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5 Cases Benefits Attorneys Should Keep An Eye On In 2025

By **Kellie Mejdrich**

Law360 (January 1, 2025, 8:01 AM EST) -- The U.S. Supreme Court will hear Cornell University workers' bid to revive a retirement plan lawsuit, the Ninth Circuit will weigh whether a nicotine surcharge dispute belongs in arbitration, and the Second Circuit will hear Yale University defend a win in a fight over retirement plan fees and investments.

Here are five cases benefits lawyers should have on their radar in the new year.

Cornell Workers Push High Court to Reinstate Their Case

The Supreme Court is expected to weigh in on the pleading standards for workers alleging retirement plan mismanagement, after justices in October granted Cornell University workers' petition for review of a Second Circuit decision that ended their Employee Retirement Income Security Act suit.

Justices have **scheduled arguments** in the case for Jan. 22 in the appeal from Cornell workers, who challenged a November 2023 Second Circuit panel's decision to affirm a summary judgment win for the university on claims recordkeeping fees were excessive.

The high court also approved the federal government's request to argue as amicus on behalf of the university retirement plan participants who petitioned for review in the case. The government **filed an amicus brief** in support of petitioners earlier in December.

Marcia Wagner, founder and managing partner of the Wagner Law Group, said she's watching the Supreme Court case, which she hopes will resolve a "three-way circuit split" regarding what workers have to plead to advance a prohibited transaction claim involving a retirement plan service provider — specifically under Section 406(a)(1)(c) of ERISA.

A core dispute in the case has to do with whether workers alleging a transaction was prohibited under Section 406(a)(1)(c) must also plead that an exemption to ERISA's prohibited transaction provisions, described in Section 408 of the law, was not met for a claim to advance.

Wagner said there are multiple ways the Supreme Court could rule, but "if a plaintiff needs to establish not only that there was a transaction with a service provider, but also that such transaction may have involved self-dealing, been unnecessary, or resulted in unreasonable compensation to the service provider, a plan fiduciary will need to pay increased attention to these matters."

Michelle Yau, who chairs the employee benefits and ERISA practice at Cohen Milstein Sellers & Toll PLLC, said she's also keeping a close eye on the Cornell case.

Yau said "there's a lot of confusion" among the circuit courts about what's required to plead a prohibited transaction claim under ERISA when service providers are involved.

Yau also took note of the narrow question that justices are taking up, which is focused on the pleading standards for Section 406(a)(1)(c) and not other types of prohibited transaction claims involving parties in interest to a plan, such as company insiders, for example.

"I think it's important to put in context all the stuff that's not going to be disturbed" by the case, Yau said.

The case is Casey Cunningham et al. v. Cornell University et al., case number 23-1007, in the U.S. Supreme Court.

Justices May Take Up Preventive Care Battle

On Sept. 19, the federal government **petitioned for high court review** of a Fifth Circuit decision that found a task force setting coverage requirements on preventive care was unconstitutional. Businesses and individuals challenging the preventive care requirements filed their own cross-petition seeking review.

Though it's still unclear whether the case will ascend to the high court's docket, it's one attorneys say they're watching. The justices are expected to decide whether to take the case sometime in January, and a ruling could impact the fate of many preventive services requirements on insurers established under the Affordable Care Act.

Plaintiffs in the case include Texas residents Joel Starnes and John Kelley, the latter of whom runs Kelley Orthodontics, and wellness center management firm Braidwood Management Inc.

Richard Hughes IV, a healthcare attorney and partner at Epstein Becker Green, said attorneys should pay attention to the case because a decision in the case "could have, really, a very significant impact on one of the most substantive benefits requirements that exist in a law."

Hughes refers to preventive services requirements under the Affordable Care Act, which added Section 2713 to the Public Health Services Act. The Fifth Circuit's decision being appealed by the federal government struck down a national injunction that would have lifted coverage requirements on a range of preventive treatments, but kept an injunction in place preventing the law's application to the individuals and businesses in Texas who sued.

The government's petition focuses on the constitutionality of the U.S. Preventive Services Task Force, which is essentially in charge of determining many of the preventive services that need to be covered cost-free under the ACA. Its guidance has required cost-free coverage for preventive care ranging from breast cancer screenings to preexposure prophylaxis, or PrEP, a medication used to prevent HIV.

Absent Supreme Court action, the Fifth Circuit left open the possibility that the plaintiffs or other similarly situated parties can try to get a nationwide block on cost-free preventive services treatments set by the preventive services task force.

Hughes added that another factor to watch in the case has to do with a new administration coming into place in 2025.

"It's a very open question as to whether the government and the new administration will continue to uphold the position in opposition to the plaintiffs," Hughes said.

The government's petition is Xavier Becerra, Secretary of Health and Human Services et al. v. Braidwood Management Inc. et al., 24-316, in the U.S. Supreme Court. Braidwood's petition is Braidwood Management Inc. et al. v. Xavier Becerra Secretary of Health and Human Services et al., case number 24-475.

2nd Circ. Mulls Yale Workers' 403(b) Suit

Benefits attorneys are also keeping close tabs on a dual-sided appeal at the Second Circuit from Yale University and a class of employee retirement plan participants who alleged excessive retirement plan fees and poorly performing investments, following a post-trial verdict in Yale's favor.

