



Current State of Retirement Plan Forfeiture Litigation Subject of Wagner Law Update

25 forfeiture lawsuits have been filed to date; brief focuses on recent Clorox decision and potential impact of Supreme Court Loper Bright ruling



by **Brian Anderson** · November 14, 2024 · ⌚ 2 minute read



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The Wagner Law Group this week released an update on the recent flood of retirement plan “forfeiture” litigation, revealing that to date, there have been 25 forfeiture lawsuits filed in a variety of jurisdictions (11 in federal courts in California).

Six decisions on motions to dismiss have been issued so far, with two motions being denied outright and one motion granted without leave to refile. The remaining three motions were granted, but with leave to plaintiffs to amend their complaints.

The new alert—Wagner Law Group’s eighth update reporting on and analyzing the nature of the claims raised by plaintiffs, the defenses asserted against them and the court opinions deciding the issues raised in these matters—begins with an overview of the *McManus v. Clorox* decision, where the U.S. District Court for the Northern District of California (Judge Rogers) issued a substantive decision on Nov. 1, granting Clorox’s motion to dismiss—but without prejudice to plaintiff’s filing an amended complaint on some of the allegations.

The new brief also covers an issue not yet directly addressed by any of the decisions published so far that Wagner Law Group believes will impact future decisions in forfeiture cases—the recent Supreme Court opinion in *Loper Bright Enters. v. Raimondo*. In particular, the update considers how *Loper Bright* may impact a future court’s consideration of IRS guidance regarding the use of forfeited funds in cases arising under Title I of ERISA.

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The brief concludes with some thoughts on both matters.

“The Clorox decision should be welcome news for the many defendants currently facing complaints alleging misuse of forfeited amounts. Like the HP Inc. decision on which its reasoning is most closely modeled, it addresses head-on the essence of the plaintiff’s case and provides further support to defendants seeking an early release from the complaints against them,” the brief states. It goes on to note that an amended complaint was filed in the HP Inc. case on July 17, 2024, and that a hearing on defendant’s motion to dismiss that amended

complaint is currently set for hearing on January 30, 2025. “The plaintiff in Clorox may certainly pursue a similar path.”

Thoughts then turned to Loper Bright’s potential impact on forfeiture litigation.

“We will continue to watch closely as future litigants and/or courts address these matters to see how these issues unfold in the law. Regardless of the ultimate outcome, we predict that the uncertainties presented by the ongoing forfeiture litigation will continue to present a variety of vexing issues for fiduciaries, plan sponsors, litigants and the courts.”

In the meantime, Wagner Law Group said it believes that plan sponsors should review the forfeiture provisions of their defined contribution plans to determine what, if any, actions might be advisable to reduce the risk of possible litigation. “They should also consider whether fiduciary decisions relating to forfeitures could be seen as relieving them of obligations to the plan and imposing additional costs on participants and whether action should be taken now that might mitigate litigation risk going forward,” the update concludes.

Read the [full update here](#).

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Veteran financial services industry journalist Brian Anderson joined 401(k) Specialist as Managing Editor in January 2019. He has led editorial content for a variety of well-known properties including Insurance Forums, Life Insurance Selling, National Underwriter Life & Health, and Senior Market Advisor. He has always maintained a focus