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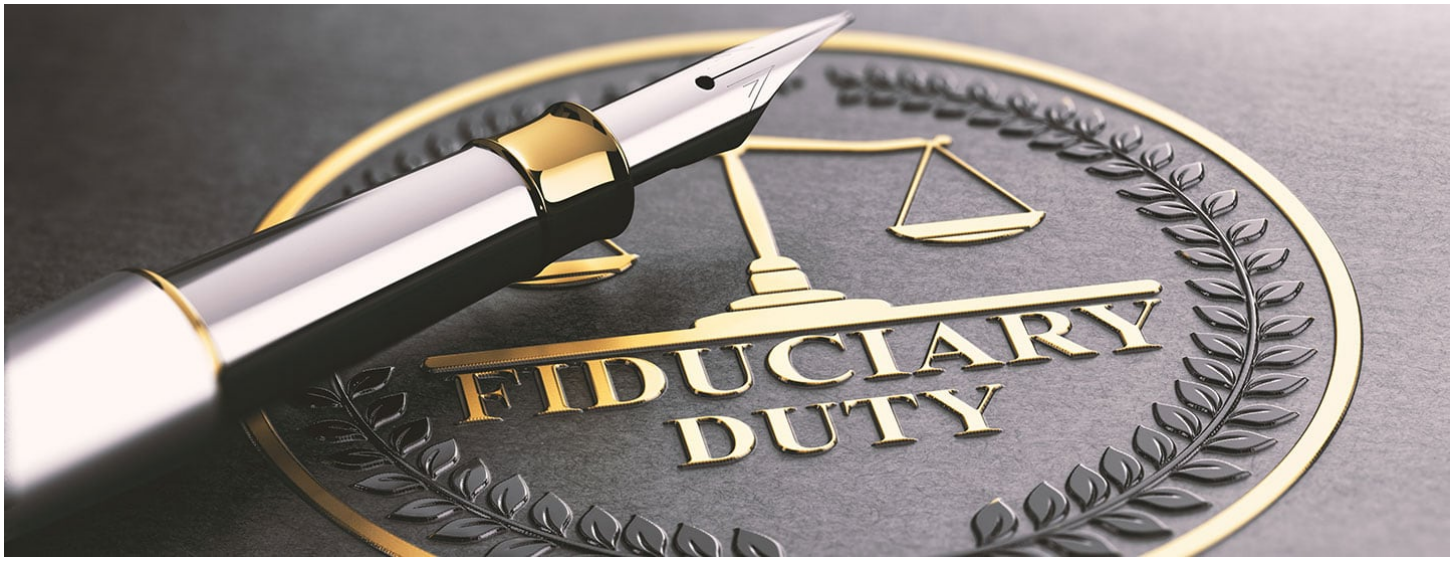

Fiduciary Update | February 2026

General Liability Insurance Did Not Cover Retirement Plan Claim

Plan fiduciaries were sued for allegedly miscalculating the amount due to a profit-sharing-plan participant, and they submitted the claim to their insurance company. Although the insurance policy included a duty to defend by the insurance company, it refused to provide a defense. Litigation ensued, and the insurance company prevailed. *Union Insurance Co. of Providence and Employers Mutual Casualty Co. v. Angus (D.R.I. 2025)*

The insurance company was obligated to defend the plan fiduciaries, but only if the underlying claim was covered by the policy in force. Although the policy included an Employee Benefits Liability Coverage Endorsement, the court determined that the claim was not covered. Most policies include an exclusion for unpaid benefits to avoid shifting responsibility for an underpayment from the employer to the insurance company. This claim fell into that category. Importantly, the insurance policy also excluded all claims based on an alleged ERISA violation. The court observed that the claim was replete with ERISA-related allegations, bringing it within the ERISA exclusion.

This case is a good reminder that insurance policies covering general liability, errors and omissions (E&O), and directors and officers (D&O) do not typically cover ERISA claims. ERISA activities usually require a higher standard of care, so they are a different insurable risk. Typically, a separate policy or rider is required for coverage of potential ERISA violations. Department of Labor Support Continues for Plan Fiduciaries in Litigation Historically, the DOL could be relied on to support plaintiffs in their challenges to plan fiduciaries—or to be neutral. However, the DOL recently supported HP Inc. in its defense of challenges to the use of forfeitures with an amicus brief. Following this, the DOL asked the Supreme Court to hear an appeal in a case that would crystallize a stricter burden of proof standard

in lawsuits against plan fiduciaries, making it more difficult for plaintiffs' claims to prevail.

