

Excessive-fee suit targeting \$9 million 401(k) plan could be ‘harbinger’ for industry

Lawsuit is perhaps the first example targeting small retirement plans.



May 31, 2016 [By Greg Iacurci](#)

A new class-action lawsuit targeting excessive 401(k) fees in a \$9 million plan could herald a new frontier of sorts in this type of litigation.

The suit, [Damberg et al v. LaMettry’s Collision Inc. et al](#), alleges plan fiduciaries breached their duties under the Employee Retirement Income Security Act of 1974 for allowing excessive fees to be charged for investments and record keeping and administration.

Defendants, including the president and chief financial officer of Minnesota-based LaMettry’s, didn’t engage in a prudent process to evaluate service providers and assess reasonableness of fees, the complaint said. That ultimately resulted in plan participants overpaying hundreds of

thousands of dollars, according to the suit, filed May 18 in the U.S. District Court for the District of Minnesota.

A request for comment from Joanne LaMettry, the firm's president, was not returned by press time. Madia Law is representing the plaintiffs.

Whereas excessive-fee suits have [traditionally targeted mega-sized defined contribution plans](#) with billions of dollars, the LaMettry's 401(k) plan is significantly smaller — it had \$9.2 million in assets and 114 active participants as of 2014.

This suit could mean small- and mid-sized 401(k) plans — where the bulk of retirement plan advisers operate — are now coming into the crosshairs of the plaintiff's bar, said Marcia Wagner, principal of The Wagner Law Group.

“If this case is the harbinger of something else, I think it's very significant for the industry,” she said, adding that the LaMettry's plan is the smallest plan “by multiples” that she has seen sued for excessive 401(k) fees.

“This may well be a test case,” Ms. Wagner said.

Litigation involving 401(k) plans [has ramped up](#) since the end of last year, with some attorneys noting this has been the most active period for new suits in recent memory. Indeed, another excessive-fee suit, against M&T Bank Corp., which has a nearly \$2 billion plan, was [filed earlier this month](#).