Morgan Stanley

ERISA Litigation Update

As of August 2025

The Morgan Stanley ERISA Litigation Update seeks to provide an overview of recent, relevant cases which may impact your responsibilities as a plan sponsor and/or plan fiduciary.

I. Supreme Court Issues Ruling on Key Procedural Issue: ERISA Pleading Standards

In April 2025, the Supreme Court issued a ruling in* Cunningham et al. v. Cornell University et al.** ***finding that, to state a claim under Section 406 of ERISA, plaintiffs need only plausibly allege that a prohibited transaction occurred. The court's decision firmly places the burden on defendants to identify a statutory or regulatory exemption as an affirmation defense to plaintiffs' claims, making it much easier for plaintiffs to pass the motion to dismiss stage of litigation. The practical effect of the decision is that it will likely result in lawsuits surviving motion to dismiss and moving to the discovery stage, and will also result in a barrage of new ERISA litigation targeting plan sponsors and fiduciaries. The Supreme Court is considering whether it will hear* Johnson v. Parker-Hannifin Corp. *to address the "meaningful benchmark" pleading standard and has requested the Solicitor General's views on the issue.

A. Prohibited Transactions.

The Supreme Court recently issued a decision in *Cunningham et al. v. Cornell University et al.,* and that decision is likely to have a profound impact on ERISA fee litigation for many years. Although many hoped the Supreme Court would use the case as an opportunity to limit frivolous litigation, the Justices instead issued an opinion that is expected to make it significantly easier for plaintiffs to defeat early-stage motions to dismiss and reach discovery. While the Supreme Court ruled in favor of the plaintiffs, the industry reaction appears to echo Justice Brett Kavanaugh's sentiments expressed during oral arguments heard in January 2025 – that it "seems nuts" that the mere fact of hiring an outside retirement plan service provider could qualify as a prohibited transaction under ERISA.

Cornell University maintains 403(b) retirement plans and hired two recordkeepers to administer the plans. A class of current and former Cornell University employees alleged that the plans' fiduciaries engaged in a prohibited transaction under ERISA by hiring the plans' recordkeepers. The parties litigated for several years over what plaintiffs must allege in their pleadings to survive a motion to dismiss. The core issue was whether the plaintiffs need to allege merely that a prohibited transaction occurred or whether they have to allege that no exemption permitted the transaction. Under ERISA virtually all contracts between a plan and a service provider are technically prohibited transactions, but Section 408(b)(2) of ERISA generally provides relief, provided the fees are reasonable and the services are necessary.

The Supreme Court unanimously held plaintiffs only need to allege that a prohibited transaction occurred. The Court reasoned that requiring plaintiffs to plead that no prohibited transaction exemption applies would violate basic tenets of statutory interpretation and relevant Supreme Court precedent regarding which party has the burden to plea and prove statutory exemptions. The Court was sympathetic to arguments that the ruling would likely increase meritless litigation because virtually every transaction with a service provider is technically prohibited by ERISA and defendants would not be able to present their defense that an exemption exists until a later stage in the litigation. In that regard, the Court suggested some tools lower courts could use to weed out frivolous claims, but noted only Congress can truly address the issue. The cost to defend fee litigation can be substantial and grows materially if the lawsuit moves into the discovery phase, which involves depositions and other labor-intensive work. Consequently, the procedural rules in litigation are very important and can have a substantial impact on overall costs. The practical effect of the decision is that it will likely result in more lawsuits surviving the motion to dismiss stage of litigation and move onto the discovery stage.

B. Meaningful Benchmarks.

The Supreme Court recently signaled it may be ready to consider an important case regarding what plaintiffs need to allege in their pleadings about investment performance for a claim to survive a motion to dismiss. The Court requested that the Solicitor General – who represents the executive branch – provide views as to whether the Court should hear *Johnson v. Parker-Hannifin Corp.* and possibly address the "meaningful benchmark" pleading standard.

