AMERICAN BENEFITS COUNCIL

Retirement Plan Litigation: Notable Developments & Council Advocacy

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Summary	Over the past decade, hundreds of lawsuits have alleged that retirement plan sponsors breached their fiduciary duties by, among other claims: (1) causing the plan to pay excessive investment management and/or recordkeeping fees; and (2) selecting and retaining investment options that underperformed their peers.[1] Last year, for example, there were 66 lawsuits alleging that fees were too high or performance was too low. In 2020, more than 100 of these lawsuits were filed. Many of these lawsuits have come as part of discrete litigation waves launched by plaintiffs' law firms using cookie-cutter complaints. For example, in the summer of 2022, there was a wave of suits brought against 12 plan sponsors for their selection of BlackRock's target date fund (TDF) series. As another example, in the summer of 2016, there was a wave of litigation brought against 12 university retirement plans. These claims rarely, if ever, allege specific facts identifying a flawed fiduciary process. Instead, they simply rely on comparisons of plan fees and performance. Nevertheless, these claims, especially those involving excessive fee allegations, have	The Council filed *amicus* ("friend of the court") briefs in support of the defendants in *Hughes v. Northwestern*, *Yale v. Vellali*, *Johnson v. Parker-Hannifin*, *Meiners v. Wells Fargo*, *White v. Chevron*, *Matney v. Barrick Gold*, and in 10 of the BlackRock TDF cases. The Council's *amicus* briefs (linked above and below, where applicable) highlight the insufficiency of the conclusory allegations in the complaints.

[1] Fees paid to service providers can also be alleged to be unreasonable and thus trigger a prohibited transaction. That issue is discussed later in this chart.

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	survived motions to dismiss (MTDs) at a very alarming rate, thereby pressuring plan sponsors to settle. In recent months, the Supreme Court has asked the Solicitor General to express the views of the United States on two issues that could have a significant impact on this type of litigation (the first two cases listed below):	
Johnson v. Parker-Hannifin **(U.S. 6th Circuit Court of Appeals, 2024)**	In most circuits, plaintiffs cannot survive an MTD for an underperformance claim based on circumstantial evidence unless they identify a "meaningful benchmark"—i.e., a comparator investment that is "meaningfully similar" in terms of its aims, risks, and potential rewards to the challenged investment. However, in the case of *Johnson v. Parker Hannifin*, the Sixth Circuit ruled that plaintiffs are not required to plead a meaningful benchmark. Subsequently, Parker-Hannifin appealed its case to the Supreme Court. Although the high court has yet to rule on whether it will hear the appeal, it has requested the views of the Solicitor General. The Council has submitted its views to the U.S. Department of Labor (DOL), urging the Solicitor to recommend that the Supreme Court hear the appeal and rule that a comparison to a meaningful benchmark is required but not sufficient to survive an MTD. To survive an MTD, a plaintiff	**Council *Amicus* Brief with the Sixth Circuit Court of Appeals in *Johnson v. Parker-Hannifin***

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	should also be required to allege some additional flaw that indicates a process failure; otherwise, the law would require all plans to chase the hottest funds, and thus buy high and sell low.	
Pizarro v. Home Depot **(U.S. 11th Circuit Court of Appeals, 2024)**	A fiduciary is liable under ERISA if: (1) it breaches its duties; (2) there are losses; and (3) the breach causes the losses. In the case of *Pizarro v. Home Depot*, the Eleventh Circuit ruled that plaintiffs bear the burden of proving each of these elements, including causation. The plaintiffs have appealed this ruling to the Supreme Court, arguing that, if they can prove a breach and a loss, the employer-fiduciary should bear the burden of proving that it did not cause the loss (#3 above). There is a circuit split on this burden shifting issue, with five circuits adopting the plaintiffs' preferred approach. Although the high court has yet to rule on whether it will hear the appeal, it has requested the views of the Solicitor General. On the three prior occasions that the court has been asked to rule on this issue, it has denied each of those petitions for certiorari.	

