

# Trucker Huss Spring 2026 ERISA Litigation Update

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## Today's Agenda

- Department of Labor's Recent Active Amicus Brief Filings
- Forfeiture Litigation
- Prohibited Transaction Claims after *Cunningham v. Cornell*
- Voluntary Benefits Litigation
- Stable Value Fund Litigation
- Enforceability of ERISA Releases

## DOL'S RECENT ACTIVE AMICUS BRIEF FILINGS



## Good News? DOL's Litigation Positions Supportive of Plan Fiduciaries

- Active use of amicus briefs in Supreme Court and Circuit Courts of Appeal
  - Friend of the Court briefs in high profile class action litigation
- Trending towards curbing wave of ERISA litigation, seemingly more fiduciary friendly – “Our amicus program is decisively pro-ERISA . . .” – DOL EBSA Assistant Secretary Daniel Aronowitz (April 16, 2026)
- Burden of Proof for Causation
- Investment Performance
- Pension Risk Transfers
- Forfeitures

## Good News? DOL's Litigation Positions Supportive of Plan Fiduciaries, cont'd

- Assistant Secretary of Labor for EBSA, Daniel Aronowitz April 16, 2026 – Subcommittee on Health, Employment, Labor, and Pensions Committee on Education and the Workforce, U.S. House of Representatives
- “[W]e are attacking regulation by private litigation, combatting ERISA class action litigation abuse that has stifled innovation in plan design – paralyzing conscientious plan fiduciaries who follow sound fiduciary practices.”
- “This is why we have filed a number of amicus briefs to defend ERISA as a law of process in which independent and conflict-free plan fiduciaries have discretion and flexibility to act in the best interests of their participants. We have also made clear in our filings that plan fiduciaries’ decisions should not be subject to second-guessing from the judicial system when they have followed a sound and prudent fiduciary process as ERISA requires.”
- EBSA is “pushing back on meritless cases that are designed to leverage settlements because the cost of class action litigation is so high.”

## Good News? DOL's Litigation Positions Supportive of Plan Fiduciaries, cont'd

- Burden to Show Loss Causation (Plaintiff has burden of proof to show a fiduciary breach caused loss to a plan versus once Plaintiff proves a breach and loss, the burden shifts to the fiduciary to prove that the loss was not caused by the breach)
  - Pizarro v. The Home Depot (December 2025) – Solicitor General (for DOL) reversed DOL's 11<sup>th</sup> Circuit position. Employee-plaintiffs dropped suit before Supreme Court was to decide whether to hear the case
  - “Following the change in Administration and this Court's invitation, the government has reviewed its position and concluded that the relevant authorities are better understood as leaving the burden of proving causation on ERISA plaintiffs.”
  - In the 11<sup>th</sup> Circuit, the DOL had supported the plaintiffs, arguing that the district court should have applied burden shifting framework once plaintiff demonstrates fiduciary breach and loss
  - Joint motion to dismiss petition for certiorari (January 2026). DOL statement: “This outcome should provide reassurance to the regulated community that the Department of Labor is committed to ending regulation by litigation and to defending ERISA as Congress intended. This result reflects a victory for common sense, sound legal doctrine, and the millions of American workers who rely on employer-sponsored retirement plans.”

## Good News? DOL's Litigation Positions Supportive of Plan Fiduciaries, cont'd

- Fund Performance and Fees
  - Parker-Hannifin Corp. v. Johnson (December 2025) – Solicitor General (on behalf of the DOL) argued that the Court should hear the case; underperformance supports inference of imprudence if compared to meaningful benchmark
- Pension Risk Transfer
  - Konya v. Lockheed Martin Corp. (January 2026). DOL News Release:
    - “The Department acted today to protect the voluntary employee benefit system as Congress intended,” said Deputy Secretary of Labor Keith Sonderling. “ERISA expressly provides an off-ramp for employers making the business decision to annuitize their defined benefit obligations. The ability to engage in PRTs is necessary to ensure that employers will continue to offer quality retirement benefits to American employees in the first place.”
    - “Our amicus brief reinforces ERISA as law of process in which plan fiduciaries have discretion and flexibility to make informed judgment calls,” said Assistant Secretary of Labor for Employee Benefits Security Daniel Aronowitz. “ERISA does not allow hindsight second-guessing or Monday-morning quarterbacking of discretionary fiduciary decisions.”
    - In its amicus brief, the department stated that “when left unencumbered, PRTs benefit employers and participants/beneficiaries alike, which is why ERISA provides for them (and the Secretary supports business’ right to engage in them). When PRT decisions are forced through the crucible of federal-court litigation, however, those upsides are (at best) obstructed or (at worst) obliterated ... if employers are thwarted from conducting PRTs because of the ever-present specter of litigation, the delicately calibrated balance Congress established between federal and state regulatory prerogatives will deteriorate.”