A number of jurisdictions (*e.g.*, 2nd, 3rd, 6th, 7th, 8th, and 10th Circuits) require plaintiffs plead a specific and relevant comparison – a "meaningful benchmark" – to support allegations that fiduciaries breached their duties by allowing the plan to invest in underperforming funds. This requirement helps ensure that plaintiffs have some evidence to substantiate their claims and are not using litigation and discovery as merely a fishing expedition.

In *Johnson*, the plaintiffs alleged that the defendant's 401(k) plan's target-date funds – the Northern Trust Focus Funds – underperformed the S&P target-date fund benchmark. The district court dismissed the case and held, among other things, that the plaintiffs failed to plead a meaningful benchmark because they did not identify other plans that could have served as a meaningful benchmark. The 6th Circuit overturned the decision and held that it was sufficient for plaintiffs to use the S&P target date fund benchmark because that benchmark is an industry-recognized standard and the funds themselves were allegedly designed to meet the benchmark.

If the Supreme Court hears *Johnson*, the Court could define what constitutes a "meaningful benchmark," which may make it more challenging for plaintiffs to bring unsubstantiated claims.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Establish maintain, and periodically review formal, documented procedures regarding the plan fiduciary's prudent selection and monitoring of plan investments and service providers, including, but not limited to, any metrics or benchmarks used by plan fiduciaries to determine the reasonableness of any such service provider's fees.
- Consider whether the plan sponsor can pay for all plan administrative expenses instead of using plan assets to pay such fees (including, but not limited to, fees incurred by hiring service provider to the plan, such as recordkeepers) to negate prohibited transaction claims related to the use of plan assets to pay service provider fees.
- Consider adopting measures and controls to keep both plan administration and investment fees as low as possible for the plan.
- Consider implementing more frequent periodic benchmarking exercises, requests for proposals ("RFPs"), and utilizing experts as part of the RFP and contracting process when engaging providers to provide services on behalf of a plan.

II. Jury Trials

While courts have historically stricken jury demands under the theory that ERISA contains no right to a jury trial for a plaintiff, several recent cases suggest that juries may be available for certain types of claims in this area, which is significant because jury trials tend to be more expensive and less predictable.

A New York federal district court recently awarded nearly $38.8 million to the plaintiffs in *Khan v. Bd. of Dirs. of Pentegra Defined Contribution Plan* after a rare jury trial in an ERISA fee case. The case involved allegations that fiduciaries of an approximately $2 billion multiple employer plan ("MEP") violated ERISA. Although the trial addressed only a portion of the claims related to allegations of fiduciary breaches of ERISA, the case settled soon after for $48.5 million.

The plaintiffs filed a lawsuit in September 2020 alleging that the MEP's fiduciaries failed to both (i) monitor the fees received by the defendant and other service providers to the MEP to determine whether the amounts were reasonable, and (ii) use the size of the MEP as leverage to negotiate lower rates. The plaintiffs also criticized the fiduciaries' failure to solicit bids from competing providers.

At the plaintiffs' request, the court granted a jury trial with respect to the fiduciary breach claims. Although ERISA does not explicitly provide for jury trials, there is 2nd Circuit precedent that allows plaintiffs claiming compensatory damages (*i.e.*, monetary awards to restore losses) to demand a trial by jury. The portions of the case not eligible for a jury trial (*i.e.*, the prohibited transaction claims) were considered in a bench trial after the jury trial concluded.

The jury found unanimously in favor of the plaintiffs, and the defendants settled all of the claims, including the prohibited transaction claims. Juries do not produce opinions or document the rationale(s) for their decisions. However, it is likely that perceived conflicts of interest and the fiduciaries' failure to solicit competing bids were important factors to the jury's findings.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Discuss the nature of the claims with ERISA and litigation counsel to determine whether the relief sought is equitable or legal in nature prior to requesting, or opposing, a jury trial.
- Remember, when considering requesting a jury trial, that jurors do not have an obligation to provide a rationale for their decisions and juries may be more expensive and less predictable.

