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Quarterly ERISA Litigation Update: Recent Developments and Areas to Watch

Gibson Dunn's ERISA litigation update summarizes key legal opinions and developments during the past quarter to assist plan sponsors and administrators navigating the rapidly changing ERISA litigation landscape.

Introduction

A dedicated plaintiffs' bar continues to expand the scope of legal challenges against employer-sponsored welfare and pension benefit plans, repurposing previous theories and advancing new ones. Because such claims often seek recovery on behalf of large groups of plan participants with significant aggregate financial exposure, they remain attractive targets for litigation. Consequently, there is a significant risk—which merits attention—to virtually every employer sponsoring a large benefit plan.

This quarterly update highlights recent developments in ERISA litigation, focusing on areas where courts are actively engaging with new or evolving theories and where litigation risk continues to develop. It covers recent filing trends, significant appellate developments, and related regulatory and legislative commentary that provides context for current litigation dynamics.

I. Recent Litigation Activity

Recent ERISA filings reflect two related but distinct dynamics: continued efforts by the plaintiffs' bar to extend theories of fiduciary liability into new contexts, and increasing judicial attention to theories that would require courts to supply benefits or economic outcomes not specified in plan terms. Three recently trending legal theories illustrate these competing dynamics.

A. 401(k) Forfeiture Litigation

Over the past 18 months, plaintiffs have filed dozens of class actions challenging the use of forfeited 401(k) funds to offset employer contributions rather than to pay plan expenses or reallocate amounts to participant accounts. Plaintiffs generally allege that this practice violates ERISA's duties of loyalty and prudence by prioritizing the plan sponsor's financial interests over those of plan participants.

Recent district-court decisions, however, have increasingly rejected these claims at the pleading stage. Courts have emphasized that ERISA does not create an exclusive duty to maximize pecuniary benefits and does not authorize fiduciaries to provide benefits beyond those promised in plan documents. *See, e.g., Middleton v. Amentum Parent Holdings, LLC*, 2025 WL 2229959 (D. Kan. Aug. 5, 2025); *Wright v. JPMorgan Chase & Co.*, 2025 WL 1683642 (C.D. Cal. June 13, 2025). Most recently, in *Curtis v. Amazon.com Services LLC*, No. 2:24-cv-02164-RSM, 2026 WL 124323 (W.D. Wash. Jan. 16, 2026), the court dismissed similar forfeiture claims at the pleading stage, reasoning that ERISA does not authorize fiduciary-duty litigation to create new benefits beyond those provided in the plan document.

Some judges also point out that the use of forfeitures to offset company contributions (where permitted by plan terms) is recognized under a Treasury Department regulation in the defined benefit context, as well as under proposed regulations in the defined contribution context. *See, e.g., Polanco v. WPP Group USA, Inc.*, 2025 WL 3003060, at *4–5 (S.D.N.Y. Oct. 27, 2025); *Hutchins v. HP Inc.*, 737 F. Supp. 3d 851, 863–64 (N.D. Cal. 2024).

Courts have also rejected anti-inurement and prohibited-transaction theories, reasoning that forfeited amounts remain plan assets and do not revert to the employer when used to offset future contributions. *See, e.g.*, *Hutchins*, 737 F. Supp. 3d at 867–69. In fact, only two of the earliest motion-to-dismiss opinions permitted prohibited transaction and anti-inurement claims to proceed. *See Perez-Cruet v. Qualcomm Inc.*, 2024 WL 2702207, at *3-7 (S.D. Cal. May 24, 2024), *reconsideration denied*, 2024 WL 3798391 (S.D. Cal. Aug. 12, 2024); *Rodriguez v. Intuit Inc.*, 744 F. Supp. 3d 935, 946-49 (N.D. Cal. 2024). Most district courts to address these claims have dismissed them. *See, e.g., Fumich v. Novo Nordisk Inc.*, 2025 WL 2399134, at *8 (D.N.J. Aug. 19, 2025); *Barragan v. Honeywell Int'l Inc.*, 2024 WL 5165330, at *5-6 (D.N.J. Dec. 19, 2024); *Hutchins*, 737 F. Supp. 3d at 868 (N.D. Cal. 2024); *Dimou v. Thermo Fisher Scientific Inc.*, 2024 WL 4508450, at *10 (S.D. Cal. Sept. 19, 2024). Several dismissal decisions are now pending on appeal. For a more detailed discussion, see our recent client alert on 401(k) forfeiture litigation.