## Good News? DOL's Litigation Positions Supportive of Plan Fiduciaries, cont'd

- Forfeiture cases
  - *Hutchins v. HP Inc.* (July 2025)
  - *Wright v. JPMorgan Chase & Co.* (9<sup>th</sup> Cir. January 2026)
  - *Cain v. Siemens Corp.* (3d Cir. January 2026)
  - *Barragan v. Honeywell International Inc.* (3d Cir. January 2026)
    - DOL press release: “The brief also confirms that there is no *per se* rule barring plan fiduciaries from deciding to allocate forfeited employer contributions to reduce future employer contributions rather than using those funds to offset administrative costs.” “This filing is part of an ongoing effort by the Department to stop regulation by opportunistic litigation,” stated U.S. Department of Labor Solicitor Jonathan Barry. “The Department previously advanced the same legal analysis in *Wright v. JPMorgan Chase & Co.* and *Hutchins v. HP Inc.*, cases involving materially similar fact patterns in which the district courts likewise dismissed the claims. ‘Together, these cases reflect a consistent application of ERISA principles governing fiduciary discretion.’”

## PLAN FORFEITURE LITIGATION



## Forfeiture Litigation

- New wave of litigation involving defined contribution plans and use of forfeitures began in 2023
- Class actions lawsuits against plan sponsors and plan committees regarding use of 401(k) plan forfeitures to reduce employer contributions
- Unvested contributions forfeited when participant terminates employment before vesting in employer contributions
- Plaintiffs allege that:
  - the plans' administrative expenses are deducted from participant accounts and reduce participants' benefits
  - defendants exercise discretionary control over how the forfeited plan assets are used
  - ERISA requires defendants to use forfeitures to pay plan administrative expenses
  - defendants have used forfeitures to reduce employer contributions, for the benefit of the plan sponsor and to the detriment of participants

## Claims Asserted in Forfeiture Cases

- Breach of the fiduciary duty of loyalty under ERISA section 404(a)
- Breach of the fiduciary duty of prudence under ERISA section 404(a)
- Breach of anti-inurement under ERISA section 403(c) that requires that plan assets never inure to the benefit of the employer
- Prohibited Transactions under ERISA sections 406(a) and (b) by using plan assets for the benefit of the defendants and for their own account
- Failure to monitor fiduciaries (derivative claim)

## Defenses Asserted in Forfeiture Cases

- Long standing Treasury, IRS, DOL, and Congressional guidance and regulations permit using forfeitures to reduce employer contributions
- ERISA creates no exclusive duty to maximize pecuniary benefits for the participants
- Defendants acted in accordance with plan terms
- Defendants were performing settlor functions and not fiduciary functions in designing the plan terms and deciding to make plan contributions
- ERISA's anti-inurement rule does not apply to reallocation of funds within a plan. No money returned to the defendants outside of the plan
- Forfeiture funds are not plan assets because participants do not have an entitlement to them unless or until they are allocated to the participant's account
- No prohibited transaction because there is no transaction. Payment of benefits is not the type of transaction the PT rules are aimed at. Exchanges or reallocations between accounts of participants are not PTs.
- Lack of injury, so no standing to sue

## Forfeiture Litigation

- Motions to dismiss have been largely successful – Home Depot, Northrup Grumman, AT&T Services, Kaiser Foundation Health Plan and others. Approx. 26 motions granted; 6 denied
- A few cases have gotten past the motion to dismiss stage – Bank of America, Qualcomm, W.W. Grainger, Clorox, Intuit and others
- Plan language might be a key factor – whether the plan mandates a certain use for forfeitures (better insulated from forfeiture claims) or whether the plan gives fiduciaries the discretion to decide (less insulated from forfeiture claims)