III. Plan Forfeiture Litigation

Although long-standing IRS and Treasury Department guidance permit the use of plan forfeitures to offset employer contributions, plan forfeiture litigation continues to gain steam. Mounting complaints generally allege that when there is a decision to use plan forfeitures to offset employer contributions instead of to reduce plan administrative expenses, the respective plan fiduciary has breached its fiduciary duties of loyalty and prudence under ERISA by failing to use plan assets for the benefit of participants. To date, courts considering lawsuits related to a plan sponsor's use of forfeitures have not ruled consistently, complicating the issue for plan sponsors and fiduciaries. The DOL broke its silence on this issue by filing an amicus brief in support of the defendants in* Hutchins v. HP Inc. *– the first forfeiture lawsuit to reach the federal appeals court level – signaling that the DOL is in agreement with the defendants in these plan forfeiture lawsuits.

A. Continued Litigation.

Since September 2023, plaintiffs have filed almost seven-dozen lawsuits alleging that 401(k) plan fiduciaries violated ERISA by using plan forfeiture assets to offset employer matching contributions to such plans. These cases are a serious threat to a well-established industry practice and indicate an increasingly aggressive and sophisticated plaintiffs' bar.

A plan forfeiture occurs when a participant's plan balance is forfeited due to events set forth in the plan document. Most commonly, plan forfeitures occur when participants separate from

employment before becoming fully vested in employer contributions. Longstanding IRS and Treasury Department guidance indicates that such use of forfeitures is permitted and forfeitures may be used to either pay plan administrative expenses or be used to satisfy the employer's matching contribution obligations under the plan; provided the plan document permits such uses of forfeitures. Plaintiffs have recently targeted this practice and alleged that fiduciaries violated ERISA by exercising discretion to use forfeitures to offset the employer's matching contributions to the relevant plans, which plaintiffs argue are an impermissibly use of such forfeitures for the employer's benefit.

To date, 12 federal district courts have opined on forfeiture related claims. Nine of the courts have found in favor of the defendants. For example, in *Wright v. JPMorgan Chase* and *Matula v. Wells Fargo*, the district courts dismissed claims after finding that the plan documents at issue compelled the use of forfeitures to fund employer contributions. However, three district courts – in the *McManus v. The Clorox Co.*, *Perez-Cruet v. Qualcomm Inc.*, and *Rodriguez v. Intuit* cases – declined to dismiss forfeiture claims. In *McManus v. The Clorox Co.*, for example, a district court allowed the forfeiture claims to proceed and held that individuals exercise fiduciary discretion when they decide how to allocate forfeitures, even if the plan permits the use of forfeitures to fund employer contributions.

B. DOL Amicus Brief.

On July 9, 2025, the DOL filed an *amicus curiae* brief in support of the defendants in *Hutchins v. HP Inc.*, which is the first forfeiture lawsuit to reach the federal appeals court level.

Like other forfeiture cases, the plaintiffs in *Hutchins* alleged plan fiduciaries breached their duties under ERISA by using forfeitures to offset employer matching contributions as permitted by the plan. In dismissing the claims, the district court explained that the longstanding IRS and Treasury Department guidance permitted the practice and noted that the plaintiffs' argument would "improperly extend ERISA beyond its bounds and would be contrary the settled understanding of Congress and the Treasury Department." The plaintiffs appealed, and the 9th Circuit is now the first federal Circuit Court to consider forfeiture claims.

Although DOL is not a party to the case, the DOL submitted a brief supporting the defendant, arguing that the plaintiff's allegations are insufficient to state a viable claim under ERISA. The DOL highlighted that there has been an "established understanding for several decades . . . that defined contribution plans . . . may allocate forfeited employer contributions to pay benefits for remaining participants rather than using those funds to defray administrative expenses." The DOL also argued that "the fundamental problem" with the plaintiff's theories is that "they ignore the constraints on the fiduciary's decision-making" and "misunderstand the boundary between settlor and fiduciary functions."

