401(K) REGULATIONS YOUR 401(K) NEWS

Supreme Court Supports Cornell Participants in ERISA Suit

The decision allows Cornell University employees another chance in challenging the institution's retirement plan

by **Amanda Umpierrez** · April 17, 2025 · 4 minute read

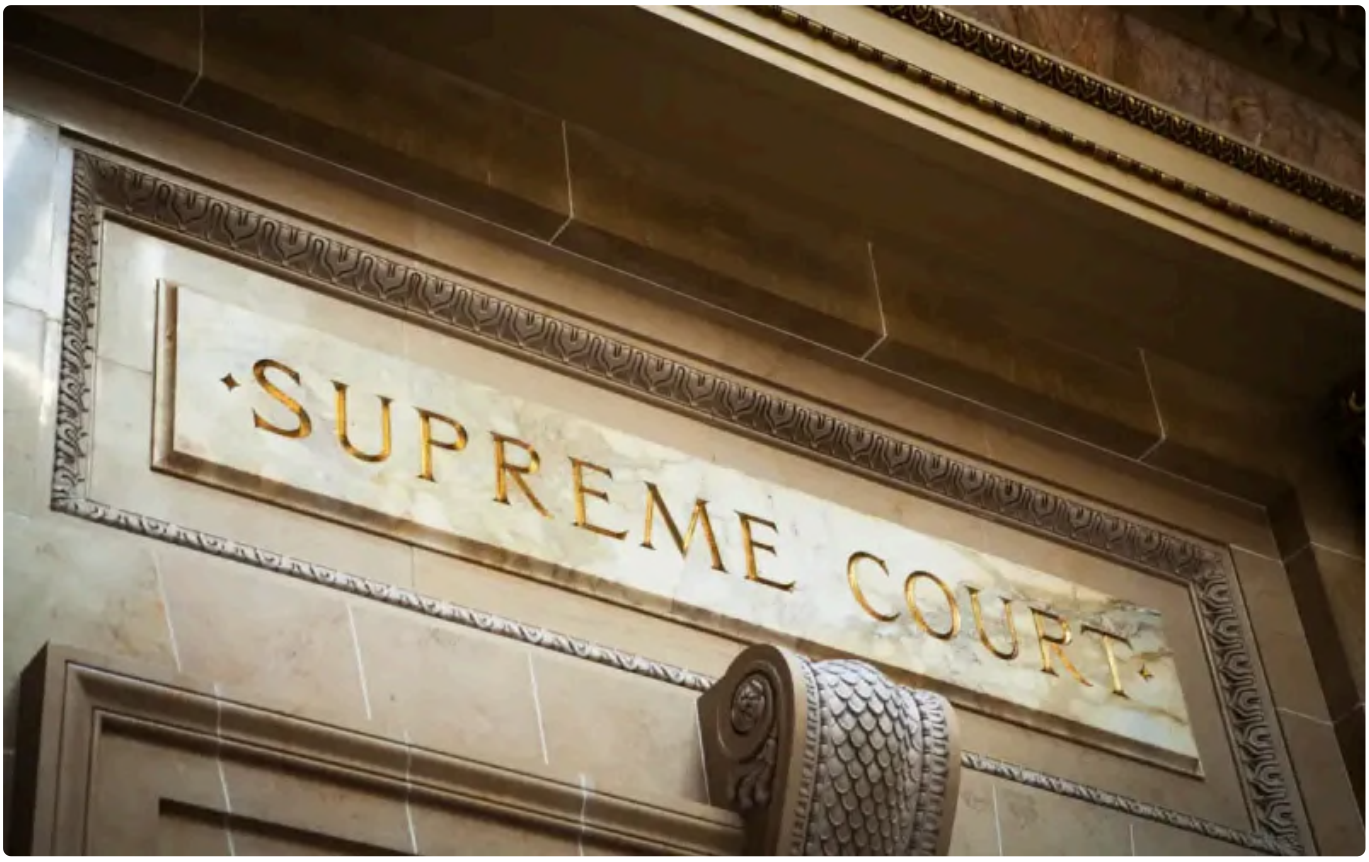

Image Credit: iStock Photos | Getty Images

The U.S. Supreme Court today announced it had sided with retirement plan participants who had previously sued Cornell University for excessive fees in the

institution's 403(b) plan, marking a major win for university employees.

In a unanimous decision, Supreme Court justices held that Section 1108 of ERISA outlines affirmative defenses and that plan fiduciaries must both plead and prove that an exemption applies to a prohibited transaction under Section 1106.

Further, plaintiffs who challenge employers under ERISA's prohibited transaction rules will not have to detail their complaints that show whether statutory exemptions apply, the Supreme Court opinion read.

Plaintiffs who accuse an employer of prohibited transactions "must plausibly allege that a plan fiduciary engaged in a transaction proscribed therein, no more, no less," stated Justice Sonia Sotomayor. "Plaintiffs are not required to plead and prove that the myriad §1108 exemptions pose no barrier to ultimate relief."