## Forfeiture Litigation, cont'd

- Eighth Circuit – *Matula v. Wells Fargo* (May 12, 2026 opinion affirming dismissal for lack of standing). First appellate ruling in this wave of litigation
- Pending on Appeal
  - Ninth Circuit – *Hutchins v. HP Inc.* (oral argument scheduled May 20, 2026)
  - Third Circuit – *Barragan v. Honeywell* and *Cain v. Siemens* (oral argument scheduled May 27, 2026)
  - Other cases on appeal to the Fourth Circuit (RTX Corp. and Northrup Grumman) and Sixth Circuit (Meijer) and Ninth Circuit (JPMorgan Chase & Co.; Amazon.com Services LLC; Nordstrom Inc.)
- First Trial on the issue – *Stephan v. Trader Joe's* trial began on May 4, 2026, in District of Massachusetts. Court ruled in favor of the Defendants mid-trial (motion for judgment on partial findings under FRCP 52(c))
- Some cases have settled – Intuit, Lehigh Valley Health Network, Capital One, among a few others

## PROHIBITED TRANSACTION CLAIMS



## ERISA Litigation in the Wake of *Cunningham v. Cornell* – What is This All About?

- ERISA litigation relating to alleged excessive fees typically involves two legal theories: breach of fiduciary duty and breach of ERISA's prohibited transaction provisions
- Until *Cornell*, Circuit Courts of Appeal were split regarding what information plaintiffs needed to plead to overcome a motion to dismiss regarding the prohibited transaction claim
  - Getting past a motion to dismiss puts tremendous pressure on defendants to settle

## *Cunningham v. Cornell*

- ERISA §406(a)(1)(C): Except as provided in section 1108 of this title:

A fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect –

(C) furnishing of goods, services, or facilities between the plan and a party in interest

## *Cunningham v. Cornell, cont'd*

- In other words, the default rule is that fiduciaries cannot allow service providers to provide services to their plan “except” as provided in ERISA §408 (29 U.S.C. §1108)
- ERISA §408(b)(2) exempts from §406 transactions that involve:  
“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.”

## *Cunningham v. Cornell, cont'd*

- Behind closed doors, most ERISA litigators (including defense attorneys) have acknowledged that ERISA's prohibited transaction provision means what it says – arrangements between service providers and plans are prohibited transactions, and it is up to fiduciaries to plead, and prove, that service provider arrangements meet the 408(b)(2) exemption

## *Cunningham v. Cornell, cont'd*

- Defense attorneys have nevertheless argued for years that it makes no sense that plaintiffs should be able to simply allege a claim against a fiduciary for entering into a contract with a service provider
- What plan doesn't need services from professionals?

## *Cunningham v. Cornell, cont'd*

- Courts have struggled to believe that Congress would have intended to prohibit arrangements with service providers
- Does it make any sense that Congress would have prohibited agreements with service providers when plans cannot reasonably exist without them?

## *Cunningham v. Cornell, cont'd*

- “... it would be nonsensical to read [§406(a)(1)] to prohibit transactions for services that are essential for defined contribution plans, such as recordkeeping and administrative services.” *Albert v. Oshkosh Corp.*, 47 F.4th 570, 585 (7<sup>th</sup> Cir. 2022)
- **Side Note: The Seventh Circuit has been a little slippery on this point. See, *Allen v. GreatBanc*, 835 F.3d 670 (7<sup>th</sup> Cir. 2016) (holding it was sufficient for plaintiff to allege a prohibited acquisition of employer stock by an ESOP, and shift the burden to defendants to plead and prove that the acquisition was for no more than adequate consideration – a separate exemption under §408(e)**

## *Cunningham v. Cornell, cont'd*

- Other courts reached the opposite conclusion (setting up a circuit split)
- “... even assuming § 408(b)(2) ‘require[s] a fiduciary to plead reasonableness as an affirmative defense’ ..., the concern ‘that putting employers to the work of persuading factfinders that their choices are reasonable makes it harder and costlier to defend ... ha[s] to be directed at Congress, which set the balance where it is. [Citation omitted.] Congress has already set the balance here.’”  
*Buglielski v. AT&T Services, Inc.*, 76 F.4th 894, 907 (9th Cir. 2023).

