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Supreme Court to Decide ERISA Prohibited Transaction Dispute

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On October 4, 2024, the Supreme Court agreed to hear an appeal in *Cunningham v. Cornell University*. The appeal involves review of a split among the United States Courts of Appeals over what plaintiffs must plead when challenging the relationship between benefit plans and their service providers under ERISA.

The case (discussed in a prior [Groom update](#)) was brought by employees of Cornell University and alleges that the fiduciaries of Cornell's retirement benefits plan violated their duties under ERISA section 404 and engaged in a prohibited transaction under ERISA section 406 with respect to the selection and monitoring of certain investments and the plan's recordkeeper.

The district court dismissed the prohibited transaction claims. The court reasoned that, although the plaintiffs alleged a prohibited transaction, they failed to allege that the defendants lacked an exemption that would allow that transaction. As relevant here, ERISA section 408(b)(2) provides relief from certain prohibited transactions where a plan fiduciary procures necessary services and the plan pays no more than reasonable compensation. The district court held that plaintiffs must allege both that a prohibited transaction occurred *and* that there was no exemption available because the two statutory provisions are intended to work together. The practical effect of the holding is that the plaintiffs would need to plead with some degree of specificity that fees were unreasonable, rather than just stating that the transaction occurred.

The Second Circuit affirmed that decision on appeal, joining the Third, Seventh, and Tenth Circuits in requiring plaintiffs raising a prohibited transaction claim to allege something more than the mere existence of a transaction between a plan and a service provider. In contrast, the Eighth and Ninth Circuits have held that plaintiffs need only allege that a transaction took place and need not allege that the transaction was for more than reasonable compensation.

By granting the plaintiffs' petition for *writ of certiorari*, the Supreme Court has signaled its readiness to resolve this circuit split. The case will likely be decided next year, as the Court's current term began this month. It is difficult to forecast how the Supreme Court will rule, but the decision could potentially have a significant impact on future ERISA litigation.