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## **Annuity Plan Overcharges Teachers, Lawsuit Says**

By **GRETCHEN MORGENSON**

A lawsuit filed last week in federal court in Washington State contends that the National Education Association breached its duty to members by accepting millions of dollars in payments from two financial firms whose high-cost investments it recommended to members in an association-sponsored retirement plan.

The case was filed on behalf of two N.E.A. members who had invested in annuities sold by Nationwide Life Insurance Company and the Security Benefit Group. It contends that by actively endorsing these products, which carry high fees, the N.E.A., through its N.E.A. Member Benefits subsidiary, took on the role of a retirement plan sponsor, which must put its members' interests ahead of its own.

By taking fees from the two companies whose annuities N.E.A. Member Benefits recommended to its members, the N.E.A. breached its duty to them, the suit contends. The N.E.A. is the nation's largest professional organization; its Web site says it serves 3.2 million workers in education, from preschool to university graduate programs.

The suit reflects heightened concern among retirement plan participants that excessive fees are diminishing their savings and enriching financial services firms. Last November, the Government Accountability Office published a study concluding that retirement plan participants, as well as the Labor Department, needed clearer information on fees in these investment vehicles.

Lawyers representing the plaintiffs said they had been unable to calculate the total payments received by N.E.A. officials from Nationwide and Security Benefit since 1991, when the products were first endorsed by the organization. But a recent Security Benefit prospectus indicated that fees paid to N.E.A. Member Benefits might exceed \$2 million a year. That prospectus said Security Benefit paid the N.E.A. subsidiary \$510,000 a quarter.

The suit, filed in United States District Court for the Western District of Washington at Tacoma, said that such payments were not disclosed to N.E.A. plan participants. Instead, N.E.A. Member Benefits maintained that it selected Nationwide and Security Benefit based on competitive criteria, the suit said.

Lisa M. Sotir, general counsel to N.E.A. Member Benefits, declined to comment on the lawsuit, saying that she had not yet seen it.

Michel Cole, a spokeswoman for Security Benefit, said it was against the firm's policy to comment on pending litigation. Erica Lewis, a spokeswoman for Nationwide, said company officials could not comment until they had seen the complaint.

Lawsuits on behalf of pensioners are usually brought under the Employee Retirement Income Security Act of 1974, known as Erisa, which requires organizations overseeing retirement plans to put their beneficiaries' interests first.

The type of 403(b) programs at issue in the complaint are typically exempt from Erisa. But the lawyers bringing the case argued that because the N.E.A. actively promoted the annuity products to its members, it essentially stepped in as a plan sponsor. That made it subject to Erisa's fiduciary duty requirements, the lawsuit contended.

"The Erisa exemption applies to situations where the employer does nothing more than arrange for salary deferral for its employees," said Derek W. Loeser, a lawyer at Keller Rohrback in Seattle, which represents the plaintiffs in the case. "But in endorsed plans, the union together with the insurance company are taking over the role that the plan sponsor plays."

From 1991 to 2000, Nationwide was the exclusive N.E.A. plan provider. The company sold its N.E.A. Valuebuilder accounts, with more than \$860 million in assets, to Security Benefit Life Insurance Company for \$72 million in 2000, the suit said.

Since 1991, the suit said, N.E.A. members have invested more than \$1 billion in the Valuebuilder plan.

The fees levied in the Nationwide and Security Benefit annuities "far exceeded" those of comparable retirement vehicles available elsewhere, the suit said. The fees in one of the annuities recommended for the Valuebuilder plan reached 10.62 percent, according to the suit, making it exceedingly difficult for investors to make money in the plan.

Dan D. Otter is a teacher and operator of [www.403bwise.com](http://www.403bwise.com), a Web site aimed at educating retirement plan participants about high fees associated with some of the investment vehicles. He said teachers were especially vulnerable to problematic plans. "There is an army of agents trolling school districts across the country selling high-fee variable annuities," he said. "I want all 403(b) participants to know how the plan works and also advocate for low-cost choices."

According to regulatory filings, N.E.A. Member Benefits "recovers its costs through contracts with various program suppliers" as well as the N.E.A. In 2005, the corporation generated income of \$52 million, the filings stated.

Ms. Sotir said that figure included income generated from many contracts, including those covering the N.E.A. credit card, home financing and life insurance programs. "Valuebuilder is a very small portion of that," she said.

The suit against the N.E.A. is the second such case filed by lawyers at Keller Rohrback against an association that administers retirement accounts to its members. Last April, the firm filed a class action against the New York State United Teachers Member Benefits Trust, a retirement plan set up to benefit teachers in the state.

Edward A. H. Siedle, a lawyer and president of Benchmark Financial Services in Ocean Ridge, Fla., a company that investigates money managers on behalf of pension plans, also represents the plaintiffs in the case. "Investors may purchase annuities for lifetime income, but for unions, endorsing annuities is lifetime income," he said. "Teachers deserve better."