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Hughes v. Northwestern **(U.S. Supreme Court, 2022)**	The Supreme Court ruled that the availability of an adequate array of prudent investments through a plan's investment menu does not excuse a fiduciary's imprudent selection of other investment alternatives. In this case, the high court declined to address the question that the plaintiffs had asked the court to consider—i.e., whether a complaint can survive an MTD by simply alleging that a plan charged fees that substantially exceeded fees charged for alternatives.	**Council Amicus Brief with the U.S. Supreme Court in *Hughes v. Northwestern University***
Matousek v. MidAmerican Energy **(U.S. 8th Circuit Court of Appeals, 2022)**	The Eighth Circuit affirmed the district court's dismissal of a fee and performance claim, ruling that the plaintiffs could not advance their claims alleging excessive recordkeeping fees, excessive investment fees, and underperforming investments unless they could identify plans and investments that could serve as a meaningful benchmark.	
Forman v. TriHealth **(U.S. 6th Circuit Court of Appeals, 2022)** ***Kong v. Trader Joe's***	The 6th and 9th Circuits ruled that plaintiffs plausibly allege a fiduciary breach by identifying the fact that a plan offers retail share classes of mutual funds when lower-cost institutional share classes are otherwise available.	

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(U.S. 9th Circuit Court of Appeals, 2022)		
Tullgren v. Booz Allen Hamilton ***Hall v. Capital One Financial*** **(U.S. District Court for the Eastern District of Virginia (Alexandria Division), 2023)**	The district court granted the employers' MTDs, ruling that the plaintiffs did not plausibly allege a fiduciary breach by simply comparing the performance of the plan's chosen investments—BlackRock's TDFs—to a handful of cherry-picked alternatives. To survive an MTD, the district court ruled that the plaintiffs must set forth some additional factual matter from which the court can reasonably infer misconduct under ERISA.	**Council *amicus* brief with the U.S. District Court for the Eastern District of Virginia (Alexandria Division) in *Tullgren v. Booz Allen Hamilton*** **Council *amicus* brief before the U.S. District Court for the Eastern District of Virginia (Alexandria Division) in *Hall v. Capital One Financial***

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Summary	Since 2023, plaintiffs have filed dozens of lawsuits challenging the use of plan forfeitures to offset employer contributions. According to the plaintiffs, when a plan gives an employer discretion to use forfeitures to offset employer contributions or to pay administrative expenses, an employer violates its fiduciary duties under ERISA when it directs forfeitures to reduce employer contributions. Additionally, the plaintiffs have alleged that this is a prohibited transaction and violates ERISA's anti-inurement rule. Approximately 70 lawsuits with forfeiture claims have been filed to date. District courts have issued rulings on motions to dismiss in 22 of those cases; the motions were granted in 16 cases and denied in six cases—i.e., a dismissal rate of 72.7%. Numerous district court decisions are currently on appeal in circuit courts. On July 9, 2025, the U.S. Department of Labor (DOL) filed an amicus brief in support of HP, as it seeks to preserve its forfeiture victory in a Ninth Circuit district court (as described below). In its brief, DOL argued that, although HP's decision about how to allocate forfeitures was a fiduciary, rather than settlor, decision, when considered in the context that plan funding decisions are settlor decisions, the fact that HP used plan forfeitures to reduce employer contributions does not state a plausible claim for a fiduciary breach. Therefore, the plaintiffs'	The Council filed *amicus* briefs in support of the defendants in *Hutchins v. HP* and *Becerra v. Bank of America*. The Council's *amicus* briefs (linked below, where applicable) argued that the forfeiture claims should be rejected because: (1) the use of forfeitures to reduce employer contributions has longstanding legal support; and (2) forfeiture allocation decisions should be treated as settlor decisions because they control how much an employer will contribute to the plan.