## *Cunningham v. Cornell, cont'd*

- The Second Circuit reached the opposite conclusion in *Cunningham v. Cornell Univ.*, 86 F.4<sup>th</sup> 961 (2<sup>nd</sup> Cir. 2023) – the precursor to the Supreme Court decision
- Held: the §408 exemptions were not true “affirmative defenses,” and that reading §406 “in isolation from its exemptions ... would encompass a vast array of routine transactions the prohibition of which cannot be consistent with that statutory purpose. To the contrary, if all payments by plan fiduciaries to third parties in exchange for plan services were presumptively prohibited, then the plan would be severely compromised.” *Id.* at 976.

## *Cunningham v. Cornell, cont'd*

- Second Circuit held that plaintiffs need to affirmatively plead why the transaction was not exempt – “that [the] transaction was unnecessary or involved unreasonable compensation.”
- This holding brings the Second Circuit (and the Seventh Circuit) squarely into conflict with the 9<sup>th</sup> Circuit (*AT&T*) and the Eighth Circuit in *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 600-602 (8<sup>th</sup> Cir. 2008)

## *Cunningham v. Cornell, cont'd*

- Justice Sotomayor wrote for a unanimous court:
- “... the [§408] exemptions are ‘written in the orthodox format of an affirmative defense. [Citation omitted.] Understood as affirmative defenses, the ... exemptions must be pleaded and proved by the defendant who seeks to benefit from them.’”  
*Cunningham v. Cornell Univ.*, 145 S.Ct. 1020, (2025)

## *Cunningham v. Cornell, cont'd*

- The Court acknowledged Cornell's concern that allowing "bare bones" allegations of prohibited transactions could lead to an "avalanche" of litigation, but noted that:
  - (1) Congress wrote the statute the way it did, and the Court "must read it the way Congress wrote it," and;
  - (2) District courts could require plaintiffs to file replies to defendants' answers to complaints

## *Cunningham v. Cornell* – What next?

- Congressman Randy Fine introduced the “ERISA Litigation Reform Act” in November 2025
- If passed, it would expressly provide that plaintiffs have the burden of plausibly alleging and proving that the transaction is not exempt
- On March 17, 2026, the bill passed vote on party lines of the House Committee on Education and Workforce
- Likelihood of passing: iffy, due to lack of bipartisan support

## VOLUNTARY BENEFITS LITIGATION



## Voluntary Benefits Litigation

- Late December, 2025: the same law firm that launched the first wave of 401(k) “excessive fee” litigation cases in 2006 filed actions against several large employers alleging that they and their benefit consultant/brokers breached ERISA fiduciary duties by allowing excessive or unreasonable premiums to be charged in connection with “voluntary benefit programs”

## Voluntary Benefits Litigation, cont'd

- “Voluntary” plans provide supplemental benefits such as accident, critical illness, cancer screening and hospital indemnity insurance – they provide additional protection against rising health care costs not covered by employer-sponsored health plans
- These programs are “voluntary” in the sense that employees pay 100% of the premiums through payroll deductions

## Voluntary Benefits Litigation, cont'd

- The gist of these cases is that the employer defendants (and their benefit consultants) should have negotiated lower premiums and lower compensation for their benefit consultants
- With respect to the broker/consultant defendants, the complaints in the cases allege that the brokers acted in their own self-interest by offering products that paid higher commissions (and acted as fiduciaries by setting their own compensation)

## Voluntary Benefits Litigation, cont'd

- Threshold issue: are voluntary benefit programs “employee benefit plans” within the meaning of ERISA
  - If yes: plan sponsors (and possibly consultants) are fiduciaries, and are subject to ERISA fiduciary duties
  - If no: ERISA doesn't govern the program and no fiduciary duty attaches

## Is The Program An “Employee Benefit Plan” or Not?

- The issue is likely to turn on whether the program satisfies the requirements of a Department of Labor “safe harbor” regulation
- The current “official” position of the DOL is that the *only* way for a program to avoid being considered an employee benefit plan is if it satisfies all four conditions set forth in the regulation (DOL Adv. Opn. 1994-23A)
- Question: Would today’s DOL take the same view?

## The Safe Harbor Regulation

- (1) No contributions by the employer
- (2) Participation is completely voluntary for employees
- (3) The employer's sole functions are, *without endorsing the program*, to permit the insurer to publicize the program and collect premiums through payroll deductions; and
- (4) The employer receives no consideration – cash or otherwise

## The Safe Harbor Regulation, cont'd

- The “endorsement” condition is at the heart of most litigation with respect to the applicability of the safe harbor regulation
- An employer will be considered to “endorse” a program if it “expresses ... any positive, normative judgment regarding the program”
- Consider: does your website “tout” these benefits?