In *Parker-Hannifin Corp. v. Johnson*, the issue is whether the plaintiffs were required to allege underperformance relative to meaningful benchmarks to survive dismissal. The appeal is being brought to resolve a split in the circuit courts around the country, with some requiring meaningful benchmarks and others not.

The DOL also weighed in on a Supreme Court petition in *Pizarro v. Home Depot*, arguing in support of the employer that, when plaintiffs assert ERISA breach-of-fiduciary-duty claims, the burden of proof for causation should fall on the plaintiffs, not the defendant.

The DOL has also filed an amicus brief in the *Konya v. Lockheed Martin* (4th Cir. 2025) pension risk transfer case, supporting the actions of Lockheed Martin in the pension risk transfer transaction.

This is taking place against a backdrop of dramatically increased class-action litigation against plan fiduciaries. Many of the cases filed are dismissed or settled with small awards to plan participants—and significant payouts to the plaintiffs' lawyers. Most of these cases that go to trial are decided in favor of the plan fiduciaries, after the investment of significant defense costs. Signaling likely continued activities in this vein, the DOL has decried *regulation by litigation*.

Cases Alleging Fee Overpayment and Investment Underperformance Continue: Process Wins

The flow of cases alleging that plan fiduciaries have overpaid for services and retained underperforming funds continues. In cases where details of the fiduciary's process were evaluated, good fiduciary process prevailed.

Here are highlights from two of this quarter's decisions.

- In its *Cunningham v. Cornell* ruling, the Supreme Court acknowledged it would now be easier for plaintiffs' prohibited transaction claims to survive motions to dismiss, and in its opinion, the Court offered suggestions to lower courts about how to require plaintiffs to spell out their claims in more detail before the expensive process of discovery begins. The judge in *Dalton v. Freeman* (N.D. Cal. 2025) has followed that advice. We will be watching for the result.
- Prudential Insurance Company of America's plan fiduciaries were sued alleging they failed to follow an adequate fiduciary process. The fiduciaries prevailed at the district court, and the dissatisfied plan participants appealed. Upholding the district court's decision, the court of appeals noted the following:
    - The duty of prudence is a process-driven obligation, so we must focus our inquiry on the fiduciary's conduct in arriving at an investment decision and ask whether the fiduciary employed appropriate methods to investigate the merits of a particular investment at the time the fiduciary acted.
    - Because this standard is flexible, we do not assess the prudence of a fiduciary against a uniform checklist.
    - We focus on the fiduciary's real-time decisions-making process and give due regard to the

range of reasonable judgments a fiduciary may make based on her experience and expertise, and the difficult tradeoffs inherent in every investment decision.
    - Seeking outside legal and financial expertise, holding meetings to ensure fiduciary oversight of the investment decision, and continuing to monitor and receive regular updates on the investment's performance are hallmarks of a prudent investment process.
    - Although the duty of prudence requires more than a pure heart and an empty head, courts have readily determined that fiduciaries who appropriately investigate the merits of an investment decision prior to acting easily clear this bar.

Cho v. The Prudential Insurance Company of America (3rd Cir. 2026).

- The Kellogg Company's fiduciaries were sued alleging overpayment of recordkeeping fees. The case was dismissed. The court observed that the complaint against Kellogg did not include context-specific allegations comparing the plans and services received by Kellogg participants vs. those of the lower-cost comparators. The judge observed that, "Comparing apples and oranges is not a way to show that one is better or worse than the other." *Fleming v. Kellogg Company* (W.D. Mich. 2025) (emphasis added).

Supreme Court Agrees to Hear Case Challenging Intel's Investment Choices: Did the Plaintiffs Identify a Meaningful Benchmark?

The Supreme Court has agreed to hear the appeal of *Anderson v. Intel Corp. Investment Policy Committee* from the 9th Circuit Court of Appeals. Intel was challenged for using hedge funds and private equity in their custom target-date funds. The lower courts found that the plaintiffs' allegations failed to provide meaningful benchmarks for assessment of the funds' performance.

