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Plaintiffs Face Multiple ERISA Consequences After Cornell Ruling

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The US Supreme Court's April ruling in *Cunningham v. Cornell University* set off predictions of a flood of new retirement plan class action lawsuits under the Employee Retirement Income Security Act of 1974. Indeed, Cornell's unsuccessful Supreme Court brief warned of an "avalanche of litigation" from plaintiffs banking on settlement payouts from defendants desperate to avoid costly discovery.

Although this sentiment was endorsed by the court itself, projections of a jump in the *quantity* of cases filed are, at a minimum, highly speculative. The *Cunningham* decision will leave its mark on defendants' approach to ERISA litigation. But however the floodgates are defined, the reality is that they have been open for some time in the ERISA class action arena.

A review of ERISA class action filings over the last 25 years confirms this and suggests at least three potential unintended consequences of the *Cunningham* decision for plaintiffs filing ERISA class action lawsuits.

Plaintiffs may see expedited discovery and a decline in early settlements if defendants decide a motion to dismiss would be futile and instead immediately engage in discovery aimed at proving an exemption. Plaintiffs will likely also see more court involvement on prohibited transaction claims, including requiring replies to affirmative defenses and curbing broad discovery.

ERISA retirement plan litigation has been booming for more than two decades, long before *Cunningham v. Cornell*. In 2000, fewer than 10 retirement plan class actions were filed, according to a Bloomberg Law docket search. By 2006, there were more than 50; by 2016, more than 90. Filings remain robust, with a record high of more than 100 filings in 2020 alone and hundreds of active cases pending today.

Although prohibited transaction allegations are common, allegations of breaches of ERISA's fiduciary duties are the backbone of retirement plan class actions. Plaintiffs frequently allege, among other claims, that defendants breached their duties by causing or allowing a retirement plan to engage in statutorily prohibited transactions with fiduciaries or other parties in interest.

Because ERISA defines "parties in interest" exceptionally broadly, most routine plan transactions arguably violate the act's prohibited transaction rules. So, to function on a day-to-day basis, most retirement plans rely on statutory or regulatory prohibited transaction exemptions that expressly permit transactions that meet specific criteria.

In *Cunningham*, the court held that these exemptions must be treated as affirmative defenses, so plaintiffs need only plead that a transaction occurred to survive a motion to dismiss—a bar so low almost every complaint will clear it.

As Justice Samuel Alito noted in his concurrence, in class action litigation, "getting by a motion to dismiss is often the whole ball game because of the cost of discovery." But most retirement plan class actions were surviving motions to dismiss even before *Cunningham*—fewer than 25% of cases were dismissed with prejudice in 2024. And the decision doesn't create new grounds for plaintiffs to ultimately prevail in their lawsuits; it simply makes it easier for a prohibited transaction claim to survive a motion to dismiss.

The *Cunningham* victory may deliver unintended consequences to plaintiffs. ERISA plaintiffs have previously sought six- or seven-figure settlements upon clearing dismissal, partly because surviving the previous pleading standard could indicate a higher chance of prevailing on the merits. The *Cunningham* decision may disrupt that formula.

First, the decision may incentivize defendants to skip motions to dismiss and go straight to discovery. If a motion to dismiss is unlikely to dispose of all claims, defendants may decide to forgo the costs of a motion to dismiss and instead invest in discovery. That approach would eliminate the early settlement window that often follows the denial of a motion to dismiss.

Second, even when a motion to dismiss is filed, a ruling that preserves a weak prohibited transaction claim may not dispose defendants toward settlement. After *Cunningham*, even cases in which an exemption clearly applies will survive motions to dismiss. Defendants in those cases may be reluctant to spend big dollars to settle claims when they know they have a strong exemption defense.

Lastly, courts may begin to manage discovery in retirement plan class actions more actively. The court in *Cunningham* acknowledged the downsides of allowing meritless claims to proceed without any checks. Since *Cunningham* was decided, some plaintiffs have alleged pro forma prohibited transaction claims.

In response, defendants will urge district courts to heed the justices' direction toward a more interventionist approach to managing such claims, and in particular, may curtail some of the wide-ranging discovery that defendants have sometimes been willing to pay large settlements to avoid.

Even if *Cunningham* doesn't open the floodgates further, it will influence how ERISA class actions are litigated moving forward. With plaintiffs even more likely to survive a motion to dismiss, defendants may choose to invest in litigation, rather than settlement, and courts may rein in limitless discovery.

Although it is too soon to know whether predictions of a boom in lawsuits are correct, it is clear that the next chapter in ERISA retirement plan litigation will be worth following.

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