ERISA in the Supreme Court: Implications of Cunningham v Cornell University

April 22, 2025

On April 17, 2025, the U.S. Supreme Court issued a unanimous opinion in ***Cunningham v Cornell University***, addressing the pleading standard applicable to prohibited transaction claims under the Employee Retirement Income Security Act (ERISA).

Which Party Must Address Prohibitive Transaction Exemptions in a Motion to Dismiss?

Plan participants filed suit against plan fiduciaries, alleging that the fiduciaries had engaged in a prohibited transaction by retaining two of its recordkeepers and paying excessive recordkeeping fees to keep them. The question presented to the Supreme Court is an important procedural question: Who—at the motion to dismiss stage—had the burden of pleading and proving whether the service provider exemption applies?

The Supreme Court resolved a lower court split by ruling that it is not the participants' responsibility to plead the absence of a prohibited transaction exemption. Instead, the plan sponsor must show that a prohibited transaction exemption applies as an affirmative defense. Exemptions are not—as the defense argued and the Second Circuit held—elements of the pleading, such that plaintiffs must demonstrate their absence to survive a motion to dismiss.

What are Prohibited Transactions and Why Are Exemptions Needed?

ERISA categorically bars certain "prohibited transactions" between a plan and a related party (a so-called "party-in-interest") to prevent conflicts of interest subject to several detailed exemptions, which allow plans to interact or conduct business with a party-in-interest if certain requirements are met. Because of the extremely broad nature of the prohibited transaction rules, the retirement industry would have difficultly functioning without the prohibited transaction exemptions. For example, in the absence of the exemptions, virtually every payment of fees to a plan vendor for services would be a prohibited transaction. However, there is a commonly used statutory exemption for reasonable arrangements with service providers for the provision of necessary services as long as no more than reasonable compensation is paid.

Supreme Court Decision May Lead to More Litigation

As the concurring opinion noted, the motion to dismiss stage has become "the whole ball game" because the cost of discovery can often drive defendants to settle meritless suits based on purely financial considerations. The Supreme Court acknowledged that this lower standard for plaintiffs could open the floodgates to more litigation, and directed trial courts to use other methods and civil litigation rules to attempt to weed out meritless cases.

Recommended Actions

This is a procedural ruling steeped in technical principles of statutory construction and interpretation of civil litigation rules. Nonetheless, there is a simple takeaway for plan sponsors. The hurdle for participants to survive a motion to dismiss in a suit against plan fiduciaries just got easier, so it is more important than ever for plan sponsors to manage litigation risk by making themselves unattractive targets. This means plan sponsors and fiduciaries should focus on engaging in prudent, compliant and well-documented actions and plan administration processes, particularly in the areas of vendor selection and management and investment selection.

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Please reach out to the authors of this alert or your Miller Canfield attorney for further discussion, or with any questions you may have.