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	claim should be dismissed. This is a very encouraging development for the forfeiture cases and hopefully signals additional support for employers in other contexts.	
Hutchins v. HP **(U.S. District Court for the Northern District of California, 2024 & 2025)**	The district court dismissed the plaintiffs' first and amended complaints. The court concluded that HP acted as a settlor in determining whether plan expenses will be paid by HP or charged to participants' accounts, and then acted as a fiduciary in allocating the forfeitures. However, the court ruled that the plaintiffs did not state a plausible claim for fiduciary breach. The court said that the plaintiffs' forfeiture theory was implausible because it would mean that every time HP made a decision on how to use forfeited funds, it would always be required to pay administrative costs; this would be contrary to the plan document and ERISA, and would require the plan to create an additional benefit that is not provided for by the plan. The plaintiffs have appealed to the Ninth Circuit.	**Council *amicus* brief with 9th Circuit Court of Appeals in *Hutchins v. HP Inc.***
Becerra v. Bank of America **(U.S. District Court for the Western District of North Carolina, 2025)**	The district court denied Bank of America's motion to dismiss the forfeiture, prohibited transaction, and anti-inurement claims, explaining that the arguments made by both parties involve questions about how to interpret the plan that cannot be resolved at the dismissal stage. Bank of America has asked the	**Council *amicus* brief with the 4th Circuit Court of Appeals in *Becerra v. Bank of America* (Interlocutory Appeal)**

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	district court to allow it to file an interlocutory appeal to the Fourth Circuit.	
Matula v. Wells Fargo **(U.S. District Court for the District of Minnesota, 2025)**	The district court dismissed the plaintiffs' forfeiture claims on standing grounds, holding that the plaintiffs did not establish that they suffered an injury (which is a requirement to establish standing). The court rejected the plaintiffs' argument that they were injured when Wells Fargo failed to use forfeitures to pay for optional services and operating expenses or make extra payments to their accounts because they were not seeking benefits that were promised to them under the plan. The plaintiffs have appealed to the Eighth Circuit.	
Rodriguez v. Intuit **(U.S. District Court for the Northern District of California, 2024)**	The district court denied Intuit's motion to dismiss the forfeiture, prohibited transaction, and anti-inurement claims. The court held that the plaintiffs plausibly alleged that Intuit had violated its fiduciary duties because they alleged that the forfeitures violated both the terms of the plan document and ERISA.	
Perez-Cruet v. Qualcomm	The district court denied Qualcomm's motion to dismiss the forfeiture, prohibited transaction, and anti-inurement claims, and denied Qualcomm's subsequent request for reconsideration. The court accepted as plausible the allegations by the plaintiffs	

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(U.S. District Court for the Southern District of California, 2024)	that Qualcomm violated its fiduciary duties by acting against the best interests of plan participants when allocating forfeitures and not defraying administrative expenses for participants, even if Qualcomm was following the plan's terms.	

PENSION RISK TRANSFERS		
SUMMARY/NOTABLE CASES	**OVERVIEW**	**COUNCIL ADVOCACY**
Summary	Since March 2024, 10 employers have been targeted in class-action lawsuits alleging that they breached their fiduciary duties when selecting an insurer for a pension risk transfer (PRT). Athene has been the insurer involved in all of the lawsuits, except for two, in which case Prudential was the insurer (RGA was also an insurer in one of the Prudential cases). In seven of the lawsuits, the plaintiffs have also named the independent fiduciary retained to select the insurer as a defendant. Among other claims, the lawsuits allege that, in selecting the insurer for their PRT, the plan sponsor-defendants breached their fiduciary duties by: • Failing to select the "safest available annuity," as required by Interpretive Bulletin 95-1, highlighting various factors showing the alleged riskiness of the insurers; • Conducting a PRT that diminished the value of participants' benefits; • Choosing a lower-cost insurer in order to save money and maximize corporate profits; and • In the case of PRTs involving Athene, there is a focus on the issues involved in selecting a private equity-owned insurer.	The Council's *amicus* briefs (linked below, where applicable) argued that the plaintiffs' PRT allegations do not state a claim for a fiduciary breach and, because the insurer has paid all benefits, the plaintiffs lack standing. The Council's amicus briefs also challenge the substantive sufficiency of the complaints, which do not allege a process failure.

