FIDUCIENT Advisors

Helping Clients Prosper

A Step Backwards for Plan Sponsors in ERISA Litigation

How Cunningham v Cornell May Impact Future Legal Actions

by Gregory F. Adams, Senior Consultant

July 2025

Supreme Court Revives ERISA Class Action Suit Against Cornell

On April 17, 2025, the U.S. Supreme Court unanimously reinstated a class action lawsuit involving 28,000 Cornell University employees who allege the university's retirement plans paid excessive fees for recordkeeping and other services. The Court's decision in *Cunningham v. Cornell University*[1] clarifies the pleading standards under the Employee Retirement Income Security Act of 1974 (ERISA), establishing that plaintiffs need not preemptively claim that statutory exemptions under ERISA do not apply. Instead, it is the responsibility of the retirement plans to present such exemptions as affirmative defenses. This ruling resolves a division among federal appeals courts and overturns a previous dismissal by the 2nd U.S. Circuit Court of Appeals that had sided with Cornell.

Background of the Case

The lawsuit, filed in 2016, accuses Cornell University of breaching its fiduciary duties under ERISA by causing its retirement plans to engage in prohibited transactions with recordkeepers TIAA and Fidelity. The plaintiffs allege these transactions involved excessive fees for recordkeeping and administrative services. Cornell contended the costs were exempt from ERISA's ban on third-party transactions and that fees paid were reasonable.

Supreme Court's Ruling

Justice Sonia Sotomayor, writing for the Court, stated that plaintiffs in ERISA lawsuits are not required to plead that statutory exemptions under ERISA do not apply. Instead, the Court held such exemptions are affirmative defenses that must be raised by the plans themselves when they move to dismiss lawsuits. This approach prevents plaintiffs from having to anticipate and address potential exemptions before discovery, which could be especially challenging when the facts necessary to assert such exemptions are within the defendant's possession. The Court's decision aligns with the views expressed by the Department of Labor and the Department of Justice, both of which filed amicus briefs in support of the plaintiffs. They argued that under ERISA, fiduciaries, not plaintiffs, bear the burden of proving compliance with

[1] *Cunningham v. Cornell University*, Supreme Court of the United States No.23-1007, Argued January 22, 2025-Decided April 17, 2025

exemptions to prohibited transaction rules. The Second Circuit's ruling, according to the agencies, misinterpreted ERISA and created unnecessary barriers for employees seeking accountability.

Implications of the Decision

The Supreme Court's ruling has significant implications for ERISA litigation. By clarifying plaintiffs are not required to preemptively plead that statutory exemptions don't apply, the decision lowers the bar for initiating class action lawsuits against retirement plan fiduciaries and fiduciary advisory firms. This could lead to an increase in ERISA claims surviving early dismissal motions, potentially resulting in higher litigation costs for defendants and possibly encouraging settlements. Justice Samuel Alito, in a concurring opinion, cautioned the decision might lead to more meritless ERISA lawsuits surviving motions to dismiss, exposing benefit plans to the costs of defending against frivolous claims.

Context of the Case

The *Cunningham* case is part of a broader wave of lawsuits filed since 2016, accusing universities and other institutions of mismanaging retirement plans in violation of ERISA. These lawsuits often allege that fiduciaries failed to monitor fees, select prudent investments or remove underperforming options. Educational institutions like Duke University, Columbia University and the University of Southern California have faced similar lawsuits, with some opting to settle for millions of dollars while denying wrongdoing.

The Evolving Legal Landscape

The Supreme Court's decision in *Cunningham v. Cornell University* marks a pivotal moment in ERISA jurisprudence. By establishing that plaintiffs need not preemptively plead that statutory exemptions under ERISA don't apply, the Court has clarified the pleading standards for ERISA class actions. This ruling is expected to influence future litigation involving retirement plan fiduciaries and may lead to increased scrutiny of fiduciary practices and defined contribution plan consulting across various institutions and organizations.

In light of this ruling, plan fiduciaries and investment consultants should continue to exercise procedural prudence when monitoring and evaluating plan fees. For more information on how our process can assist Plan Sponsors in building an appropriate Fiduciary Trail®, please contact any of the professionals at Fiducient Advisors or visit www.fiducientadvisors.com.

About the Author

Gregory Adams
Senior Consultant

Greg services institutional clients by providing counsel and guidance on portfolio design, asset allocation, manager selection, investment policy statements and performance monitoring. He is also a member of the Recordkeeper Oversight Council. Greg joined Fiduciary Investment Advisors, LLC in 2017, which combined with Fiducient Advisors in 2020.

Before joining the firm, Greg worked in both institutional and individual wealth management helping create positive retirement outcomes for plan sponsors and plan participants. He received his BA from the University of Connecticut and is a ChFC® (Chartered Financial Consultant). He volunteers as a Chair of the Board for MARCH, Inc. of Manchester, a Connecticut organization dedicated to enriching the lives of individuals with intellectual and developmental disabilities, as a Board Member of the Connecticut Council on Problem Gambling, and as a Board Member for Riverfront Recapture. Greg enjoys biking, hiking, kayaking, running, lacrosse and football in his free time.