## The Safe Harbor Regulation, cont'd

- At least one court has held that whether an employer has “endorsed” a program turns in part on whether “the employer plays an active role in either determining which employees will be eligible for coverage *or in negotiating the terms of the policy or the benefits provided*” *Thompson v. America Home Assur. Co.*, 95 F.3d 429, 436 (6<sup>th</sup> Cir. 1996)

## To Negotiate, or Not To Negotiate

- The irony: when employers negotiate the terms, premiums, etc., of the program, all else being equal, the program is more likely to be considered an employee benefit plan
- Conversely, if employers are passive in the process, and the court nevertheless determines the program is an employee benefit plan, the employer risks a finding that it breached its fiduciary duty

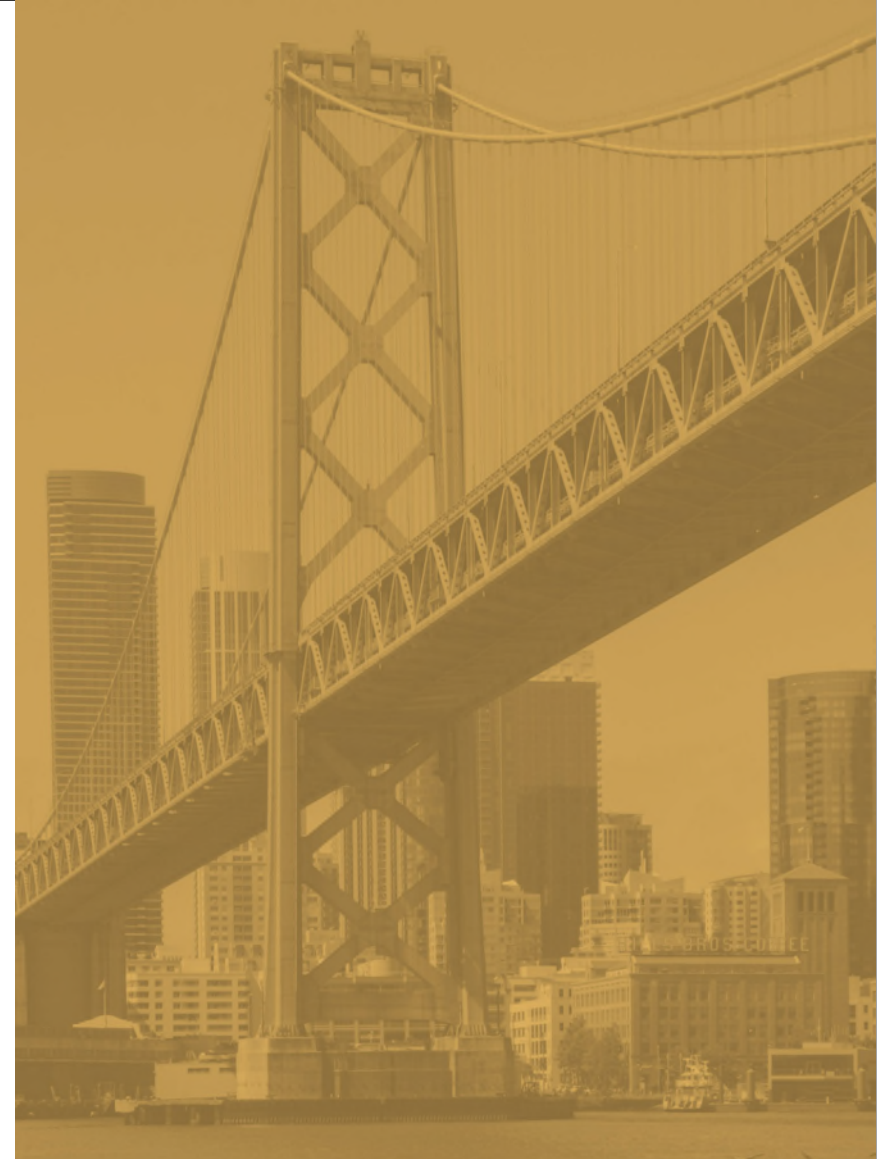
## Likely Issues To Be Addressed In the Litigation

Is it too speculative to assume that premiums (or consultant compensation) would have been lower if they were more actively negotiated?