During **panel arguments in September**, all three judges appeared open to parts of workers' argument that a jury was erroneously instructed before rendering a **verdict in June 2023**. The jury found that Yale had breached its fiduciary duty to the employees' 403(b) plan and that the breach had caused a loss, but it later calculated that Yale owed zero dollars in damages. A 403(b) plan is essentially a 401(k) plan for tax-sheltered organizations such as nonprofit and not-for-profit organizations.

Arguments on appeal hinge on the issue of whether the jury was properly instructed on how to measure damages caused by Yale's breach of fiduciary duty under ERISA, which workers had already proved resulted in a plan loss.

Yale workers argue on appeal that the jury was erroneously told that Yale could evade damages if it showed that a prudent fiduciary "could have" made the same decisions. Yale workers argue the jury instead should have been told to consider whether a prudent fiduciary "would have" made the same choices. Yale argues on cross-appeal that the verdict should be affirmed, but that workers also aren't entitled to a jury trial if there is a retrial.

Wagner, of Wagner Law Group, said she's keeping a close eye on how the Second Circuit weighs in on the 'would have, could have' dispute when it comes to the standard under ERISA for proving loss causation.

A Second Circuit decision finding the defense must prove loss causation could be "potentially a game-changing decision," Wagner said.

Wagner said workers' "would have" argument would be "troublesome" for the Second Circuit to adopt, "because it assumes that there is only one correct decision that a fiduciary could make, which appears to be more of a results-based standard than a process-based standard."

The case is Vellali v. Yale University, case numbers 23-1082 and 23-1172, in the U.S. Court of Appeals for the Second Circuit.

9th Circ. Poised to Rule in Sodexo Nicotine Case

Attorneys await a decision from the Ninth Circuit in a battle between food services company Sodexo and workers who allege a nicotine surcharge in their employee health plan violated ERISA. The key issue on the appeal is whether pushing class claims into individual arbitration thwarts the goals of ERISA, a question which might eventually find its way to the U.S. Supreme Court.

A three-judge Ninth Circuit panel heard oral **arguments in September** on Sodexo's push to force the proposed class action into individual arbitration**.** Sodexo **appealed** after a California federal judge **refused to compel arbitration in 2023**. Both Sodexo and the workers squared off over whether the lower court rightly applied what's known as the Federal Arbitration Act's effective vindication doctrine, which gives judges deference under the FAA not to enforce arbitration agreements that eliminate statutory remedies.

Attorneys are watching to see if the Ninth Circuit follows the logic of another appellate panel from 2019 that compelled individual arbitration of a proposed class action against Charles Schwab Corp. from workers who alleged 401(k) plan mismanagement. The decision compelling arbitration was unpublished, while the panel in a published opinion rescinded precedent in the circuit that previously barred any arbitration of ERISA class actions.

Gerald Maatman, who chairs Duane Morris LLP's class action defense practice, said he's keeping an eye on the Sodexo case to see if it's "one of the vehicles that gets to the U.S. Supreme Court."

Plaintiffs have been on a victory streak in appellate courts on the issue of ERISA arbitration, with the Sixth Circuit becoming the fifth appellate court in recent years to reject an employer-side attempt to push proposed class actions into individual arbitration by amending language governing the plan.

Maatman said in his experience, the Ninth Circuit had been "probably one of the more anti-arbitration circuits." But justices' views on arbitration suggest the opposite, he said.

"I think that the higher up you go into the court system, when you get to the Supremes, their view of these issues is kind of informed by their incredible pro-arbitration bent, and that a lot of people thought that cases that they couldn't win below, get won at the Supreme Court level," Maatman said.

The case is Robert Platt v. Sodexo SA et al., case number 23-5573, in the U.S. Court of Appeals for the Ninth Circuit.

Vax-Refusal Health Plan Surcharge Teed Up in North Carolina

Another case Maatman and other attorneys are closely monitoring for developments is a proposed class action in North Carolina district court alleging a security company's health plan illegally imposes a surcharge on individuals who refuse to get vaccinated for COVID-19 and who use nicotine.

GardaWorld on Dec. 2 **moved to dismiss** the proposed class action alleging nicotine and vaccine surcharges violated ERISA, arguing the fees are legal under a wellness program authorized by ERISA, which allows employers to apply fees as long as participants are offered reasonable alternatives to the fee.

Blair Artis and Jonathan Fisher, two armed guards for GardaWorld, first sued in September, alleging the security company violated ERISA's anti-discrimination provisions with regard to $100-a-month surcharges on the health plans of employees. The proposed class also alleged workers weren't given adequate notice of alternatives to being assessed fees under both programs

Maatman, at Duane Morris, said **class actions targeting employers' wellness programs**, including nicotine fees, are an emerging trend in ERISA class action litigation.

"The plaintiffs bar is looking for opportunities to push the boundaries of statutory interpretations of ERISA and find noncompliant situations they can sue over in a class action context," Maatman said.

Maatman said he's seen an increased volume over the last three months of cases targeting various health plan surcharges, though the trend started with nicotine fees.

"What you're seeing is an evolution or a pushing of the legal envelope by the plaintiffs bar in terms of innovative strategies to press this sort of issue," Maatman said.

The case is Artis et al. v. GardaWorld Cash Service Inc., case number 3:24-cv-00837, in the U.S. District Court for the Western District of North Carolina.

--Editing by Bruce Goldman and Leah Bennett.

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