



Update on the Johnson & Johnson ERISA Fiduciary Lawsuit

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On January 24, 2025, the U.S. District Court of New Jersey dismissed claims made in a class action lawsuit against Johnson & Johnson (“J&J”) regarding management of their prescription drug benefits.

In *Lewandowski v. Johnson & Johnson*, the plaintiffs alleged that J&J breached its fiduciary responsibilities under ERISA by mismanaging the prescription drug benefit program, costing employees millions of dollars in the form of higher payments for prescription drugs, higher premiums, deductibles, coinsurance and copays and lower wages and limited wage growth. In addition, the plaintiffs alleged J&J failed to furnish requested plan documents as required by ERISA.

In response, J&J filed a motion to dismiss the lawsuit. The court ruled in J&J’s favor regarding the plaintiff’s two fiduciary breach claims, finding the plaintiff lacked Article III standing to bring the lawsuit. To establish standing under Article III, the plaintiff must generally show that they have sustained a concrete injury, the injury was caused by the defendant, and the injury could be fixed by the court.

- **Higher health insurance premiums.** The plaintiff claimed that J&J’s breach of fiduciary duty by mismanaging the prescription drug plan caused the plaintiff to pay higher premiums for the group health plan coverage. The court held that the plaintiff’s alleged injury, paying more in premiums, was not sufficient to establish standing because the allegation about higher premiums is speculative and “stands on nothing more than supposition.”
- **Increased out-of-pocket costs.** The plaintiff also alleged that she paid higher out-of-pocket costs because of the higher prices for prescription drugs in the plan. While the court held that the Plaintiff’s allegations that she suffered an injury are traceable to the employer’s alleged fiduciary violation, the injury alone is not sufficient to establish standing. The plaintiff also needed to show that the injury would likely be redressed by judicial relief. This requires a “substantial likelihood” that the injury can be remedied by a court’s decision. The court ruled that the injury was not redressable by court action. Specifically, it appears that plaintiff satisfied her out-of-pocket maximum so a court’s decision in her favor would not reimburse her the costs for her prescription drug costs.
- “In straightforward terms, a favorable decision would not be able to compensate Plaintiff for the money she already paid. Even if Defendants were to reimburse Plaintiff for her out-of-pocket costs on a given drug—that is, the higher amount of money she spent as a result of Defendants’ breaches—that money would be owed to her insurance carrier to reimburse it for its expenditures on other drugs that same year. In short, there is nothing the Court can do to redress Plaintiff’s alleged injury.”



It is important to note that the court did not dismiss the Plaintiffs claim that requested plan documents were not timely furnished. This claim is allowed to proceed under the court's decision.

With respect to the above claims, the court is providing the plaintiff with leave to amend the complaint to cure the failures identified by the court as to the issue of standing (they have 30 days to do so). In addition, the plaintiff may seek to file an appeal.

■ Employer Action

While this decision is a victory for J&J and plan sponsors, the story is not over. Though the court's opinion highlights the challenges for plaintiffs to establish standing to bring these lawsuits against plan sponsors, it does not close the door to other lawsuits alleging fiduciary breach as it comes to plan costs and management of benefits.

Employers should continue to monitor developments in the health and welfare litigation space and continue to review and understand the fiduciary responsibilities with respect to their health and welfare plans, particularly as it comes to monitoring and selecting service providers.

In addition, the decision serves as a reminder for employers to timely respond to requests for ERISA plan documents. Under ERISA, fiduciaries must furnish plan documents within 30 days of a written request of a participant or beneficiary. Penalties of up to \$110/day may apply to these failures.