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	Additionally, the lawsuits allege that the employers caused the plans to engage in non-exempt prohibited transactions. First, the plaintiffs argue that the employers caused the plans to hire a service provider—i.e., the insurer—for more than reasonable compensation. Second, the plaintiffs argue that, by selecting a lower cost insurer to increase their own profits, the employers engaged in a form of self-dealing. There are also allegations of prohibited transactions based on the relationships between the independent fiduciary, the insurer, and the plan sponsors.	
Camire v. Alcoa **(U.S. District Court for the District of Columbia, 2025)**	The district court granted the defendant's motion to dismiss (MTD). The court concluded that the plaintiffs did not have standing because not a single plaintiff alleged that they had received a lower benefit payment as a result of the PRT, and there was no substantial risk of future harm to their benefits. The plaintiffs have made a motion for permission to file an amended complaint.	
Konya v. Lockheed Martin **(U.S. District Court for the District of Maryland, 2025)**	The district court denied Lockheed's MTD on both the standing issue and the substantive issues. The court held that the plaintiffs had standing because there was a substantially increased risk—even if that risk was relatively small—that the insurer will fail and they will not receive their promised benefit payments. Both	**Council *Amicus* Brief with 4th Circuit Court of Appeals in *Konya v. Lockheed Martin Corporation***

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	the district court and the Fourth Circuit have granted Lockheed Martin's request for permission to file an interlocutory appeal to the Fourth Circuit on the standing issue.	
Piercy v. AT&T **(U.S. District Court for the District of Massachusetts, 2025)**	The magistrate judge issued a report and recommendations to the district judge concluding that the plaintiffs have standing because they plausibly alleged an injury—i.e., that the annuity purchased from Athene was less valuable to participants than their benefit under the plan. However, the magistrate concluded that the case should nevertheless be dismissed because the plaintiffs' allegations were insufficient to show a fiduciary breach; for example, the plaintiffs did not allege that the fiduciaries failed to consider important factors in selecting Athene, and the plaintiffs failed to address the fact that AT&T could reasonably have selected the insurer due to the fact that the PRT was backed by a separate account as an additional layer of security. On October 3, the district court judge accepted the recommendations of the magistrate judge, dismissing the case, and will next consider the plaintiff's motion for leave to amend the complaint.	**Council *Amicus* Brief with the U.S. District Court for the Northern District of Massachusetts in *Piercy v. AT&T***
Bueno v. General Electric	The district court granted the defendant's MTD, ruling that any "harm" caused by the PRT was a speculative future harm that is	

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(U.S. District Court for the Northern District of New York, 2025)	insufficient to provide standing. In the court's view, if the harm has not already occurred, there needs to be a "certainly impending" harm or a "substantial risk" of harm, rather than a "substantially increased risk of harm."	
Doherty v. Bristol Myers Squibb **(U.S. District Court for the Southern District of New York)**		**Council *amicus* brief with the U.S. District Court for the Southern District of New York in *Doherty v. Bristol Myers Squibb***
Maneman v. Weyerhaeuser **(U.S. District Court for Western District of Washington)**		**Council *amicus* brief with U.S. District Court for Western District of Washington in *Maneman v. Weyerhaeuser***
Other Cases	To date, the PRT litigation includes the following additional cases which, unless otherwise noted, challenge the selection of Athene: *Schoen v. ATI, Inc.* (W.D. Penn.); *Doherty v. Bristol-Myers Squibb* (S.D.N.Y.); *Dow v. Lumen Technologies* (D. Colo.); *Maneman v. Weyerhaeuser Co.* (W.D. Wash.); *Dempsey v. Verizon* (S.D.N.Y.,	

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	challenging the selection of Prudential and RGA); and *Spohn v. IBM* (D. Mass., challenging the selection of Prudential).	

ACTUARIAL ASSUMPTIONS		
SUMMARY/NOTABLE CASES	**OVERVIEW**	**COUNCIL ADVOCACY**
Summary	Since 2018, a series of lawsuits have been filed against defined benefit (DB) plan sponsors alleging that they violated ERISA by using outdated mortality assumptions to calculate optional forms of annuity benefits, most notably when converting a single life annuity to a qualified joint and survivor annuity (QJSA). According to the plaintiffs, the use of outdated mortality tables is causing some participants to receive smaller benefits than they are entitled to. Although these cases have generally yielded unfavorable results for employers at the motion to dismiss (MTD) stage, a more recent string of decisions has provided some encouraging results for employers facing these lawsuits.	The Council's *amicus* briefs (linked below, where applicable) argued that a reasonableness requirement for actuarial assumptions would lead to unpredictability and increased costs, discourage pension plan adoption, and subject employers to additional litigation risks. Furthermore, if Congress had wanted to impose a reasonableness requirement on all benefit conversions, or prescribe a specific set of mortality assumptions, it could have done so as it has in other contexts.
Smith v. U.S. Bancorp	The district court denied the employer's MTD, ruling that the plaintiffs plausibly alleged a failure to provide an "actuarially	