## What's The Best Course of Action?

- *Review* the roster of programs presently offered
- *Assess* how those programs are communicated to employees – does it rise to the level of endorsement?
- *Consider* whether it makes more sense to assume that the programs offered constitute employee benefit plans

## STABLE VALUE FUND LITIGATION



## Stable Value Funds

- Stable value funds are intended to provide bond-like returns with low volatility
- Characteristics
  - Principal preservation
  - Consistent, positive returns
  - Liquidity for participant benefit payments
- Stable value funds are comprised of fixed income securities, insurance contracts, and short-term money market instruments
- Guaranteed Interest Contracts (“GIC”) are funded through insurance company general accounts or separate accounts
- Fees include fund management, stable value wrap contract, third party fixed income management, trust, custody, and fund administrative fees

## Stable Value Funds, cont'd

- Stable value funds are benefit responsive at the participant level
- Participants can make transfers or withdrawals at full book value: original purchase amounts and accrued interest
- Restrictions apply to the termination of a stable value fund at the plan level
- To receive full book value, payments will be made in installments usually spread over several years
- For liquidation in one payment, assets will be paid at mark to market values and may be less than book value

## Stable Value Fund Litigation

- Over sixty stable fund cases have been filed in the last several years
- Early case against J. P. Morgan was settled
- Recent cases:
  - Hensley v. Molson Coors Beverage Co. USA LLC
  - Khan v. Staples, Inc.
  - Porter v. Arthur J. Gallagher (III.), LLC
  - Fitch v. Centra Health, Inc.
  - Wallace v. Pilgrim's Pride Corporation
  - Jones v. Ramboll Ltd.

## Allegations in Stable Value Fund Litigation

- Cases are brought as putative class actions on behalf of all participants and beneficiaries
- Plaintiffs allege breach of fiduciary duty of prudence in the selection and retention, as an investment option in the plan, of a stable value fund or a GIC that allegedly has a lower crediting rate compared to other similar investments available on the market.
- Plaintiffs allege that, because the GIC crediting rates are low, the spread between the crediting rates and the actual interest earned by the issuer on the assets in their general account is a prohibited transaction
- Plaintiffs allege that the recordkeeping fees are excessive and a prohibited transaction
- Plaintiffs allege breach of fiduciary duty by the company or the board of directors for failing to monitor the plan committee

## Defenses in Stable Value Fund Litigation

- Failure to raise a plausible inference of imprudence because the comparator funds fail to satisfy the “meaningful benchmark” pleading standard
- Failure to include any allegations supporting the conclusory assertion that the comparator funds are comparable to the fund at issue
- Failure to allege the underlying insurance contracts, asset composition, risk profiles, or fee structures of the purported comparators
- Claims are an “apples to oranges” comparison
- Claims are based on improper, hindsight-based performance comparisons

## ENFORCEABILITY OF ERISA RELEASES



## Enforceability of ERISA Releases

- Can a broad release in a severance agreement be enforced to preclude ERISA claims?
- Vested benefits cannot be waived
- Can 502(a)(2) claims on behalf of the plan be waived?
- Release of ERISA claim “is subject to closer scrutiny than a waiver of general contract claims”
- Release must be “knowing and voluntary”

## Enforceability of ERISA Releases, cont'd

- Courts examine:
  - 1) the plaintiff's education and business experience
  - 2) the amount of time the plaintiff had possession of or access to the agreement before signing it
  - 3) the role of [the] plaintiff in deciding the terms of the agreement
  - 4) the clarity of the agreement
  - 5) whether the plaintiff was represented by or consulted with an attorney
  - 6) whether the consideration given in exchange for the waiver exceeds employee benefits to which the employee was already entitled by contract or law

## Enforceability of ERISA Releases, cont'd

- *Schuyler v. Sun Life Assurance Co. of Canada*
  - Schuyler signed a broad separation agreement releasing “all claims” against her employer and “related entities” in exchange for \$25,000
  - She had a pending long-term disability (LTD) claim (worth much more) that the insurer argued was released
  - The 2nd Circuit found the release unenforceable because it was not “knowing and voluntary”
  - The employer’s legal counsel gave written assurances that the release would have “absolutely no effect” on her LTD claim
  - Even if a release seems broad, evidence that the employee relied on representations that their benefits were safe can invalidate the release

