Issues To Watch In 2025's ERISA Litigation Landscape

By **William Delany, Samuel Levin and Kara Wheatley** (January 17, 2025)

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In 2024, there was a notable uptick in class action filings under the Employee Retirement Income Security Act. The 136 new ERISA class actions filed in 2024 represent an increase in new cases in comparison to 2023.

That being said, the number of new ERISA class actions in 2024 is nowhere near the all-time record of the more than 200 filed in 2020. Whether the uptick in new ERISA cases will continue into 2025 will likely depend on the resolution of the following key issues.

Excessive fee filings pick up, as existing lawsuits are increasingly resolved at summary judgment and trial.

More cases challenging excessive fees and investments were filed in 2024 than in 2023. New cases have continued to challenge routine plan practices such as recordkeeping, retention of investment advisers and hindsight opposition to investment performance.

Courts continue to issue conflicting decisions regarding the requirements necessary to allege a plausible claim for relief. The U.S. Supreme Court's 2022 decision in Hughes v. Northwestern University held that "the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise."

But the Supreme Court did not clearly articulate what facts a plaintiff must allege to state a plausible claim for relief. This has resulted in disagreement among district and appellate courts regarding what a plaintiff must allege to survive a motion to dismiss. The outcome of a case may, in large part, be dependent on the jurisdiction where it is filed.

The overwhelming majority of these lawsuits that survived motions to dismiss resulted in settlements. While settlements remain common, there has been a recent increase in the number of lawsuits being resolved on the merits — at summary judgment or at trial.

In 2024, there were multiple favorable defense verdicts following bench trials, in cases including In re: Prime Healthcare ERISA Litigation, Mattson v. Milliman Inc., Mills v. Molina Healthcare Inc. and Lauderdale v. NFP Retirement Inc.

Further, some courts have become more willing on summary judgment to dig into the evidence and determine that either the plan fiduciaries engaged in a prudent process or that the decisions were objectively reasonable, or both. Given that many of these lawsuits rest on a slender reed at the pleading stage, this trend of disposition on summary judgment and at trial is likely to continue.

These lawsuits' apparent lack of success once they are judged on their merits also seems to have affected settlements. Settlement amounts appear to have decreased, with several settlements at or below $1 million. This trend is also likely to continue.

Forfeiture litigation picks up steam.

In 2024, approximately 30 class actions were filed challenging the widespread practice of using defined contribution plan forfeitures — the nonvested portion of a former employee's account balance — to offset employer contributions. Forfeiture claims have also been tacked on to new or existing excessive fee cases, making it an additional theory of recovery.

Forfeiture claims typically allege that an employer's use of plan assets to offset its contributions is self-dealing, which violates ERISA's prohibited transaction and anti-inurement rules, as well ERISA's fiduciary requirements.

Federal district courts have taken divergent views on whether an employer's use of forfeitures to offset its contributions violates ERISA — with the majority of district courts so far holding that there is no violation. No circuit court has weighed in on this issue yet.

There are also divergent results among district courts on alleged violations of the exclusive purpose rule, with some outcomes dependent on whether the plan document grants the administrator discretion to determine how forfeitures should be allocated. Some courts have held that a plan administrator's exercise of discretion to use forfeitures to offset employer contributions, rather than to pay plan expenses, violates the rule.

This issue may also need to be resolved by federal circuit courts — and may ultimately result in amendments to provisions in plan documents governing the use of forfeitures.

The Supreme Court is expected to provide guidance on pleading requirements for prohibited transaction claims.

On Jan. 22, the Supreme Court will hear arguments in Cunningham v. Cornell University regarding the pleading standard for ERISA-prohibited transaction claims.

ERISA presumptively prohibits transactions with parties that have a relationship to a plan — a so-called party in interest — but contains a series of exemptions that permit those transactions if certain conditions are met. Among other things, transactions are generally exempt if they are necessary for the operation of the plan and the compensation is reasonable.

