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## Novant Suit Highlights Finance Firms' Steep Plan Fees

By Margaret Collins and Sophia Pearson Mar 12, 2014 12:53 PM CT



Photographer: Brent Lewin/Bloomberg

*The Lockheed Martin Corp. booth at the Singapore Airshow on Feb. 10, 2014.*

Novant Health Inc. employees are suing the nonprofit hospital system for allegedly overcharging them in their **retirement accounts** by millions of dollars, according to a complaint filed today that highlights how workers' savings are eroded by high fees to financial firms.

In the latest of more than a dozen lawsuits against employers since 2006, a retired doctor and six others are alleging Novant's plan saw a more than 10-fold increase in fees over three years and contains costly investment choices, according to a complaint filed today in federal court in Greensboro, North Carolina. The lawsuit also highlighted ties between the hospital and a brokerage, D.L. Davis & Co., whose founder Derrick L. Davis gave more than \$5 million in charitable gifts to Novant, after which he earned fees from the plan.

"Novant employees have had to pay excessively high fees out of their retirement assets with no increase in services for those fees," said Jerry Schlichter, founding partner of the **law firm** Schlichter Bogard & Denton, LLP, which filed the case on behalf of workers. "That's simply wrong."

**Lockheed Martin Corp. (LMT), Caterpillar Inc. (CAT)** and ABB Ltd. are among large employers sued over the last eight years as lawmakers and employees have intensified their scrutiny of fees in retirement accounts, which have replaced traditional pensions as the primary savings vehicle for old age. Companies including **Facebook Inc. (FB)** and **Whole Foods Market Inc. (WFM)** are also holding back on the amount and timing of their contributions to worker savings plan, making it more difficult for Americans to save for retirement.

### **Retirement Fees**

Americans held \$5.6 trillion in defined contribution plans, including 401(k)s and 403(b)s, as of Sept. 30, according to the **Investment Company Institute**. Winston-Salem, North Carolina-based Novant's tax-deferred savings plan for workers is a 403(b) used by nonprofits such as hospitals and universities.

A variety of providers such as recordkeepers, which provide administrative services to retirement plans, consultants, brokers and investment managers make money from 401(k)-type plans. It's generally difficult for workers to determine how much they are paying in fees, and to whom, because those deals are buried in private contracts between financial firms and employers, and in government filings.

Employees usually have little power to change investments and costs in their plans, which is why some -- like those at Novant -- have resorted to filing lawsuits.

About 25,000 Novant employees are in the **retirement plan**, according to the complaint. The plan's assets have more than doubled to \$1.42 billion from \$612 million in 2008, the plaintiffs said.

Novant operates 14 medical centers along with clinics, outpatient surgery centers, medical plazas, rehabilitation programs, imaging centers and community health programs in North Carolina, **Virginia, South Carolina** and **Georgia**, according to its website.

### **No Response**

Karolyn Kruger, a retired physician and lead plaintiff in today's complaint, wrote to Novant's administrative committee on Jan. 27, requesting a copy of the company's retirement plan documents and contract with its recordkeeper, **Great-West Lifeco (GWO)** Inc.'s U.S. annuity business, according to the court filing. She hasn't received a response, according to the filing.

At issue in the Novant case are alleged excessive fees paid to the Great-West and D.L. Davis, according to the complaint. While most companies can negotiate lower fees for retirement plans with more than \$1 billion in assets, Novant's plan saw a jump in costs even as assets rose from 2009 to 2012, according to the complaint. Novant workers paid mutual-fund fees that were more than 100 percent higher than what plans of comparable size are offered.

### **'Bargaining Power'**

"Given the massive bargaining power of a plan at or near \$1 billion in total plan assets, a 'large' plan in industry terms, prudent fiduciaries consider far lower cost investments that are accessible to institutional investors," lawyers for the employees said in the complaint.

Great-West was paid \$2.3 million by the **retirement** plans in 2012 compared with \$195,899 in 2009, according to the complaint. The insurer also received additional payments from money management firms with investment options in the plan, according to the filing.

Investments in 401(k)-type plans have been sold to businesses with built-in expenses paid by workers known as revenue sharing, which can cover employers' administrative costs for running a retirement program including the use of a recordkeeper or broker.

### **Broker's Ties**

D.L. Davis, based in Winston-Salem, **North Carolina**, was paid about \$3.7 million from Novant's retirement program through commissions, according to the complaint and Labor Department filings. The fees paid to the firm for brokerage services were excessive and workers were subjected to them because of a relationship between Novant and the broker, according to the complaint.

Founder Davis donated more than \$5 million to Forsyth Medical Center, a Novant unit, in 2004, according to the complaint and news reports at the time. Forsyth renamed its cancer center after the donor.

The broker also had ties to investments in the plan from MassMutual Financial Group, according to the court filing. D.L. Davis's securities and investment advisory services, according to its website, are offered through MML Investors Services, a unit of MassMutual Financial Group.

The Mass Mutual Guaranteed Interest Fund held more than 5 percent of Novant workers' retirement plan assets in 2012, according to Labor Department filings.

Caryn Klebba, a spokeswoman for Novant Health, and Derrick Davis didn't return phone calls or e-mailed requests for comment. Lisa Gigax, a spokeswoman at Great-West, said the firm "is not a party to this lawsuit," while declining to comment further.

### **Caterpillar, Cigna**

Schlichter Bogard & Denton has filed more than a dozen 401(k)-plan lawsuits on behalf of workers since 2006 that have dragged on for years against U.S. companies including Lockheed Martin, Caterpillar and ABB.

The law firm finalized a \$35 million settlement for **Cigna Corp. (CI)** employees in 2013 and a \$30 million settlement with International Paper Co. in January. This suit is its first against a nonprofit over plan fees, Schlichter said.

Separately, a group of employees of **Fidelity Investments**, the largest provider of 401(k) plans, sued the Boston-based mutual firm last year for self-dealing at the expense of its own workers' retirement savings. The case is still pending.

The spate of lawsuits has led to heightened scrutiny of 401(k)-type plans by lawmakers, said Mike Alfred, chief executive officer of BrightScope, a San Diego-based firm that ranks retirement plans.

### **'Perfect Storm'**

"We've seen this perfect storm," Alfred said in a December phone interview. "We have Schlichter getting class action certification and getting huge settlements. You've got fee-disclosure information hitting sponsors."

Novant's employees seek class-action status for the complaint and a court order removing the committee that oversees the plan, appointing an independent administrator and granting unspecified restitution, damages, interest and legal costs.

The case is *Kruger v. Novant Health Inc.*, 14-cv-00208, U.S. District Court, Middle District of North Carolina (Greensboro).