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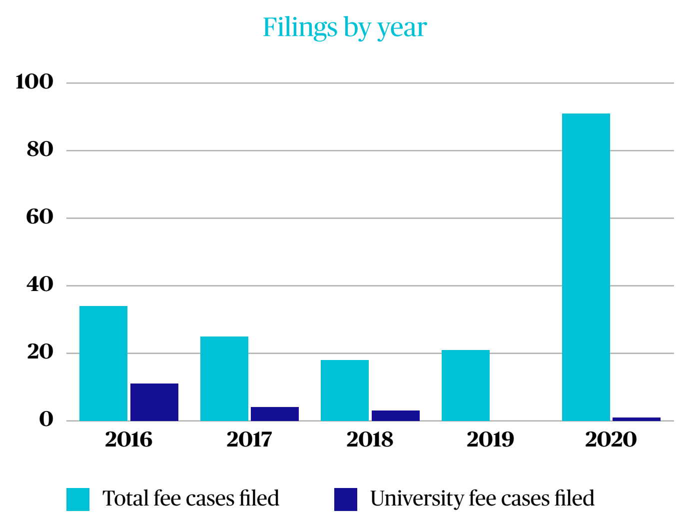
Excessive Litigation Over Excessive Plan Fees

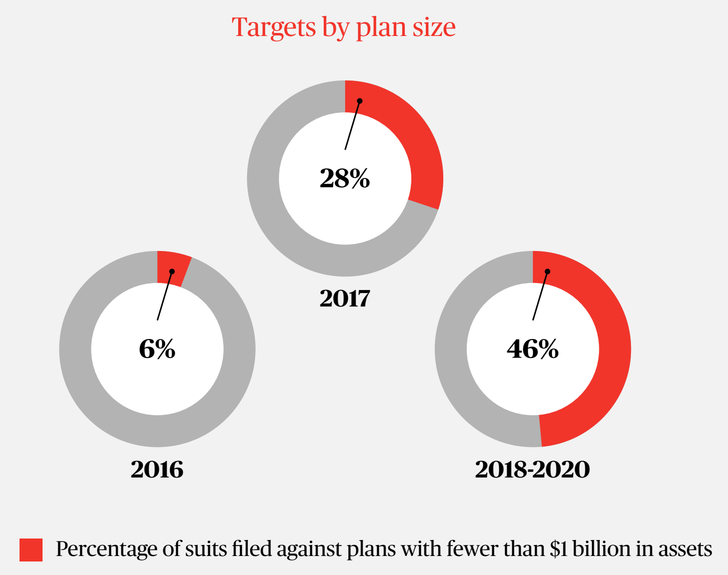
An inside look at the dramatic change in excessive fee litigation affecting retirement plan fiduciaries.[1]

As one of the leading carriers of fiduciary liability insurance protection, Chubb is dedicated to helping our clients understand and mitigate the risks they may face. The alarming rise in the number of lawsuits filed over excessive fees in retirement plans is a potential exposure for all types of plan sponsors (e.g., publicly traded companies, privately owned companies and not-for-profit organizations) in all types of industries, while smaller sized defined contribution plans are increasingly being targeted.

The pace of filings increased more than 4-fold industry-wide in 2020.

Although fiduciary excessive fee claims first appeared in 2006, they were historically infrequent, other than a brief period in 2016 when a series of claims were brought against certain private universities. However, in 2020, the pace of filings dramatically increased. These new filings do not exhibit a discernable trend in the types of plan sponsors or industries that plaintiffs might seek to serve with a complaint.





It's not just large plans getting sued anymore.

Prior to 2016, the vast majority of plans whose fiduciaries were being sued had well over $1 billion in plan assets. Since then, companies with much smaller plans have increasingly been targeted. In fact, in one year, well over half of the targeted plans contained less than $1 billion in plan assets.

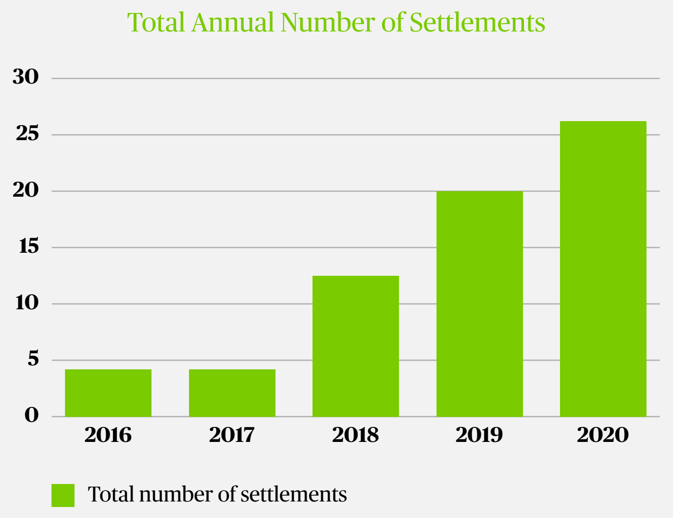
Over the past three years, 46% of plans that were sued had less than $1 billion in plan assets, while in 2016, just under 6% of the plans that were sued had less than $1 billion in plan assets. Even plans with less than $50 million in plan assets have been sued!

