Mayors Score Win in Lawsuit Over Troubled Retirement Plan Endorsement Deal

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The U.S. Conference of Mayors has been locked in a court dispute for several years over the soured arrangement.

The U.S. Conference of Mayors for about three years now has been battling in court with a company that previously administered a retirement savings program for city employees that the mayors' group agreed to endorse in exchange for royalties and fees.

Earlier this month, the mayors took a significant step toward prevailing in that lawsuit. A federal appeals court upheld a jury verdict the conference won at trial last year that called for the company, Great-West Life & Annuity Insurance Company, to pay the organization $8 million.

U.S. Mayor Enterprises, Inc., a for-profit subsidiary of the Conference of Mayors, is also a plaintiff in the lawsuit.

The case is a contract dispute. It centers on a deal between the company and the mayors to offer public workers what are known as "Section 457" retirement savings plans.

Great-West, a licensed broker, was tasked with selling and administering the plans, and the mayors with promoting the program and helping to develop related educational seminars.

But the mayors have argued Great-West failed to live up to the terms of a 10-year deal that the two parties initiated in 2012 and that the company "destroyed" a program that had previously been a sizable source of revenue for the conference—generating $3 million for the organization annually in 2011, according to court documents.

Margaret Warner, a lawyer who represented the mayors, said by phone Thursday that this month's appeals court ruling is a "complete, utter vindication of the position that the mayors took."

"It's a complete win in all regards and the mayors are very pleased about it," she added.

Great-West bills itself as the nation's largest provider of governmental retirement plans, and says it extends its services to more than 9,000 government employers, including states, counties, cities and towns, and over 2.7 million public employees.

Stephen Gawlik, a spokesman for the company, declined to comment Thursday on whether Great-West would continue to fight the case, or pay the mayors the $8 million.

He also emphasized that the dispute "is not in any way related to the quality of the plans we sold or the services we provided to plan participants."

"This case represents a disagreement over the scope of a past, obsolete marketing contract to offer retirement plans to some cities and towns," he added. "That contract has since expired."

Section 457(b) plans are similar to 401(k) plans, but specifically open to certain state and local government employees under the federal tax code. Employees can contribute to 457 plans through salary deductions, deferring taxes on contributions and investment earnings.

The Conference of Mayors pushed at the federal level in the 1970s for the program's creation. And after that, for about 30 years, insurance and financial services giant Nationwide administered a 457 program the mayors' organization endorsed and helped to promote to cities.

Warner, the lawyer for the Conference of Mayors, during last year's trial compared the arrangement to basketball legend Michael Jordan endorsing sneakers for Nike. "It's the same thing with the mayors," Warner said in court, according to a transcript of the proceedings.

"Mayors and city managers trust the United States Conference of Mayors to evaluate retirement programs and to pick ones that best serve city employees," she added. "So cities would sign up because the mayors gave the program their stamp of approval."

By 2011, the Nationwide program the mayors gave its blessing to had over 300,000 participating employees and $6 billion in assets under management, and Nationwide that year paid the mayors an annual fee of $3 million under their long-running deal, according to court filings.

But the conference says it was hearing concerns from cities that Nationwide was charging fees that were too high and not providing employees with enough assistance planning for retirement. The group later began talks with Great-West about working with them instead.

The mayors and Great-West eventually reached a deal in 2012 under which the company would pay the mayors $10 in royalties and fees per year for each participant who enrolled in a 457 program that the Conference of Mayors had endorsed.

Warner stressed during the trial that these payments "would not come from the city employees' savings," that they were instead made by Great-West to the mayors.

As part of the deal Great-West also agreed to advance the mayors $2.5 million to be repaid by the company withholding a portion of quarterly fees and royalties.

Great-West, according to a brief the mayor's filed in appeals court, initially projected the "worst case scenario" for the program would be enrolling 14,000 to 16,000 participants per year, which would yield around $7.5 million in royalties and fees for the mayors over a decade.

But by the end of 2015, Great-West had enrolled only 3,001 participants in the program, only enough to generate about $30,000 in annual payments. The mayors acted to terminate the arrangement with Great-West in December 2015, and in April 2016 filed the lawsuit.

Tensions began to build between the mayors and Great-West early on in their arrangement, according to court documents.

Company emails that emerged during the lawsuit raised the possibility that about 18 months into the program one executive may have been "looking for ways internally to kill the deal."

Other correspondence referenced in court indicated that Great-West may have been steering prospective clients for the mayors' plan toward other offerings, suggesting they'd be better off.

And in 2014, Great-West offered to pay the mayors $250,000 to cancel the program, the mayors say in a court brief.

Great-West has denied breaching the deal and argued that it was actually the mayors that failed to hold up their end of the bargain. The company says the group over-promised how much clout they had to help attract city employers to the Great-West program.

“They were supposed to open doors for us,” The company’s lawyer, Michael O'Donnell, said last year in court, according to a transcript. “Those doors were closed.”

Part of the arrangement, he said, was that the Conference of Mayors would assist Great-West by providing possible contacts in city government to approach about the plans.

O'Donnell noted that the mayors’ decision to switch from Nationwide to Great-West was preceded by Nationwide informing the Conference of Mayors in 2011 that it would cut the amount it was paying the group down to $1.5 million by 2016.

Great-West has argued that it did muster its best efforts to make sales as part of the deal with the mayors and the program failed to gain traction for reasons outside of the company’s control, including that Nationwide took steps to retain cities and re-sign them to contracts.

The Conference of Mayors says this is the first lawsuit it has filed in its roughly 84-year history.

The nine-day trial in the case took place in January 2018 in a federal court in Washington, D.C. Great-West appealed to the U.S. Court of Appeals for the D.C.

Circuit last June. Oral arguments before a three-judge appeals court panel were in February.

In a May 7 ruling, the appeals panel affirmed the lower court ruling in a two-page *"per curiam*" judgement. Great-West has some moves it could make to keep fighting the case, but its options have dwindled.

After breaking things off with Great-West, the mayors struck up a new 457 partnership arrangement—again with Nationwide. Court documents say that the company would only agree to pay the mayors $1 million per year for five years as part of the new deal.

Route Fifty asked the Conference of Mayors on Thursday about the size of its current budget and what share was made up by the 457-plan endorsement and what revenues from the Nationwide deal looked like these days. But the group didn't provide specific answers.

"There was never a threat to our financial viability," Tom Cochran, CEO and executive director said in an emailed statement. "The lawsuit was brought because Great West breached its contract with USCM," he added. "It never affected the operating budget of the organization."

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