Why this matters: These cases underscore that district courts have been increasingly unwilling to treat compliance with express plan terms as a fiduciary breach, but pending appeals mean sponsors should continue to expect scrutiny of how plan forfeiture provisions are drafted and applied.

B. Voluntary Benefits Litigation

A series of recent ERISA class actions involves challenges to voluntary benefits programs, including accident, critical illness, hospital indemnity, and cancer insurance. These cases, filed in late 2025, reflect an emerging effort by plaintiffs to extend ERISA fiduciary theories into what are often fully employee-paid welfare benefits.

Recent complaints filed against employers such as Labcorp, Allied Universal, and Community Health Systems advance similar allegations. Plaintiffs assert that the voluntary benefits programs are governed by ERISA and that fiduciaries failed to prudently select and monitor insurers and brokers. The complaints focus on broker compensation and contend that fiduciaries failed to evaluate whether participants received reasonable value.

The claims typically package these factual allegations into multiple overlapping theories, including breach of the duties of prudence and loyalty, failure to monitor service providers, and prohibited transactions based on allegedly excessive or conflicted compensation arrangements. The cases remain at an early stage, and courts have not yet addressed threshold issues such as ERISA coverage, fiduciary status, or the relevance of loss-ratio allegations.

What to watch: Although these cases are at an early stage, they suggest increased scrutiny of broker compensation structures, service provider monitoring practices, and how voluntary benefits programs are documented and administered.

C. Tobacco Surcharge Litigation

Recently, there has also been a rise in ERISA class actions against employers challenging tobacco surcharges in wellness programs. *See, e.g., Bokma v. Performance Food Grp., Inc.*, 783 F. Supp. 3d 882 (E.D. Va. 2025); *Mehlberg v. Compass Grp. USA, Inc.*, 2025 WL 1260700 (W.D. Mo. Apr. 15, 2025). These cases generally allege that tobacco surcharges and related wellness program features violate ERISA by failing to offer compliant reasonable alternative standards or providing inadequate notice to participants. While some early decisions allowed claims to proceed past the pleadings phase, two district courts recently rejected the argument.

On November 4, 2025, the U.S. District Court for the District of Rhode Island in *Williams v. Bally's Management Group LLC* dismissed ERISA claims challenging the legality of a $65-per-month tobacco surcharge under an employer-sponsored health plan and associated tobacco-cessation wellness program offered by Bally's Management Group. 2025 WL 3078747, at *1, *3–4 (D.R.I. Nov. 4, 2025). In *Williams*, the plaintiff alleged that Bally's violated ERISA by imposing a surcharge on tobacco users who did not complete a cessation program, failing to reimburse surcharges paid before completion of the program, and providing inadequate notice of the wellness program's terms. The district court rejected these claims, holding that ERISA and applicable regulations do not require retroactive reimbursement of tobacco surcharges and that the plan materials provided sufficient notice of the program's requirements. *Williams*, 2025 WL 3078747, at *11–14.