Although some will focus on Intel's use of hedge funds and private equity in a 401(k) plan, the issue the Court accepted regards what allegations a plaintiff must include in its complaint alleging breach of the duty of prudence for the selection and monitoring of a retirement plan's investments.

This is quite similar to the issue presented in *Parker-Hannifin Corp. v. Johnson*, where the issue of "meaningful benchmarks" also arises. The resolution of either *Anderson v. Intel Corp. Investment Policy Committee* or *Parker-Hannifin Corp. v. Johnson* provides the Supreme Court with an opportunity to weigh in on the pleading standards for claims in this area.

Cases Challenging Use of Plan Forfeitures Continue to Be Dismissed

Forfeitures occur when a plan participant leaves employment before the plan sponsor's contributions to the participant's account have vested. Lawsuits challenging 401(k) plan fiduciaries' use of participant forfeitures to offset employer contributions—rather than to pay plan expenses that were eventually paid by plan participants—continue to be dismissed.

Perhaps advancing toward the end of a chapter on these types of allegations, the DOL has filed an

additional amicus curiae brief supporting plan fiduciaries in *Wright v. JPMorgan Chase & Co.* (9th Cir 2025). The DOL has also indicated plans to file another in *Barragan v. Honeywell International, Inc.* (3rd Cir. 2025), also supporting the plan fiduciaries.

This quarter, several reported cases have followed what appears to be a consistent pattern of these claims being dismissed. Here are examples.

- *Jacob v. RTX Corporation* (E.D. Va. 1.22.26)—Dismissed
- *Curtis v. Amazon.com Services, LLC 401(k) Committee* (W.D. Wash. 1.16.26) —Dismissed
- *Hernandez v. AT&T Services, Inc.* (C.D. Cal. 11.14.25)—Dismissed
- *Garner v. Northrop Grumman Corporation* (E.D. Va. 12.4.25)—Dismissed
- *Tillery v. WakeMed Health & Hospitals* (E.D.N.C. 1.15.26)—Dismissed
- *Brown v. PECO Foods, Inc.* (S.D. Miss. 11.14.25)—Dismissed
- *Polanco v. WPP Group USA, Inc.* (S.D.N.Y. 10.27.25)—Dismissed
- *Del Bosque v. Coca-Cola Southwest Beverages, LLC* (N.D. Tex. 11.13.25)—Dismissed
- *Donelson v. Meijer* (W.D. Mich. 12.29.25)—Dismissed

New Front Opened in Fiduciary Challenges to Plan Sponsors: Supplemental Benefits

Many employers offer supplemental—sometimes called *voluntary*—benefits that are 100 percent employee paid. These often include supplemental insurance for hospital stays, cancer treatment, critical illness, and accidents. Plaintiffs' lawyers who have led the way in filing class action suits challenging retirement plan fees and investments have recently set their sights on supplemental benefits. Four suits were filed in late 2025, alleging the following.

- Plan sponsors retained brokers without a diligence process and for unreasonable fees;
- There was not a thoughtful process to select or monitor the benefit providers or their fees; and
- Plan sponsors agreed to arrangements resulting in overpayment for supplemental coverage.

The cases are:

- *Brewer v. CHS/Community Health Systems, Inc.* (N.D. Ill. complaint filed 12.23.25)
- *Braham v. Laboratory Corp. of Am. Holdings* (N.D. Ill. complaint filed 12.23.25)
- *Fellows v. Universal Serv. of Am.* (S.D.N.Y. complaint filed 12.23.25)
- *Pimm v. United Airlines, Inc.* (N.D. Ill. complaint filed 12.23.25)

These claims also name the brokers, including Gallagher Benefit Services, Inc., Mercer Health and Benefits Administration LLC, Lockton Companies LLC, and Willis Towers Watson U.S. LLC.

ERISA exempts some benefits from its requirements if:

- The employer does not make any contribution to the program;
- Participation is completely voluntary for employees;

- The employer's sole function is to make the program available and serve as a conduit for premiums, with no employer endorsement; and
- The employer receives no direct or indirect compensation or consideration beyond payment for their direct costs of allowing the program.

These claims, plus others based on health and welfare benefits, underscore the need to have a thoughtful and diligent process for the selection and monitoring of service providers in these areas.

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