissed with prejudice," said Philip Harris, vice president and general counsel of Northwestern University. "As we said from the beginning, there is no basis for the claims against Northwestern University."

Mr. Schlichter, founding and managing partner at Schlichter Bogard & Denton, couldn't be reached for comment.

The ruling marks the second complete dismissal of allegations levied against prominent universities over management of their 403(b) plans, a type of defined-contribution plan sponsored by nonprofit institutions.

There have been approximately 20 such lawsuits filed since August 2016, when Mr. Schlichter sued such schools as Yale University, Duke University, Massachusetts Institute of Technology, New York University and the University of Pennsylvania, among others.

Mr. Schlichter is well-known for his pioneering 401(k) litigation going back to 2006. His successes include winning a number of large settlements and a judgment in the only 401(k) fee suit to go to the Supreme Court, *Tibble v. Edison*.

Northwestern University and UPenn are the only university defendants **to have received complete dismissals**. Others have had partial dismissals of allegations, but other claims were allowed to proceed. The University of Chicago was the first to reach a settlement, **for \$6.5 million**, last Wednesday.

Marcia Wagner, principal at The Wagner Law Group, said it's too early to tell what the dismissals mean long-term.

"Two does not make a trend," Ms. Wagner said. "But I do think this is not a 401(k) excessive-fee class-action redux. [403(b) plans] are very different creatures, and they're very different creatures for historical reasons by way of how they developed."

Judge Alonso alluded to these differences in his ruling.

Addressing his reason for dismissing one of the allegations, he said: "The plans had good reasons, which are outlined in plaintiffs' amended complaint, to offer the TIAA-CREF Traditional Annuity ... That is an attractive offering, particularly given that 403(b) plans were originally required to offer only annuities."

Plaintiffs also had claimed there were too many investment options, making it impossible to decide where to invest, that the university offered retail-share-class investment funds instead of lower-cost institutional shares, and that using multiple providers and a revenue-sharing arrangement made record keeping too expensive.

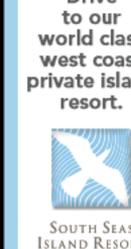
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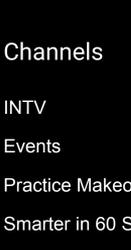
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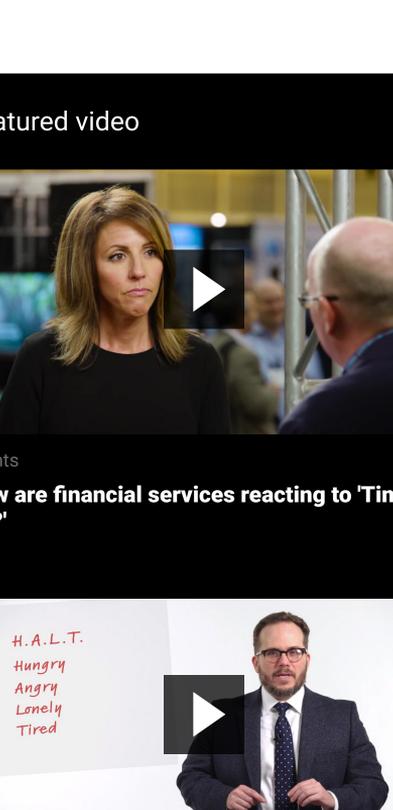
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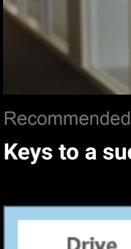
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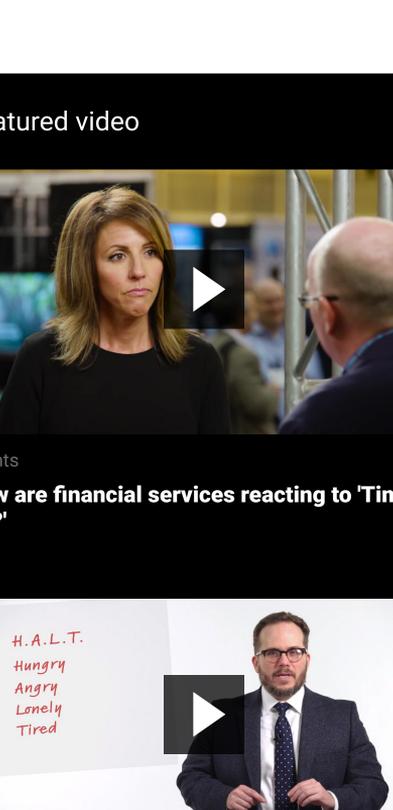
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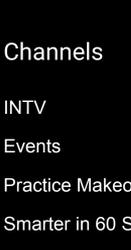


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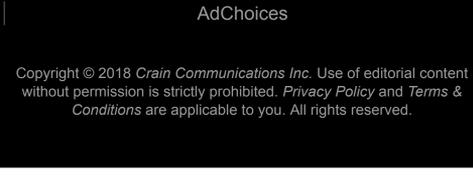
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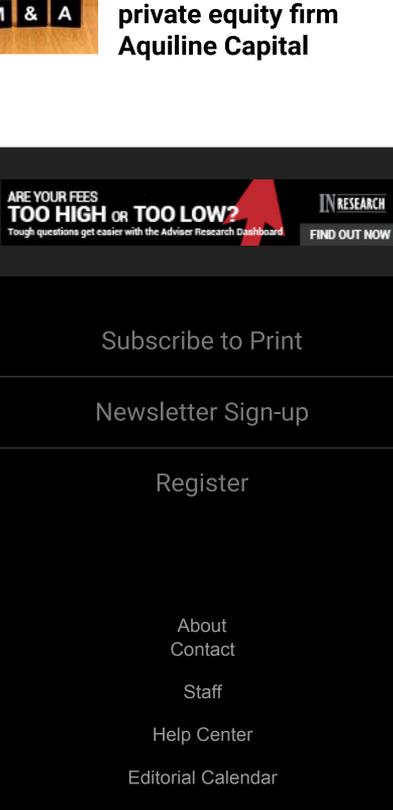
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