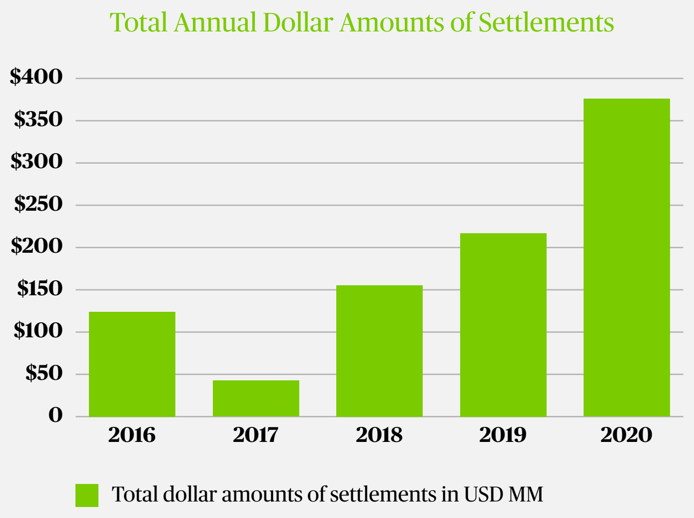
These cases are expensive to defend, often costing millions of dollars.

These lawsuits are costly, even if the defendants win an early dismissal. Defence costs can total in the low seven-figures by the time there is a final determination on a motion to dismiss. Unfortunately, when cases survive an early motion to dismiss, defence costs can rise meteorically, often with defence budgets in the multi-millions of dollars.

Settlements continue to climb.

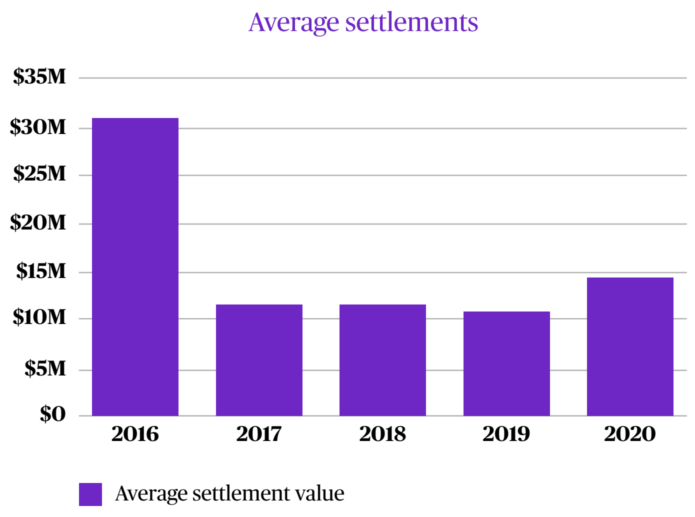
The significant increase in the number of filings has been accompanied by a substantial uptick in the total annual number of settlements and the total annual amount of settlement dollars being paid. These figures have more than quadrupled from 2017 to 2020.





In 2020, over 25 excessive fee cases settled, as compared to less than 5 settlements in 2016 and in 2017.

Just under $1 billion in total settlement dollars was paid between 2016 and 2020!



Average Settlement Amounts Are Increasing

Based on publicly available data, the settlement landscape is continuing to evolve with individual settlements between 2016 and 2020 ranging from less than $1 million to well over $55 million. Average settlement values continue to climb. The average excessive fee settlement was approximately $14.5 million in 2020. That's $3 million more than the average settlement value in each of the three preceding years.

What can you do?

In addition to following prudent plan processes and utilizing qualified plan experts, companies that sponsor retirement plans should have adequate Fiduciary Liability insurance in place with a trusted, experienced carrier like Chubb.

For more information on Chubb's Fiduciary Liability insurance solutions, visit https://www.chubb.com/ca-en/business-insurance/fiduciary-liability.html

[1]The data contained in this report reflects excessive fee claims brought against plan sponsors and their internal fiduciaries (i.e. the parties that are typically protected by Fiduciary Liability Insurance). It does not include excessive fee claims made solely against plan service providers, such as record keepers and investment managers. This data is based on Chubb's best efforts to monitor these matters industry-wide, but Chubb makes no representations or warranties as to the completeness of the data. The information presented is based on U.S. data.

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