ACTUARIAL ASSUMPTIONS		
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(U.S. District Court for the District of Minnesota, 2019)	equivalent" benefit in accordance with ERISA because the plan used older interest and mortality assumptions to convert benefits, rather than current interest and mortality assumptions.	
Belknap v. Partners **(U.S. District Court for the District of Massachusetts, 2022)**	The district court granted the employer's MTD, ruling that, when a plan specifies the particular assumptions that will be used in benefit conversions, the term "actuarial equivalent" does not require the use of reasonable assumptions for purposes of ERISA section 204(c)(3). That provision requires a participant's early retirement benefit to be the actuarial equivalent of the normal retirement benefit.	
Reichert v. Kellogg **(U.S. District Court for the Eastern District of Michigan, 2024)** ***Watt v. FedEx***	Three courts have recently granted employers' MTDs in a series of actuarial equivalence lawsuits. In each of these cases, the courts ruled that ERISA's requirement for single life annuities to be the "actuarial equivalent" of a QJSA does not require the actuarial assumptions to be "reasonable."	**Council Amicus Brief for the 6th Circuit Court of Appeals in *Reichert v. Kellogg Company*** **Council Amicus Brief with 6th Circuit Court of Appeals in *Watt v. FedEx***

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(U.S. District Court for the Western District of Tennessee, 2024) ***Drummond v. Southern Co.*** **(U.S. District Court for the Northern District of Georgia, 2024)**		**Council Amicus Brief with 11th Circuit Court of Appeals in *Drummond v. Southern Company***

STATUTE OF LIMITATIONS		
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Summary	ERISA requires plaintiffs filing a fiduciary breach claim to do so within six years of when the breach occurred. However, an accelerated deadline applies if a plaintiff has "actual knowledge" of the breach, in which case a claim must be filed within three years of when the plaintiff has actual knowledge. As an exception to these general rules, in the case of fraud or concealment, an action may be commenced not later than six years after the date of discovery of such breach or violation. That is, ERISA's six-year "statute of repose" begins to run on the date of the fiduciary's alleged misconduct, or in the case of breach by omission, the date on which the fiduciary could have cured the breach. ERISA's three-year "statute of limitations," on the other hand, begins to run on the date on which the plaintiff had actual knowledge of the alleged misconduct. Separately, claims for statutory violations of ERISA that do not assert a breach of fiduciary duty are governed by the statute of limitations set forth in the plan document, as long as it is reasonable. From time to time, litigation tests the scope and application of these statutes of limitations.	The Council filed *amicus* briefs in support of the defendants in *Intel v. Sulyma*, *Tibble v. Edison*, *Knight v. IBM*, and *Guenther v. BP*.
Intel v. Sulyma	The Supreme Court addressed what it means for a plaintiff to have "actual knowledge" of a fiduciary breach for purposes of	**Council Amicus Brief before the U.S. Supreme**

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(U.S. Supreme Court, 2020)	ERISA's statute of limitations. The high court held that a plaintiff does not necessarily have actual knowledge of the information contained in the plan disclosures required to be sent to participants under ERISA which the participant receives but does not read or cannot recall reading—i.e., actual knowledge must be more than potential or conceivable. Thus, the three-year limitation period would not necessarily start to run upon the plaintiff's receipt of such disclosures.	**Court Requesting Cert in *Intel v. Sulyma*** **Council Amicus Brief before the U.S. Supreme Court on Merits in *Intel v. Sulyma***
Tibble v. Edison **(U.S. Supreme Court, 2015)**	The Supreme Court ruled that a fiduciary's duty to monitor investments is a continuing duty, and because an alleged breach of this continuing duty occurred within the last six years, the plaintiffs' claim was not barred by ERISA's six-year statute of repose.	**Council Amicus Brief with U.S. Supreme Court in *Tibble v. Edison***
Knight v. IBM **(U.S. 2nd Circuit Court of Appeals, 2025).**	The district court ruled that the plaintiffs' fiduciary breach claim involving the use of outdated mortality tables to calculate joint and survivor benefits was untimely under ERISA's three-year statute of limitations, and the plaintiffs' non-fiduciary statutory claims were barred under the two-year statute of limitations imposed by the terms of the plan. The court explained that the two-year statutory limit began to run once the plan sent participants disclosures regarding the mortality tables because	**Council Amicus Brief with the 2nd Circuit Court of Appeals in *Knight v. IBM Corporation***

