

The Supreme Court Weighs in on ERISA's Prohibited Transaction Pleading Standard

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On April 17th, the Supreme Court in *Cunningham v. Cornell University* unanimously determined that participants who allege that a plan sponsor has engaged in a prohibited transaction due to excessive fees must only plead that the prohibited transaction actually exists without the need to state that an ERISA exemption does not apply. The case was originally filed in 2016 as a class action lawsuit against the plan sponsor, Cornell University, alleging that the 403(b) plan paid excessive recordkeeping fees partly due to numerous investment options offered on the plan's investment menu.

As a result of the Court's validation of these favorable pleading standards for plaintiffs, the recent rise in fiduciary lawsuits is unlikely to subside. However, the Court did indicate that, in order to limit meritless litigation, if a plan sponsor files an answer to a complaint specifying that a prohibited transaction exemption applies and the plaintiff does not provide a sufficient reply, lower courts could, in their discretion, dismiss the lawsuit.

In addition, as we previously reported [here](#), there are proactive steps that a plan sponsor can take that could mitigate the risk of fiduciary lawsuits and related damages by (i) updating plan documents with regard to potential litigation, such as adding mandatory arbitration provisions to the plan documents and a shorter limitations period for bringing fiduciary breach claims; (ii) ensuring that plan fiduciaries document their "procedural prudence" when making fiduciary decisions affecting the plan; and (iii) providing regular fiduciary training to committee members and other plan fiduciaries.

The Court's opinion is available [here](#).