## Enforceability of ERISA Releases, cont'd

- *Schuman v. Microchip Tech. Inc.*
  - Employees were promised high severance via an ERISA plan but were offered much lower amounts in exchange for signing a release after a merger
  - The employer told employees the ERISA plan had “expired” to induce them to sign the release
  - The 9th Circuit held that releases must be scrutinized for fiduciary breaches
  - If an employer (fiduciary) lies about or hides the existence of benefits to force a release, that release is likely invalid
  - “Special Scrutiny” requires evaluating if the release was induced by the employer’s bad faith or breach of loyalty

## Enforceability of ERISA Releases - Takeaways

- Knowing and Voluntary Standard: Courts require that employees explicitly understand they are giving up specific ERISA rights
- Specific vs. General Language: Agreements that specifically mention ERISA or the relevant benefit plans are more likely to be enforced than general “all claims” waivers
- Pre-execution Assurances: Evidence that an employer assured an employee that a release would not impact benefits can invalidate a written release

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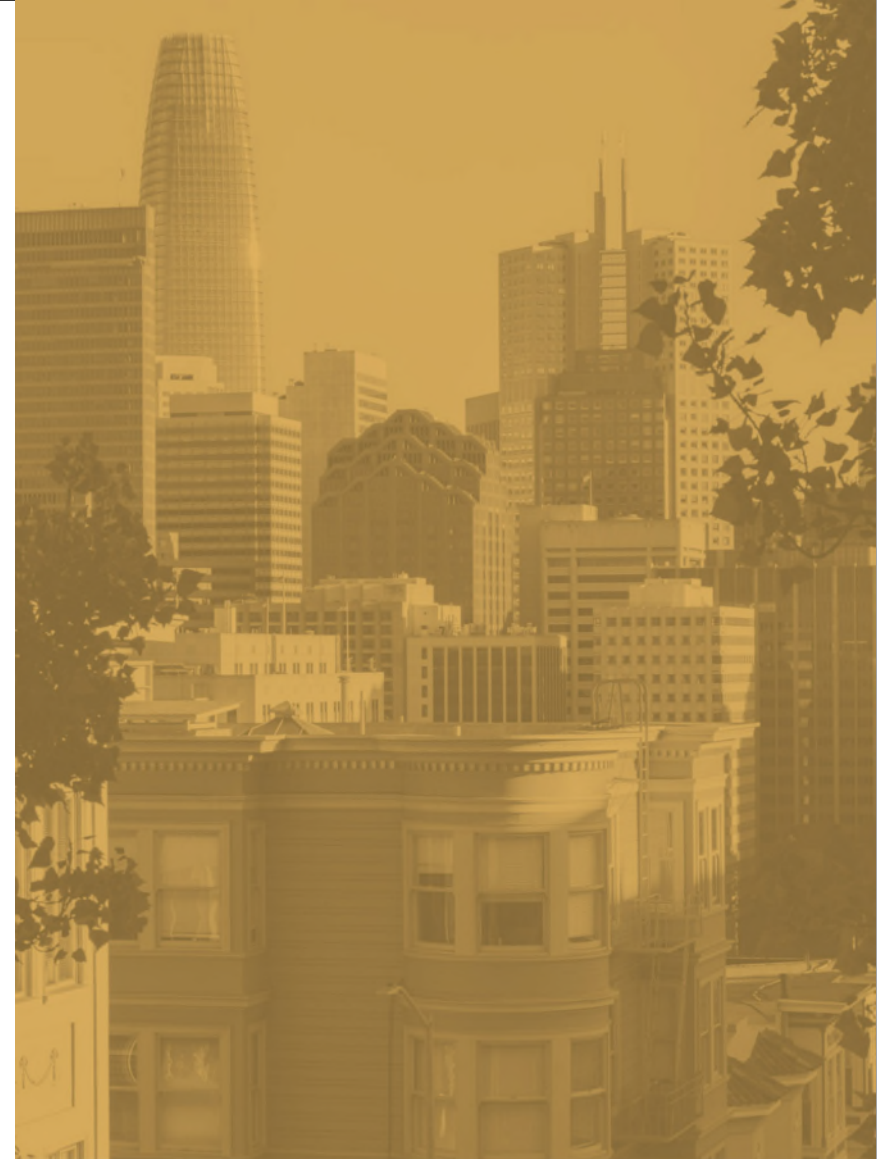
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