

Employees of JPMorgan May Proceed with Their Lawsuit Over High Drug Costs in Health Plan



Mary E. Powell

On March 9, 2026, the U.S. District Court for the Southern District of New York issued an opinion in *Stern vs. JPMorgan Chase & Co.* (No. 25-2097, S.D. N.Y., 2026 U.S. Dist. LEXIS 47281). The Plaintiffs, current and former JPMorgan employees (Plaintiffs), brought a putative class action under the Employee Retirement Income Security Act of 1974 (ERISA) alleging that the defendants (JPM Bank, JPMorgan Chase & Co., JPMorgan Chase U.S. Benefits Executive and members of the Compensation & Management Development Committee—herein after referred to as “JPMorgan”) breached their fiduciary duties of loyalty and prudence, and engaged in prohibited transactions by mismanaging the prescription drug component of the self-funded health plan (the “Plan”). JPMorgan filed a motion to dismiss, which was granted in part and denied in part. As explained below, the court dismissed the breach of fiduciary duty claims finding that Plaintiffs’ allegations focused on purported plan design issues, which are a settlor function—not a fiduciary function; however, the court allowed the prohibited transaction claims alleged by the Plaintiffs to survive, and the action against JPMorgan will proceed.

Standing—Injury in the Form of Higher Premiums Is Not Enough. In order to survive a motion to dismiss for lack of subject matter jurisdiction, plaintiffs must establish Article III standing, meaning the plaintiff must plausibly allege that: (1) he suffered an injury in fact that is concrete, particularized, and actual or imminent, (2) the injury was likely caused by the defendant, and (3) the injury would likely be redressed by judicial relief. JPMorgan challenged the first element—injury in fact.

The court held that Plaintiffs’ claim that they paid increased premiums because JPMorgan agreed to grossly overinflated drug prices set by CVS Caremark, in its role as the pharmacy benefit manager (PBM) for the Plan, was too speculative to establish standing. The court stated that there was no concrete evidence that the alleged overpayments made to CVS Caremark impacted the amount that Plaintiffs paid in premiums. Plan participants paid approximately 30% of the premiums and that the Plan document gave JPMorgan discretion to increase that amount at any time. The court noted that participant contributions remained relatively consistent despite “dramatic swings” in benefits paid by the Plan over a three-year period.

Standing—Injury in the Form of Out-of-Pocket Costs Is Sufficient. The court held Plaintiffs plausibly alleged personal financial loss because they paid inflated out-of-pocket costs tied to the excessive drug prices set by CVS Caremark, which was allowed by JPMorgan through its PBM contract with CVS Caremark. This allegation of personal financial harm was enough to confer standing.

The court noted that the Plaintiffs analyzed all 404 generic drugs contained in the Plan's formulary and alleged an average markup of 211.1% for 366 of those drugs, using the reported acquisition cost of the prescription (*i.e.*, the NADAC) and cash prices as benchmarks. In addition, Plaintiffs provided examples of markups for the remaining 38 generic drugs. The court held that, while JPMorgan could contest the issue of the correct benchmark for determining the markup of a drug, that "is a question for the merits and not a ground for dismissal based on lack of standing."

Failure to State Breach of Fiduciary Duty Claims. JPMorgan also sought to dismiss the complaint for failure to state a claim and successfully dismissed the breach of fiduciary duty claims. The Plaintiffs alleged, among other things, that JPMorgan breached its fiduciary duties of prudence and loyalty in failing to negotiate better pricing terms with CVS Caremark, entering into a contract that contained opaque pricing provisions, and permitting numerous drugs to be classified as "specialty," which caused participants to pay higher costs for those drugs. In addition, the Plaintiffs alleged that the business relationship that JPMorgan had with CVS influenced their fiduciary decisions.

The court held that while the Plaintiffs tried to frame these issues as fiduciary breaches, they were really settlor decisions and, therefore, not subject to the ERISA fiduciary rules. "Defining the formulary framework, determining cost-sharing terms, and choosing between pricing models are components of benefit design... None of those challenged choices are fiduciary in nature."