The DOL further argued that the funding of a plan, including decisions regarding the timing and amount of contributions, is a "settlor function" rather than a fiduciary function actionable under ERISA. While the allocation of forfeitures is a fiduciary function (as it amounts to an exercise of control over plan assets), the act of funding constitutes a settlor function – supporting the conclusion that allocating forfeitures to fund or offset employer contributions does not give rise to a claim for breach of fiduciary duty, especially when such use of forfeitures is expressly identified and permitted in the plan document. The DOL also discussed how certain risks "are eliminated where the fiduciary chooses to use the forfeitures to cover the remaining matching contribution amount," including the risk of having a protracted dispute with the employer to obtain the full amount of matching contributions.

The 9th Circuit is still considering the case, and it may be several months before it issues a decision. However, the DOL's brief is an important signal to all U.S. courts that the DOL agrees with the defendants' positions in these forfeiture cases.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Identify and review any forfeiture provisions set forth in plan documents with ERISA counsel and discuss whether any modifications are necessary regarding the exercise of discretion related to the

use of forfeitures to reduce or eliminate the type of discretion over the assets that could form the basis for an ERISA fiduciary breach claim.

- Plan sponsors should review their plan forfeiture language to determine if the plan authorizes the use of forfeitures for employer contributions and to ensure that any ordering rules set forth in the plan document are followed (e.g., some plans require plan expenses be paid prior to offsetting employer contributions).
- If the clear intent of the plan document is for plan sponsors to use plan forfeitures primarily to offset employer contributions, plan sponsors should consider whether any modifications are needed to the plan document to remove discretion and optionality related to forfeiture use. Consider incorporating ordering rules into the plan document that clearly prioritize and/or define the circumstances in which plan sponsors may use forfeitures to offset employer contributions in lieu of using such forfeitures to pay plan administrative expenses, so that the plan sponsor does not have any discretion or optionality as to how such forfeitures are used (including, if desired, so that offsetting employer contributions is the first or only permitted use).

IV. Cash Sweep Litigation

Plaintiffs have brought more than 30 class action lawsuits challenging cash sweep arrangements, alleging that the defendants violated their duties under either Regulation Best Interest or the Investment Advisers Act of 1940 (the "40' Act") when implementing such cash sweep programs. The recent rulings in two lawsuits*– In re LPL Financial *and* In re Wells Fargo –** ***suggest that establishing a fiduciary duty for uninvested cash in non-advisory accounts may be challenging for plaintiffs, but highlights that plaintiffs have other avenues of recourse to successfully bring other claims, such as unjust enrichment or breach of contract, to overcome a motion to dismiss.

A number of major financial institutions have faced allegations that they breached their fiduciary duties and/or contractual obligations by failing to pay reasonable interest on balances invested through cash sweep programs. These programs typically seek to generate modest returns by investing cash held in client accounts in short-term, low-risk products, such as bank deposits. Plaintiffs have filed lawsuits against at least eight financial institutions, and courts recently issued important decisions in two of those cases – *In Re LPL Financial Cash Sweep Litig.* and *In re Wells Fargo Cash Sweep Litig*.

Regarding *In re LPL Financial,* the court rejected many of the plaintiffs' allegations but allowed a portion of the lawsuit to proceed. The plaintiffs argued that LPL owed a fiduciary duty to clients with respect to the cash sweep program, and LPL breached that duty by, among other things, retaining a portion of the returns. The court determined that LPL did not owe a fiduciary duty to clients because the relationship between LPL and non-advisory accounts (*e.g.*, brokerage) is primarily contractual. The court further concluded that neither Regulation Best Interest nor the 40' Act provide a private right of action enforceable by private plaintiffs. The court also rejected the plaintiff's argument that LPL had contractually committed itself to a "best interest" standard of care with respect to the cash sweep program. However, due to an ambiguity in the contract language, the court denied LPL's motion to dismiss.