Circuit courts have taken varying positions regarding what is necessary to plausibly allege a prohibited transaction claim — i.e., whether a plaintiff needs to plead only the existence of a transaction with a party in interest, or whether something more is required.

In Cunningham, the U.S. Court of Appeals for the Second Circuit adopted what is arguably the most stringent pleading standard to date. It held that a plaintiff must plausibly allege that a party-in-interest prohibited transaction occurred and that no exemption permitting the transaction applies.

The ruling is significant because other circuits have held that a plaintiff can plead a claim for relief merely by identifying transactions that meet the definition of a prohibited transaction, even though such transactions are common and necessary for the operation of a plan. These courts have not required the plaintiff to assert allegations that services were unnecessary or unreasonable.

The highly anticipated Supreme Court ruling in Cunningham could clarify what facts a plaintiff must plead to survive a motion to dismiss, and could also determine the extent to which fiduciaries are exposed to prohibited transaction litigation in the coming years.

Health plan fee litigation continues to develop.

In 2024, plaintiffs filed two putative class action lawsuits against employers relating to the pricing of prescription drugs — Lewandowski v. Johnson & Johnson in the U.S. District Court for the District of New Jersey and Navarro v. Wells Fargo & Co. in the U.S. District Court for the District of Minnesota.

The lawsuits contain substantially similar allegations, and both claim that employers overpaid for prescription drugs and pharmacy benefit manager services, resulting in increased costs for participants. The lawsuits attack common plan design features such as spread pricing, the retention of prescription drug rebates by the pharmacy benefit manager and steerage to pharmacy benefit manager-owned pharmacies.

The resolution of pending motions to dismiss may be affected by the U.S. Court of Appeals for the Third Circuit's dismissal of Knudsen v. MetLife Group Inc. in September for lack of Article III standing. In Knudsen, the plaintiffs alleged they paid "excessive amounts" for health insurance coverage because their employer retained prescription drug rebates instead of allocating the rebates to the plan or its participants.

However, the Third Circuit found that the plaintiffs failed to allege concrete facts demonstrating that the employer's retention of prescription drugs affected their out-of-pocket costs, or that they had an individual right to the rebates under the plan documents.

Lewandowski and Navarro may serve as test cases for the viability of future ERISA litigation regarding health plan fees. Depending on the outcome of the pending motions, we may see a wave of new health plan fee cases, or we may see the plaintiffs bar pivot in how they approach this anticipated next frontier of ERISA litigation.

Plaintiffs test tobacco use premium surcharges.

In 2024, plaintiffs filed more than 20 putative class actions alleging ERISA violations related to a common health plan design feature — premium surcharges based on tobacco use.

The lawsuits allege that the surcharges violate the Health Insurance Portability and Accountability Act's nondiscrimination requirement. The requirement prohibits group health plans from making enrollees pay a premium or contribution that is greater than one charged to a similarly situated enrollee based on a health status-related factor, such as tobacco use.

HIPAA provides an exception that allows employers to offer incentives, including premium discounts, in return for participation in a wellness program, such as a tobacco cessation course.

The lawsuits allege that the wellness programs offered by the plans did not meet the requirements of the HIPAA wellness rule. A handful of defendants have agreed to early class action settlements, but a number of defendants are seeking to dismiss the claims.

Among other things, defendants have argued their programs comply with the wellness program requirements, and that the wellness rule is not the best reading of the statute, pursuant to the Supreme Court's decision last June in Loper Bright Enterprises v. Raimondo. No court has yet ruled on a dispositive motion testing the complaints' allegations.

In many ways, the premium surcharge lawsuits are similar to the wave of lawsuits related to allegedly deficient Consolidated Omnibus Budget Reconciliation Act notices that peaked several years ago — the lawsuits allege technical violations of the wellness program rules, were filed in quick succession by a few plaintiffs firms, the complaints are largely identical in each case and the plaintiffs firms appear motivated to obtain quick class action settlements.

