

# Johnson and Johnson Case Highlights Fiduciary Duty Obligations of Employer-Sponsored Health Plans

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A recent class action complaint filed against Johnson and Johnson in its capacity as the plan sponsor of a group health plan, its benefits committee, and the members of the benefits committee (collectively, the “**Defendants**”) for breaches of fiduciary duties may be a sign of a new ERISA litigation trend against employer-sponsored health plans.

The complaint alleges that the Defendants breached their ERISA fiduciary duties by mismanaging Johnson and Johnson’s prescription-drug benefits program, particularly with respect to its contractual arrangement with its pharmacy benefit manager (“**PBM**”), Express Scripts. The complaint states that the Defendant’s mismanagement of the prescription-drug benefits program is most evident in the prices it agreed to pay the PBM for many generic prescription drugs, such as agreeing to pay \$10,239.69 for a 90-pill teriflunomide prescription that could be obtained at various pharmacies for \$28 – \$77 without insurance. Notably, in this case, benefits under the plan are being paid through a VEBA trust that is funded by employer and participant contributions.

This complaint was filed on February 5th of this year, so there is more to come on this topic. However, there are some important takeaways for employers based on the facts alleged in the complaint.

First, the plan administrator of an employer-sponsored, group health plan, particularly one funded by a VEBA, has a fiduciary responsibility to engage in a prudent process when selecting and negotiating with its PBM, which may require an open RFP. Experts may need to be engaged to analyze the financial terms of a PBM contract and to understand and evaluate alternatives to a traditional PBM arrangement. When engaging experts for the plan, the responsible plan fiduciary should be aware of any direct and indirect compensation they may be paid from the PBM arrangement.

Finally, plan fiduciaries should have ongoing processes for monitoring and reviewing plan fees, the prescription drug formulary, and the PBM’s performance.

The *Lewandowski v. Johnson & Johnson* class action complaint is available [here](#).