Related Posts:

- DOL Final Fiduciary Rule Released, Set to Become Effective in September
- Trump EBSA Nominee Aronowitz a Stern Critic of Frivolous ERISA Litigation
- Corporate Roundup: CFP Board CEO Announces Retirement, HSA Bank Updates Logo

"The actual opinion was pretty straightforward: The structure and language of ERISA's prohibited transaction rules suggest that ERISA Section 408 exemptions are affirmative defenses, which a Plaintiff need not address in order to plead a *prima facie* claim for violation of the prohibited transaction rules found in Section 406(a)," explained Andrew Holly, an ERISA attorney who represents

fiduciaries, plan sponsors, and insurers/plan service providers for law firm Dorsey & Whitney.

"This means that to survive a motion to dismiss, a plaintiff need only allege that an ERISA plan entered into a contract with a 'party in interest,' which would include an existing recordkeeper," he further added.

History behind *Cunningham v. Cornell University*

Over 28,000 Cornell University employees filed a class action lawsuit against the college in 2016, over allegations that the institution had breached their fiduciary duty by offering investment products like the CREF Stock Account, Money Market Account, and TIAA Traditional Annuity, against their best interests.

Plaintiffs also alleged that university officials failed to effectively monitor and control recordkeeping fees and failed to effectively monitor and offer appropriate investment options.

Now nearly 10 years ago, *Cunningham v. Cornell University* was filed during a time that saw waves of lawsuits targeting 403(b) retirement plans. In 2019, the *Cunningham* district court granted Cornell's motion to dismiss the prohibited transaction claims targeting the plan's recordkeeping fees, and the Second Circuit Court of Appeals affirmed this dismissal in November 2023.

The ruling comes a few months after several groups filed two amicus briefs requesting for the Supreme Court to uphold its 2023 decision. The ERISA Industry Committee (ERIC) and a coalition of employee benefit industry

"This means that to survive a motion to dismiss, a plaintiff

groups including the American Benefits Council and the SPARK Institute; along with Encore Fiduciary under the leadership of its President Daniel Aronowitz, filed a pair of amicus briefs in January calling for tougher pleading standards to halt the growing number of ERISA class action litigation suits.

Both briefs argued that upholding the decision would protect plan participants while supporting the creation and orderly administration of employee benefit plans.

> need only allege that an ERISA plan entered into a contract with a 'party in interest,' which would include an existing recordkeeper."
>
> Andrew Holly, ERISA attorney

"If every transaction can be the subject of a suit, then plans will be mired in litigation, which harms participants. And if plans are less likely to engage the expertise of service providers, that could also harm participants," said Tom Christina, executive director of the ERIC Legal Center, at the time. "Nobody profits from this type of system—except the lawyers, of course."

What's next

Following news of the decision, industry experts questioned whether the verdict would induce a flood of new ERISA litigation against 403(b) and 401(k) plans.

While Holly expects to see an uptick in ERISA cases, it's unlikely litigation will overflow, he states. He likens the outcome to one in *Braden v. Wal-Mart Stores*, in which a Walmart employee sued the retail corporation for mismanaging its profit sharing and 401(k) plans.

Ultimately, the United States Court of Appeals for the Eighth Circuit held that Jeremy Braden, a participant under Walmart's retirement plan, had made a sufficient showing and proved a cause of action under ERISA, and stated that the district court had placed higher standards on plaintiffs to prove the allegations.

"The Eighth Circuit had essentially already adopted this rule in the Braden decision.

Although prohibited transaction claims are more likely to be raised in the Eighth Circuit. I have not seen an enormous difference in the number of ERISA putative class actions filed in the Eighth Circuit vs. other circuits," Holly observed.

Instead, "ERISA plaintiffs' counsel will often file claims with dubious merits in hopes of a settlement, but they do take on some risk with every new case, so they have an incentive to be somewhat judicious," he stated.

Despite their verdict, the Supreme Court did offer relief to plan sponsors and fiduciaries facing suits by highlighting its Rule 7(a)(7) of the Federal Rules of Civil Procedure. The rule would mandate plaintiffs to "file a 'reply' to an answer that would force them to address the exemptions/affirmative defenses raised in the answer," or essentially what is filed in response to a complaint, explained Thomas Clark, an ERISA attorney with the Wagner Law Group, in a post on LinkedIn.

"As the Supreme Court acknowledged, this is not an often used procedural approach. But now it's been given a unanimous green light by all nine justices to be utilized by the lower courts," he stated.

Ultimately, the Supreme Court's decision could push district courts to examine whether allegations are of merit before moving forward with litigation processes, Holly hopes. "With all that said, perhaps the Supreme Court's endorsement of these procedures might cause courts to look more carefully at

ERISA matters and take steps to ensure that meritless claims are weeded out early on in the process," he concluded.

SEE ALSO:

Groups Urge Supreme Court to Clarify ERISA Litigation Pleading Standards to Combat Surge in Frivolous Suits

Amanda Umpierrez

Managing Editor at 401(k) Specialist | Web | + posts

Amanda Umpierrez is the Managing Editor of 401(k) Specialist magazine. She is a financial services reporter with nearly a decade of experience and a passion for telling stories and reporting news. She is originally from Queens, New York, but now resides in Denver, Colorado.

401(K) LITIGATION | 403(B) PLANS | DEFINED CONTRIBUTION PLAN (DC PLAN) | SUPREME COURT OF THE UNITED STATES (SCOTUS)