More recently, on February 3, 2026, the U.S. District Court for the Eastern District of Missouri dismissed with prejudice ERISA claims alleging that an employer's $60 monthly tobacco surcharge and associated tobacco cessation wellness program violated ERISA statutory and regulatory requirements. *See Plesha v. Ascension Health Alliance*, Case No. 4:24-cv-01459-CMS, at *1–3 (E.D. Mo. Feb. 3, 2026). Specifically, the plaintiff alleged that the defendant violated ERISA by failing to retroactively reimburse surcharges to participants who completed the tobacco cessation program, failing to provide adequate notice of the wellness program in plan materials, and breaching fiduciary duties to the plan in assessing the allegedly discriminatory surcharge. *Id*. at *2–3. The district court disagreed with each of the plaintiff's claims, finding that retroactive reimbursement of surcharges is not required by the statute, that plaintiff did not sufficiently plead an informational injury to support standing for her notice claim (and, alternatively, that the defendant's plan disclosures did comply with ERISA requirements), and that the defendant violated no fiduciary duties because it acted as a settlor, not a fiduciary, in creating and administering a compliant health plan. *Id*. at *9–21.

Practical context: The *Williams* and *Plesha* decisions provide early examples of courts resolving tobacco-surcharge claims at the pleading stage in favor of the employer, suggesting that well-documented program design and participant disclosures may meaningfully affect outcomes even as this area of litigation continues to develop. More broadly, *Williams* and *Plesha* suggest that courts may be reluctant to use ERISA fiduciary-duty theories to rewrite wellness program incentives or to order retroactive premium refunds absent a clear, plan-based entitlement.

II. Significant Appellate Developments

Cunningham v. Cornell University

In *Cunningham v. Cornell University*, the Supreme Court held that an ERISA plaintiff asserting a prohibited-transaction claim under 29 U.S.C. § 1106(a)(1)(C) need only plausibly allege the elements contained in § 1106(a)(1)(C) to survive a motion to dismiss and need not plead facts negating potential statutory exemptions. 604 U.S. at 696, 700–702. The Court explained that § 1108's exemptions are set out as affirmative defenses—not elements of a § 1106(a)(1)(C) claim—so it is defendant fiduciaries who bear the burden of pleading and proving an applicable exemption. *Id.* at 696, 701–702. The Court emphasized that "plaintiffs need do no more than plead a violation of § 1106(a)(1)(C)," *id.* at 700, while also noting that a plaintiff will not ultimately prevail if defendants later establish that an exemption applies. *Id.* at 702–703.

The Court's decision thus addresses pleading and burden allocation rather than expanding the universe of transactions that qualify as prohibited transactions under § 1106(a)(1)(C): a covered transaction remains "presumptively unlawful" unless an exemption is shown, but exemption issues generally are addressed after the complaint stage. *Id.* at 700–703, 709. The majority acknowledged concerns that its pleading rule could allow "barebones" claims to proceed and discussed district courts' tools to screen or manage meritless cases (including Rule 7(a) replies, standing-based dismissal, discovery limits, Rule 11 sanctions, and ERISA cost shifting). *Id.* at 707–709; *see also id.* at 710–712 (Alito, J., concurring).

Practical impact: Cunningham makes prevailing on a motion to dismiss based on an exemption to the prohibited-transaction rule more difficult, increasing the likelihood that some prohibited-transaction claims will proceed beyond the pleading stage—subject to district courts' authority to manage or curtail discovery and dismiss claims on other threshold grounds (including lack of concrete injury). *Id.* at 707–709; *id.* at 710–712 (Alito, J., concurring). The Supreme Court's embrace of these more novel pleading to challenges may invite defendants in appropriate cases to employ other creative approaches to respond to tenuous prohibited transaction claims.

Anderson v. Intel Corp. Investment Policy Committee

The Supreme Court has agreed to review ERISA pleading standards again next term. On January 16, 2026, the Supreme Court granted certiorari in *Anderson v. Intel Corp. Investment Policy Committee*, No. 25-498, to address the pleading standard for an ERISA fiduciary breach claim based on fund underperformance—specifically, whether such a claim requires pleading a "meaningful benchmark." As relevant to the issue before the Supreme Court, the Ninth Circuit affirmed dismissal of an ERISA duty-of-prudence claim predicated on fund underperformance because the complaint did not allege a meaningful benchmark—i.e., a sound comparator with similar objectives (and risks)—from which the court could plausibly infer that the fiduciaries acted imprudently based on performance results. *Anderson v. Intel Corp. Investment Policy Comm.*, 137 F.4th 1015, 1022 (9th Cir. 2025).