Like *In re LPL Financial*, the court in *In re Wells Fargo* concluded that Wells Fargo did not owe a fiduciary duty to non-advisory accounts. However, the court allowed the plaintiff's breach of contract claim to proceed because Wells Fargo had contractually agreed to pay reasonable interest. The court specifically noted that Wells Fargo publicly stated that it decided to raise rates for the cash sweep program to "better align with rates paid in money market funds."

The outcomes in these cases may have widespread implications for the ongoing wave of cash sweep lawsuits. The rulings suggest that establishing a fiduciary duty for uninvested cash in non-advisory accounts may be challenging for plaintiffs, but that plaintiffs may still be able to

successfully bring other claims, such as unjust enrichment or breach of contract, to overcome a motion to dismiss.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Consider establishing, maintaining, and periodically reviewing formal, documented procedures that require plan fiduciaries to periodically review and monitor cash sweep programs and sweep vehicles as the plan fiduciary would with respect to any other plan investment strategy or vehicle.
- Review the plan fiduciary's processes to ensure transparency in such fiduciary's decisions (and such processes) related to plan investments through additional disclosures and education to plan participants related to cash sweep program, and consider documenting why a plan fiduciary determined that such programs were appropriate and prudent.

V. Alternative Investments in Retirement Plans

Courts continue to focus on the importance of procedural prudence in plan investment decisions, including with respect to alternative asset investments in retirement plans. However, due to the lack of clear guidance on fiduciary standards related to the inclusion of such investments, fiduciaries may face litigation exposure, absent regulatory guidance on this issue. The forthcoming DOL guidance (which must be issued within 180 days of President Trump's August 7 executive order on alternative asset investments) will address how a fiduciary may satisfy its duties under ERISA when selecting alternative assets as an investment option for a plan, although it remains unclear as to what such guidance will impose on fiduciaries at this time.

A. Longstanding Litigation.

The 9th Circuit recently affirmed the dismissal of the long-running case *Anderson v. Intel Corporation Investment Policy Committee*. The case has been closely watched as it is one of the first lawsuits involving claims related to a fiduciary's inclusion of private funds in a 401(k) plan. The litigation began in 2019 when a former Intel employee filed a complaint alleging, among other things, that the plan fiduciaries violated ERISA when they restructured their target date funds to include allocations to private equity and hedge fund investments. The district court dismissed the complaint for failure to state a claim and subsequently dismissed the amended complaint and emphasized that the plaintiff failed to identify a "meaningful benchmark" (discussed above).

Plaintiffs appealed, and the 9th Circuit affirmed the dismissal, emphasizing that the duty of prudence turns on whether plan fiduciaries follow appropriate processes to evaluate investments, rather than whether they got the decision "right" – referred to as "procedural prudence." More specifically, the court emphasized that a plaintiff cannot just allege that fiduciaries could have obtained better results through a different investment option and instead, a plaintiff needs to cross the line from possibility to plausibility to get past the pleading stage and into discovery. The court affirmed the district court's holding that plaintiffs failed to state a claim for breach of the duty of prudence because they did not set forth allegations from which the court could infer that an inadequate process led the fiduciaries to select hedge fund and private equity investments that were inappropriate for the plan.

The 9th Circuit also explained that the plaintiffs' general challenge to hedge fund and private equity investments in the 401(k) plan overlooked the principle that prudence is assessed with respect to a plan's portfolio as a whole. The court cited DOL guidance (Information Letter to Jon Breyfogle, Groom (June 3, 2020)) as support for its position that private funds can prudently be incorporated into a target date fund's overall strategy.