The future of the premium surcharge lawsuits remains to be seen. Plaintiffs firms may be motivated to file additional cases if the pending motions to dismiss are denied and additional defendants agree to early class action settlements.

Pension plan litigation ebbs and flows, actuarial equivalence lawsuits slow following a 2023 surge, and a new wave of lawsuits challenges pension risk transfer transactions.

The filing of actuarial equivalence lawsuits — cases where plaintiffs have argued that pension plan benefits were calculated using unreasonable actuarial assumptions, resulting in lower benefit payments — significantly slowed in 2024. While nine of these lawsuits were filed in 2023, only one was filed in 2024.

Two prominent cases include McFadden v. Sprint Communications LLC in the U.S. District Court for the District of Kansas, and Holloway v. Kohler Co. in the U.S. District Court for the Eastern District of Wisconsin. Each settled for less than $4 million. These settlement amounts are in stark contrast to the more than $59 million settlement in Cruz v. Raytheon Co. in 2021 in the U.S. District Court for the District of Massachusetts.

The U.S. Department of Labor provided support for plaintiffs in two lawsuits challenging the reasonableness of actuarial assumptions: Drummond v. Southern Company Services Inc. in the U.S. Court of Appeals for the Eleventh Circuit, on appeal from the U.S. District Court for the Northern District of Georgia; and Knight v. International Business Machines Corp. in the Second Circuit, on appeal from the U.S. District Court for the Southern District of New York.

In Drummond, the DOL filed an amicus brief arguing that the 70-year-old data used by the plan was too outdated to be considered reasonable. In Knight, the DOL's amicus brief urged the court to hold that ERISA's three-year statute of limitations, which applies when a plaintiff has actual knowledge of the facts giving rise to the claim, was not triggered. This is because, it argued, there was insufficient evidence that the plaintiffs had actual knowledge of the assumptions used to calculate benefits.

Meanwhile, there has been a recent wave of challenges to the practice of pension risk transfer, with nine such lawsuits filed in 2024. These transactions transfer pension plan assets and obligations to third-party insurance companies, or annuity providers. This is perhaps, in part, based on the rationale that annuity providers are best situated to manage the underlying assets to ensure that obligations are satisfied.

These lawsuits allege that the selected annuity provider was not a prudent choice relative to available alternatives. Defendants have vigorously opposed the allegations and moved to dismiss the claims. The resolution of these motions will likely determine the trajectory of this category of ERISA litigation.

Litigation continues against the DOL regarding investment advice fiduciaries.

The DOL has made repeated attempts to expand its long-standing definition of an "investment advice fiduciary" to cover first-time investment advice — when the parties had no preexisting relationship — and rollovers from ERISA plans to individual retirement accounts.

The DOL's latest attempt to revise the DOL's long-standing definition of an investment advice fiduciary was the retirement security rule, which was finalized last April. Under the new rule, an investment advice fiduciary is anyone who either states they are a fiduciary under ERISA or regularly makes professional investment recommendations to investors as part of their business, relying on their professional judgment of what is in the investor's best interest.

As with prior efforts, the DOL's position has been met with resistance by federal courts. Last July, the U.S. District Courts for the Eastern and Northern Districts of Texas blocked the DOL from implementing its change to the definition of an investment advice fiduciary.

A senior DOL official has indicated that President-elect Donald Trump's incoming administration may attempt yet another rule altering the definition.

Conclusion

2025 is poised to be another active year in the rapidly evolving arena of ERISA litigation. We expect further litigation regarding the pleading standards in defined contribution litigation, and resolution from the Supreme Court regarding the pleading standard applicable to prohibited transaction claims.

We also expect health plan litigation to be front and center, with decisions expected in key health plan fee cases. We also anticipate that litigants will increasingly rely on Loper Bright to challenge implementing rules, and we may first see a decision in that regard in the context of the tobacco premium surcharge cases.

Hold on tight, ERISA litigators. It's going to be another busy year!

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Disclosure: Wheatley was part of a Groom Law team that represented Milliman in Mattson v. Milliman.