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	the participants either knew or should have known about the material facts of the alleged breach at that time (which was the standard that triggered the two-year limit according to the plan's terms). The court held that ERISA's three-year limit began to run once the plaintiffs received their first pension payment and were sent the disclosures, because they had knowledge of the facts underlying their claim at that time. On appeal (where the plaintiffs, citing the *Intel* decision described above, argued that the disclosures were too complicated to understand and therefore did not trigger ERISA's statute of limitations), the Second Circuit reversed on the grounds that the district court should have allowed the parties to submit additional materials regarding when each plaintiff actually received the disclosure.	
Guenther v. BP **(U.S. District Court for the Southern District of Texas, 2024)**	In a case involving purportedly inadequate communications in 1989 to plan participants regarding the conversion of their traditional pension plan to a cash-balance plan, the district court held that ERISA's six-year statute of repose did not apply to the claims filed in 2016, even though the plaintiffs did not bring the lawsuit until nearly 30 years after the conversion, because they were only claims for equitable relief.	**Council *amicus* brief with 5th Circuit Court of Appeals in *Guenther v. BP***

PROHIBITED TRANSACTIONS		
SUMMARY/NOTABLE CASES	**OVERVIEW**	**COUNCIL ADVOCACY**
Summary	Until the Supreme Court's recent ruling in the case of *Cunningham v. Cornell* (described below), there had been a circuit split on what plaintiffs must plead in order to survive a motion to dismiss (MTD) for a lawsuit alleging a prohibited transaction based solely on a plan's hiring of a service provider. Some circuits ruled that plaintiffs were only required to allege that a plan hired a service provider, thereby shifting the burden to employers to prove that any contracts are exempt under ERISA section 408(b)(2)—i.e., the services are necessary, the contract is reasonable, and no more than reasonable compensation is paid for the services. Other circuits ruled that the mere allegation of a plan hiring a service provider could not, by itself, survive an MTD. Instead, those circuits ruled that plaintiffs could only advance if they also alleged that the exemption under ERISA section 408(b)(2) was not satisfied, or there was some other wrongdoing.	The Council filed amicus briefs in the case of *Cunningham v. Cornell* at the Supreme Court and the Second Circuit. The Council filed an amicus brief in the case of *Bugielski v. AT&T*, urging the Ninth Circuit to rehear its troubling ruling against AT&T.
Cunningham v. Cornell **(U.S. Supreme Court, 2025)**	The Supreme Court sided with the plaintiffs and ruled that plaintiffs generally can survive an MTD by simply alleging that a plan hired a service provider. Thus, plaintiffs do not have to claim that any fees were unreasonable or that any other wrongdoing occurred. In its unanimous decision, the court acknowledged that there are "serious concerns" with the risk of "an avalanche of meritless litigation" if plaintiffs are not required	**Council *amicus* brief with the U.S. Court of Appeals for the 2nd Circuit in *Cunningham v. Cornell*** **Council *amicus* brief with the U.S. Supreme Court in *Cunningham v. Cornell***

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	to plead that an exemption to the prohibited transaction rules does not apply. Ultimately, however, the court found that those concerns "cannot overcome the statutory text and structure" of ERISA. In other words, to the extent that the pleading standards yield concerning results, it is up to Congress to fix it, not the courts. The court offered some possible ways to avoid this avalanche but only one seemed remotely possible, and even that one is not commonly used today. That one was described as follows by the court: "For instance, if a fiduciary believes an exemption applies to bar a plaintiff's suit and files an answer showing as much, Federal Rule of Civil Procedure 7 empowers district courts to 'insist that the plaintiff' file a reply "'put[ting] forward specific, nonconclusory factual allegations'" showing the exemption does not apply."	
Collins v. Northeast Grocery **(U.S. 2nd Circuit Court of Appeals, 2025)**	Relying on the Supreme Court's *Cunningham* decision, the Second Circuit revived a previously dismissed lawsuit against a plan sponsor involving a claim that the plan sponsor engaged in a prohibited transaction by paying excessive direct and indirect fees to its service providers.	