The court also rejected allegations that the plan fiduciaries violated ERISA by selecting private funds in which the sponsor's affiliate had already invested. The court explained that the plaintiffs only presented the potential for conflicts of interest and had not sufficiently alleged that any such conflict negatively impacted fiduciary decision-making.

B. 2025 Executive Order.

On August 7, President Trump issued the long-awaited executive order "Democratizing Access to Alternative Assets for 401(k) Investors," which directs the DOL and other relevant federal agencies to revise regulatory guidance and reduce legal barriers that currently restrict defined contribution retirement plans (e.g., 401(k) plans) from offering alternative investment options. Specifically, the DOL, among other things, must issue guidance clarifying fiduciary duties when including alternative assets in retirement plan investment menus within 180 days of the issuance of such executive order.

While the order criticizes litigation trends for stifling innovation and limiting access to high-performing asset classes and further commits to reducing regulatory burdens and litigation risks that hinder retirement account diversification, the fiduciary standards associated therewith remain unclear. Until the DOL issues guidance on how fiduciaries can prudently evaluate such investments, fiduciaries may face litigation risk where they include alternative assets in plan investments.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Establish, maintain, and periodically review formal, documented procedures related to a plan fiduciary's process in making investment decisions and selecting an investment line-up for 401(k) plans.
- Consider employing additional protective measures when selecting alternative asset investments supporting a plan fiduciary's inclusion of such alternative assets as investment options in a 401(k) plan, such as ensuring transparency in a plan fiduciary's decisions and processes related to plan investments in alternative assets (whether directly or indirectly through a fund) through additional documentation setting forth the reasoning as to why a plan fiduciary determined that such investments were appropriate and prudent to include in the plan's investment line-up at the time of its investment decision to demonstrate both procedural prudence and the basis for each investment decision.
- Consider the varied objectives and risk tolerances of a 401(k) plan's underlying participants when selecting the plan's investment options.
- Review any guidance (formal or informal) issued by the DOL – including a potential fiduciary safe harbor – in connection with the agency's forthcoming guidance on how fiduciaries may comply with their fiduciary duties under ERISA when considering the inclusion of alternative asset investments in retirement plans.

VI. Proprietary Funds

Plan sponsors that make their own proprietary investment products available as an investment option in 401(k) plans continue to be a target of frequent class action lawsuits.

A Massachusetts District Court recently issued a decision in favor of the defendants in Waldner v. Natixis Inv. Managers. In this case, the plaintiffs alleged that plan fiduciaries failed to adequately monitor the performance of the plan's investment funds and improperly favored "specialty investment funds" offered by the defendant and/or its affiliates.

After a two-week trial, the court dismissed the plaintiffs' claims in favor of the defendants. The court reasoned that, although the fiduciary committee was not a "shining example of prudence," such fiduciaries satisfied their duties by relying on outside experts, providing employees with non-proprietary investment choices, and selecting proprietary funds only when such proprietary funds were among the top-performing funds recommended by an independent consultant. The court dispensed with arguments that the fiduciaries had a conflict of interest when selecting proprietary funds. Notably, the court explained that the evidence indicated that proprietary funds constituted only a "tiny" percentage of Natixis' total assets under management, fiduciary committee members credibly denied receiving personal financial incentives related to proprietary funds, and there was participant demand for proprietary funds to be included in the plan's investments. The court found one instance where the fiduciaries breached their fiduciary duty of prudence by delaying the removal of an underperforming fund from the plan's investment lineup, but found that the plaintiffs failed to demonstrate that this breach resulted in any financial loss.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Establish, maintain, and periodically review formal, documented procedures related to a plan fiduciary's process in making investment decisions and selecting an investment line-up for 401(k) plans.
- Consider employing additional protective measures when selecting a proprietary fund to avoid claims of fiduciary breach related to a plan's inclusion of proprietary funds as investment options in a 401(k) plan, such as the following measures:
    - Establish, maintain, and periodically review formal, documented procedures evidencing its investment decision processes obligating that plan fiduciary to conduct impartial investigations into other comparable investment options in the marketplace and the corresponding fees vs. performance thereof.
    - Ensure transparency in a plan fiduciary's decisions and processes related to plan investments through additional disclosures and education to plan participants related to proprietary funds and why a plan fiduciary determined that such funds were appropriate and prudent to include in the plan's investment line-up at the time of such investment decision.

