Employers Carry Burden in Retirement Plan Excessive Fees Cases

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Plan sponsors and administrators have the burden of demonstrating the reasonableness of fees charged to retirement plans, according to a recent opinion issued by the United States Supreme Court.

The Case

In *Cunningham v. Cornell University* (April 17, 2025), the Court considered the plaintiff's burden in bringing a complaint under the Employee Retirement Income Security Act (ERISA).

Under ERISA 406, certain transactions between retirement plans and "parties in interest" (including those who provide services to the plan) are prohibited. ERISA 408(b)(2), however, carves out an important exemption to this rule, allowing a plan to pay for certain services from a party in interest if specific conditions are met — including that the amount paid is "reasonable."

In *Cunningham*, the plaintiffs (employees of Cornell University) alleged that Cornell was overcharging them for managing their retirement plans. Specifically, they claimed the fees approved by Cornell and paid to financial firms TIAA and Fidelity for providing recordkeeping and other administrative services were multiples of the reasonable costs for such services.

Cornell argued that, since essentially every service provided to a plan for any fee is prohibited by ERISA 406, a plaintiff should also have to allege that no valid exemption applies.

The Court disagreed, concluding that the burden is on the defense to prove an exemption is valid under ERISA 408. Thus, it is Cornell's responsibility in this case to demonstrate that the fees charged were appropriate. The Court stressed that plaintiffs are not responsible for disproving all defenses at the complaint stage.

Cornell noted that this decision would have the potential to make it very easy for plaintiffs to bring suit – even if the costs a plan pays for services are very reasonable. The Court was not bothered by this. It responded that courts can impose sanctions and fee-shifting in frivolous cases, such that plaintiffs will still have to think twice before suing.

WHY DOES THIS MATTER?

Aside from emboldening potential plaintiffs to bring suit in the excessive fees context – if for no other reason than to force settlement – the implications of the Court's decision effectively extend to virtually all matters where prohibited transaction issues are at play.

A prime example is the employee stock ownership plan context. Cases are routinely brought in the ESOP world which essentially argue that an ESOP trust overpaid for the stock of a company when it purchased that stock into the ESOP retirement plan.

Because the purchase itself is only permissible if an ERISA 408 exemption applies, such as if the ESOP paid no more than fair market value for the stock, it places the burden – and cost and time – of showing that the purchase price was not excessive directly on the ESOP plan trustee.

That is, all a plaintiff needs to allege is that the ESOP (a plan) bought stock from a party in interest (an owner-seller of a company). Showing

that the ESOP did not overpay for that stock becomes the responsibility of the ESOP trustee.

Conclusion

We have significant concern that this decision, although legally sound, will inspire plaintiffs' counsel to file lawsuits to force settlements from plan sponsors – defendants who do not want to risk litigation or incur the cost to defend such suits. How this will play out in coming years remains to be seen. If you have any questions, please reach out to the primary Boardman Clark attorney with whom you work or call us at (608) 257 9521 to speak with one of our employee benefits attorneys.

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