

Litigators of the Week: Just Call Them the Jenner Wildcats

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Faced with hundreds of millions of dollars in potential damages, **Northwestern University** tapped a team from **Jenner & Block** to smack down a putative class action challenging the substance and management of its retirement plans.

Such suits have become increasingly common, with at least 20 universities including **Yale**, **Columbia**, **Princeton**, **Georgetown** and **Duke** hit with recent claims.

Jenner litigation department chair **Craig Martin** and partner **Amanda Amert** on May 25 persuaded **U.S. District Judge Jorge Alonso** in Chicago to dismiss the case against Northwestern with prejudice—a feat that’s all the more impressive considering suits against other schools have been allowed to proceed. (Indeed, a ruling is expected this summer following a trial in the suit against **New York University**.)

For succeeding where others have failed and sparing their client drawn-out litigation, Martin and Amert win the mantle of Litigator of the Week.

The complex, data-heavy complaint against Northwestern—141 pages long—alleges that plan beneficiaries “lost tens of millions of dollars of



retirement savings” due to poor investment strategies and excessive management fees.

But Martin and Amert successfully countered that the allegations were both unfounded and misplaced, and that the plans actually performed well.

According to the plaintiffs, the two Northwestern plans at issue have a combined total of more than \$3 billion in assets and more than 20,000 participants.

“We worked as a collective team,” Martin said. “I get to be one ‘face’ of the team and Amanda gets to be the other face, but a group of us worked very hard with **Northwestern general counsel Phil Harris** and **associate GC Thalia Myrianthopoulos**, working through the legal aspects of the case and keeping us focused on the facts.”

Others on the team included Jenner & Block partners **Matt Devine, Casey Grabenstein and Brienne Letourneau** and associates **LaRue Robinson, Alexis Bates, Amit Patel, Patrick Cordova** and **Monika Kothari**.

“We found that Northwestern’s programs are managed very well according to federal law, as opposed to the negative way they were portrayed in the complaint,” Martin said.

“The judge noted that people have ample opportunities to choose what options they want and that the lineup Northwestern gave them was perfectly appropriate,” added Amert.

“The bottom line is that this case is about investment strategy and we’re really happy with the judge’s order,” Martin said.

In dismissing the suit, Alonso in a 28-page order said that the claims including breach of fiduciary duty and violation of federal law generally amounted to displeasure with the selection and performance of options Northwestern offered for managed accounts.

“Most of the plaintiffs’ allegations,” wrote Alonso, are “not specific to the defendants and the plans in this case,” and instead “constitute a description of plaintiffs’ opinions both on ERISA law and on a proper long-term investment strategy for average

people who lack the time to select either individual stocks or actively-managed mutual funds.”

“In their complaint, plaintiffs object to, among other things, the mix of investment options available in the plans. Plaintiffs believe they had too many options, leaving them with the ‘virtually impossible burden’ of deciding where to invest their money,” Alonso said.

In his order, he denied the plaintiffs’ request to once again amend their complaint, and dismissed it with prejudice.

“We are very happy with the outcome and believe that the opinion is thorough, well-reasoned, and consistent with Seventh Circuit case law,” said Northwestern GC Harris via email.

“I said after this lawsuit was filed that we would defend the case aggressively because we strongly believe that our retirement plan investment committee acted prudently at all times and in all respects,” Harris said, adding that “Craig, Amanda, and their team have been fabulous. They are exceptional attorneys who understand higher education.”

The plaintiffs are represented by **Jerome Schlicter, Troy Doles, Heather Lea and Sean Soyars** of St. Louis’ **Schlicter, Bogard & Denton**, who did not immediately respond to a query on Thursday.