

April 21, 2025

Supreme Court Lowers the Bar for Pleading ERISA Prohibited-Transaction Claims

The Supreme Court Held that Plaintiffs Alleging that an ERISA Fiduciary Engaged in a Prohibited Transaction Need Not Address Statutory Exemptions that May Absolve the Fiduciary of Liability

SUMMARY

On April 17, 2025, the Supreme Court decided *Cunningham v. Cornell University*, unanimously holding that an ERISA plaintiff may pursue a prohibited-transaction claim without addressing at the pleading stage the statutory exemptions that would defeat its claim because those exemptions are affirmative defenses that defendants bear the burden of pleading and proving.¹ In doing so, the Court acknowledged that this pleading standard may significantly increase the risk of meritless prohibited-transaction claims and, for that reason, offered various options that litigants and courts may consider to prevent frivolous suits going forward.

THE COURT'S DECISION

ERISA prohibits plan fiduciaries from engaging in certain transactions with a “party in interest,” which is defined to include any entity that provides services to the plan.² As a practical matter, fiduciaries often need to transact with service providers to operate the plan. For instance, plans routinely contract with firms that manage investment options available to plan participants, while also paying those same firms for record-keeping and account-management services. To avoid holding fiduciaries liable for those transactions, ERISA includes various statutory exemptions to the prohibited-transaction rule, including for any transaction that involves “contracting or making reasonable arrangements with a party in interest for office space, or legal, accounting, or other services necessary for the establishment or operation of the plan, if no more than reasonable compensation is paid therefor.”³ ERISA also empowers the Secretary of Labor to promulgate additional exemptions that may be appropriate.

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The question in *Cunningham* was whether a plaintiff alleging that a fiduciary engaged in a prohibited transaction needs to also address exemptions that would authorize the transaction at issue in order to state a claim. In a unanimous opinion, the Court held that it does not. According to the Court, an ERISA prohibited-transaction claim requires only that a fiduciary engage in a transaction with a “party in interest,” knowing that the transaction “constitutes a direct or indirect . . . furnishing of goods, services, or facilities.”⁴ The exemptions provided for elsewhere in the statute—including the exemption for routine service contracts—are affirmative defenses, which must be raised and proved by the defendant.⁵ The upshot is that plaintiffs can overcome a motion to dismiss without pleading facts showing why one of ERISA’s exemptions does not bar their claims.

The Court acknowledged that its holding created a serious risk of meritless claims reaching discovery. Although the Court did not view those concerns as sufficient to overcome the text of the statute, it did identify various tools that courts and litigants can use to defeat and deter frivolous claims. Two of these tools are important for defendants seeking to dismiss claims prior to discovery. First, the Court noted that district courts can require plaintiffs to address any exemption identified in a defendants’ answer under Federal Rule of Civil Procedure 7.⁶ Second, the Court explained that courts can dismiss complaints on jurisdictional grounds based on the absence of an injury-in-fact.⁷ On the latter point, it is notable that the *Cunningham* decision held that plaintiffs need not identify self-dealing or disloyal conduct to state a prohibited-transaction claim, meaning that some plaintiffs might try to state a claim without alleging any conduct that caused concrete harm to plan participants.

Following *Cunningham*, litigants should consider both Rule 7 filings and jurisdictional challenges when faced with prohibited-transaction allegations that do not address statutory exemptions. They should also consider asking district courts for streamlined discovery on their affirmative defenses in suits where a statutory exemption clearly bars the plaintiffs’ claim.

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ENDNOTES

¹ *Cunningham v. Cornell Univ.*, 602 U.S. __ (2025) (slip op. at 1).

² 29 U.S.C. § 1106(a)(1).

³ 29 U.S.C. § 1108(b)(2)(A).

⁴ *Cunningham*, slip op. at 6.

⁵ *Cunningham*, slip op. at 7.

⁶ *Cunningham*, slip op. at 14-15 (citing Fed. R. Civ. P. 7(a)(7)).

⁷ *Cunningham*, slip op. at 15 (citing *Thole v. U.S. Bank N.A.*, 590 U.S. 330, 341 (2016)).

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