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Bugielski v. AT&T **(U.S. 9th Circuit Court of Appeals, 2023)**	The Ninth Circuit ruled that a prohibited transaction occurs any time that a plan amends its contract with an existing service provider. Accordingly, it is the employer's burden to prove that an exemption applies and the fees are reasonable.	**Council *amicus* brief before the U.S. Supreme Court Requesting Cert in *Bugielski v. AT&T***

LONG-TERM INCENTIVE COMPENSATION		
SUMMARY/NOTABLE CASES	**OVERVIEW**	**COUNCIL ADVOCACY**
Summary	There have been disputes about whether a long-term incentive compensation plan (LTICP) may be treated as an ERISA-covered pension plan. In recent years, plaintiffs have aggressively sought to extend ERISA coverage to LTICPs merely because a plan, as an exception to its typical vesting period, makes payments upon death, disability, retirement, layoff, or government service. These challenges run contrary to longstanding case law and Department of Labor (DOL) positions. These challenges have been especially prevalent for advisors in the financial services industry.	
Shafer v. Morgan Stanley **(U.S. District Court for the Southern District of New York, 2023)**	The district court ruled that Morgan Stanley's LTICP for its advisors was an ERISA pension plan because: (1) it was not a "bonus plan" within the meaning of Labor Reg. section 2510.3-2(c); and (2) its payments in the event of death, disability, retirement, layoff, or government service resulted in the deferral of income to termination of employment or beyond. Morgan Stanley appealed to the Second Circuit, which declined to consider the appeal on procedural grounds. *Note*: Notwithstanding the district court's ruling, on September 9, 2025, DOL issued Advisory Opinion 2025-03A, which clearly states that Morgan Stanley's LTICP is not an ERISA plan.	**Council *amicus* brief with the 2nd Circuit Court of Appeals in *Shafer v. Morgan Stanley***

LONG-TERM INCENTIVE COMPENSATION		
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Milligan v. Bank of America **(U.S. District Court for the Western District of North Carolina, 2025)**	The district court granted Bank of America's motion for summary judgment, ruling that Bank of America's LTICP for advisors was not an ERISA pension plan. In the court's view, this was because the purpose of the program was to reward performance and tenure; not to provide retirement income or to defer income until termination or beyond. Additionally, the court ruled that Bank of America's program was exempt from ERISA as a "bonus plan" within the meaning of Labor Reg. section 2510.3-2(c). The plaintiffs have appealed this ruling to the Fourth Circuit.	**Council *amicus* brief with the 4th Circuit Court of Appeals in *Milligan v. Bank of America/Merrill Lynch***

CLAIMS ADMINISTRATION		
SUMMARY/NOTABLE CASES	**OVERVIEW**	**COUNCIL ADVOCACY**
Summary	Under Supreme Court precedent, if an ERISA-covered plan provides a fiduciary with discretion to interpret the plan and make benefit determinations, and the fiduciary's determinations are ever challenged in court, the fiduciary's determinations are to be given deference by the reviewing court. In this case, the fiduciary's determination will only be reversed if the decision represents an "abuse of discretion." In recent years, plaintiffs have sought to chip away at this rule so that courts will review their benefit claims under a "de novo" standard of review. These challenges open plan sponsors up to unnecessary, inefficient, and unpredictable second-guessing by the courts.	The Council filed *amicus* briefs in support of the defendants in *Baleja v. Northrop Grumman*, *Kramer v. American Electric Power*, and *Cloud v. NFL*.
Firestone Tire v. Bruch **(U.S. Supreme Court, 1989)**	The Supreme Court ruled that, when a participant challenges a benefit denial in court under ERISA, the claim must be reviewed under a *de novo* standard of review unless the plan expressly gives the plan administrator or fiduciary discretionary authority to determine eligibility for benefits or to construe the plan's terms, in which cases a deferential standard of review is appropriate.	