VII. Prohibited Transactions Litigation

In July, a federal judge issued a partial ruling in favor of plaintiffs challenging the DOL's guidance under Prohibited Transaction Exemption 2020-02 ("PTE 2020-02"). Plaintiffs argued that the DOL exceeded its statutory authority under the Administrative Procedure Act ("APA"), and the court agreed that certain portions of PTE 2020-02 represented "arbitrary and capricious interpretations" of the five-part test used to determine fiduciary status.

On July 9, 2025, a federal judge in the Northern District of Texas issued a partial ruling in favor of plaintiffs challenging the DOL guidance under PTE 2020-02. The plaintiffs, which included a coalition of industry groups, financial planners, and insurance agents, argued that the DOL exceeded its statutory authority under the APA by improperly expanding the definition of "fiduciary" under ERISA, ignoring longstanding common-law principles, and contradicting a previous 5th Circuit ruling that vacated a similar 2016 rule.

Accepting the recommendation of the U.S. Magistrate Judge, the court agreed with the plaintiffs that certain provisions of PTE 2020-02 exceeded the DOL's authority under ERISA and represented "arbitrary and capricious interpretations" of the five-part test used to determine whether a financial professional qualifies as an investment advice fiduciary under ERISA. As a result, the judge's order invalidated parts of PTE 2020-02's text and preamble that allowed for consideration of Title II investment advice relationships when determining fiduciary status under Title I of ERISA. Specifically, the court rejected the DOL's interpretations that (i) a single rollover could be deemed to constitute the beginning of an ongoing advisory relationship for Title II plans; (ii) potential "future, ongoing relationships" with Title II plans could be included; and (iii) "an ongoing advisory relationship spanning both the Title I plan and the individual retirement account satisfies the regular basis prong" for establishing fiduciary status. In effect, this ruling partially invalidates the DOL's attempt to classify and regulate one-time rollover advice as the provision of fiduciary investment guidance.

This ruling is the latest in a slew of recent challenges to the DOL's interpretive guidance on this issue. Last year, a federal judge in the Eastern District of Texas stayed the effective date of Prohibited Transaction Exemption 84-24, similarly finding that the DOL's guidance was "arbitrary and capricious" and exceeded the agency's authority under the APA.

Best Practices for Plan Sponsors and Plan Fiduciaries to Consider:

- Consider how rollover recommendations and advisory relationships are documented and consider clearly delineating, where possible, what constitutes fiduciary vs. non-fiduciary advice with respect to such one-time rollover recommendations.
- Carefully consider whether any past DOL guidance on fiduciary status remains in effect to avoid misclassifying fiduciary status and standards when providing one-time rollover advice.

- Closely monitor and review any guidance (formal or informal) issued by the DOL and recent and future court rulings related to the definition of an investment advice fiduciary under ERISA. Consult ERISA counsel to discuss the impact of such guidance and/or litigation outcomes.

VIII. Recent Notable Settlements

- In April 2025, Boston Children's Hospital agreed to settle *Monteiro v. Child. Hosp. Corp*. for $3 million. The plaintiffs alleged the defendant violated ERISA by offering imprudent investments and charging excessive fees in its 403(b) plan.

- In May 2025, Giant Eagle, Inc. agreed to settle *Kehrer v. Giant Eagle Inc*. for approximately $668,750. The plaintiffs alleged the defendant violated ERISA by charging excessive recordkeeping and administrative fees in its 401(k) plan.