In parallel, *Parker-Hannifin Corp. v. Johnson* (No. 24-1030) remains pending at the Supreme Court and presents a closely related question—whether, in an ERISA imprudent-investment claim predicated on comparative underperformance, the complaint must allege that a proposed benchmark is a sound basis for comparison. The Court's decision in *Anderson* may therefore provide needed clarity concerning the circuit split between the Ninth Circuit's "meaningful benchmark" requirement and the Sixth Circuit's rejection of a categorical benchmark pleading rule. *See Johnson v. Parker-Hannifin Corp.*, 122 F.4th 205 (6th Cir. 2024).

III. Regulatory and Policy Context

The litigation trends described above—particularly the relatively low pleading threshold for certain ERISA claims and the continued willingness of the plaintiffs' bar to press novel fiduciary theories—have not gone unnoticed by regulators and policymakers.

In his November 20, 2025 speech, SEC Commissioner Mark T. Uyeda cautioned that expansive ERISA litigation—and permissive pleading standards—may meaningfully affect fiduciary decision-making. *See* Mark T. Uyeda, Comm'r, U.S. Sec. & Exch. Comm'n, The Diversification Deficit: Opening 401(k)s to Private Markets (Remarks at the ICI Retail Alternatives and Closed-End Funds Conference, New York, N.Y., Nov. 20, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-diversification-deficit-opening-401ks-private-markets-112025. He emphasized that regulatory permission alone may be insufficient if fiduciaries remain exposed to significant litigation risk, observing that sponsors may be reluctant to adopt new plan features not because such actions are prohibited, but because litigation exposure creates a practical constraint.

Commissioner Uyeda made these observations in the context of urging broader access to private market investments—such as private equity, private credit, infrastructure, and real estate—within 401(k) and other defined contribution plans. He noted that current retirement savers face a "diversification deficit" under public-market-centric structures and that regulatory frameworks should not assume that excluding certain asset classes is inherently safer.

Consistent with those concerns, regulatory and legislative attention has also turned to the procedural and substantive contours of ERISA fiduciary litigation. In September 2025, the Department of Labor announced its intent to issue a notice of proposed rulemaking to clarify the duties of a fiduciary when making available an asset allocation fund that includes investments in alternative assets. In January 2026, the Department submitted the draft proposal to the Office of Information and Regulatory Affairs (OIRA) for interagency review, where it remains pending.

Separately, in November 2025, Representative Randy Fine introduced the ERISA Litigation Reform Act (H.R. 6084), which would amend ERISA to require plaintiffs in certain prohibited-transaction cases to plausibly allege (and ultimately prove) that the challenged transaction is not exempt, and would stay discovery while specified Rule 12 motions are pending (subject to limited, enumerated exceptions). The bill remains at the introductory stage and has been referred to the House Committees on Education, the Workforce, and the Judiciary.

Taken together, Commissioner Uyeda's remarks and the introduction of H.R. 6084 reflect recognition by policymakers that the current ERISA litigation framework—particularly at the pleading stage—may influence fiduciary behavior as much as substantive regulatory guidance, and that this framework may need to be changed to ensure that plan design choices aimed to increase participants' choices are not constrained by litigation threats.

Practical context: Together, these developments highlight how pleading standards and litigation risk may shape fiduciary decision-making even where regulatory guidance permits greater flexibility.

Closing

We will continue to monitor these developments and provide updates as additional decisions are issued and new cases progress.

The following Gibson Dunn lawyers prepared this update: Karl Nelson, Ashley Johnson, and Jennafer Tryck.

Gibson Dunn lawyers are available to assist in addressing any questions you may have about these developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any leader or member of the firm's ERISA Litigation, Labor & Employment, or Executive Compensation & Employee Benefits practice groups:

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