- In May 2025, Whole Foods Market agreed to settle *Winkelman v. Whole Foods Market Inc*. for $2 million. The plaintiffs alleged the defendant violated ERISA by failing to prudently manage the administrative fees of its $1.9 billion 401(k) plan, which allegedly resulted in excessive recordkeeping fees to such plan and millions in losses for employees.

- In June 2025, a federal judge granted final approval to a $69 million class action settlement in *Snyder v. UnitedHealth Group Inc. et al*. This settlement resolved claims that the defendant breached its ERISA fiduciary duties by retaining underperforming Wells Fargo investment funds in its 401(k) plan.

VIII. Table of Authorities

- *Anderson v. Intel Corporation Investment Policy Committee*, 137 F.4th 1015 (9th Cir. 2025).
- *Cunningham et al. v. Cornell University et al.*, 604 US __, 145 S.Ct. 1020 (2025).
- *Fed'n of Ams. for Consumer Choice, Inc. v. Couch,* No. Civ. Action No. 3:22-CV-0243-K-BT, 2025 BL 238908 (N.D. Tex. 2025).
- *Federation of Americans for Consumer Choice, Inc. et al v. United States Department of Labor et al*, No. 6:2024cv00163 (E.D. Tex. 2024).
- *Hutchins v. HP Inc.*, 767 F.Supp.3d 912 (N.D.Cal. 2025).
- *In Re LPL Financial Cash Sweep Litig.*, No. 3:24-cv-01228-TWR-AHG (S.D. Cal June 30, 2025).
- *In re Wells Fargo Cash Sweep Litig.,* 2025 WL 1785315 (N.D.Cal. 2025).
- *Johnson v. Parker-Hannifin Corp.*, 122 F.4th 205 (6th Cir. 2024).
- *Kehrer v. Giant Eagle Inc.*, No. 2:24-cv-01211 (W.D.Pa. 2025).
- *Khan v. Bd. of Dirs. of Pentegra Defined Contribution Plan*, No. 7:20-cv-07561 (S.D.N.Y. Jury Verdict Apr. 23, 2025).
- *Matula v. Wells Fargo & Company*, 2025 WL 1707878 (D.Minn. 2025).
- *McManus v. The Clorox Co.*, 2025 WL 732087 (N.D.Cal. 2025).
- *Monteiro v. Child. Hosp. Corp.*, No. 1:22-cv-10069 (D.Ma. 2025).
- *Perez-Cruet v. Qualcomm Inc.*, 2024 WL 3798391 (S.D.Cal. 2024).
- *Rodriguez v.* Intuit, 744 F.Supp.3d 935 (N.D.Cal. 2024).
- *Snyder v. UnitedHealth Group, Inc. et al*, Docket No. 0:21-cv-01049 (D. Minn.).
- *Waldner v. Natixis Inv. Managers*, 2025 WL 1871290 (D. Mass.).
- *Winkelman v. Whole Foods Market Inc.*, No. 1:23-cv-01352 (W.D. Tex.).
- *Wright v. JPMorgan Chase & Co.*, 2025 WL 1779053 (C.D. Cal. 2025).

Disclosures

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ESG investments in a portfolio may experience performance that is lower or higher than a portfolio not employing such practices. Portfolios with ESG restrictions and strategies as well as ESG investments may not be able to take advantage of the same opportunities or market trends as portfolios where ESG criteria is not applied. There are inconsistent ESG definitions and criteria within the industry, as well as multiple ESG ratings providers that provide ESG ratings of the same subject companies and/or securities that vary among the providers. Certain issuers of investments may have differing and inconsistent views concerning ESG criteria where the ESG claims made in offering documents or other literature may overstate ESG impact. As a result, it is difficult to compare ESG investment products or to evaluate an ESG investment product in comparison to one that does not focus on ESG. There is no assurance that an ESG investing strategy or techniques employed will be successful. Past performance is not a guarantee or a dependable measure of future results.

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