Plausibly Alleged Prohibited Transaction Claims. The plaintiffs alleged that JPMorgan engaged in prohibited transactions by having the Plan enter into an agreement with CVS Caremark for PBM services. They also alleged that the amounts that CVS Caremark received in spread pricing (*i.e.*, the difference between what CVS Caremark charges the Plan for a drug versus what is paid to the dispensing pharmacy) and rebate payments (*i.e.*, the amounts paid to CVS Caremark by a pharmaceutical company for the placement of a drug on a formulary), plus \$3 million in annual administrative fees, was excessive compensation; therefore, the arrangement for PBM services was unreasonable—and as such amounted to a prohibited transaction. (Note: courts consider both direct and indirect compensation when determining whether a transaction is for no more than reasonable compensation for a prohibited transaction.)

Citing the recent U.S. Supreme Court case of *Cunningham vs. Cornell University*, the court held Plaintiffs only need to allege that JPMorgan, as a Plan fiduciary, (1) acting in their fiduciary capacity, (2) caused the Plan to engage in a transaction that the fiduciary knew or should have known constituted a direct or indirect furnishing of services, (3) between the Plan and a party-in-interest. The prohibited transaction statute, ERISA § 406(a), is very broad and *Cunningham* held that plaintiffs do not have to plead around anticipated affirmative defenses under ERISA § 408(b). The selection of a service provider is a fiduciary function, and the Plan already had an existing relationship with CVS Caremark; therefore, the Plaintiffs plausibly alleged that JPMorgan (1) caused the Plan to enter into an agreement with CVS Caremark, (2) to furnish PBM services to the Plan, and (3) as an existing service provider to the Plan, CVS Caremark is a party-in-interest at the time of the transaction. (While other prohibited transactions were also alleged, those transactions are similar in nature to the one discussed.) The court stated, "Even though Defendants may have ample defenses to this claim, pursuant to the Supreme

Court's recent opinion in *Cunningham v. Cornell University*, Plaintiffs' allegations are sufficient to assert a plausible prohibited transaction at this juncture." Accordingly, the motion to dismiss the prohibited transaction claims were denied.

Final Footnote in the Court's Opinion. In the final footnote of the court's opinion, it states that the Supreme Court's opinion in *Cunningham v. Cornell University* enumerated various tools that a district court could use to screen out meritless claims before the discovery stage of a lawsuit, and that it intends to require Plaintiffs to file a reply if JPMorgan asserts an exemption to the prohibited transaction as an affirmative defense. JPMorgan is likely to assert an affirmative defense under ERISA §408(b)(2), which provides an exemption for service arrangements between a Plan and a party-in-interest if:

- the contract or arrangement is reasonable,
- the services are necessary, and
- no more than **reasonable compensation** is paid for the services.

As noted above, courts consider both direct and indirect compensation. There are many ways CVS Caremark could have received direct or indirect compensation related to the PBM services it provided to the Plan, including spread pricing, rebates, formulary fees, fees related to using the Plan's data, etc. It will be interesting to see what information JPMorgan has about the compensation that was paid to CVS Caremark and whether it received that information prior to entering into the agreement for Plan services and determined it was reasonable compensation. JPMorgan will likely plead factual allegations about the reasonableness of the compensation paid to CVS Caremark to support their affirmative defense. Depending on JPMorgan's litigation strategy and Plaintiffs reply to the answer, JPMorgan may move for judgment on the pleadings in another attempt to end this case before it reaches the discovery phase—which is a costly process.

In summary, while the prohibited transaction claims survived the motion to dismiss, it is unclear how the Plaintiffs will fare in the next stage of this litigation. We will keep you posted!

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Editor: Nicholas J. White, nwhite@truckerhuss.com (<mailto:nwhite@truckerhuss.com>)

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SAN FRANCISCO

135 Main Street, 9th Floor
San Francisco, California 94105-1815

LOS ANGELES

15760 Ventura Blvd, Suite 910
Los Angeles, California 91436-3019

PORTLAND

329 NE Couch St., Suite 200
Portland, Oregon 97232-1332

Tel: (415) 788-3111

Fax: (415) 421-2017

Email: info@truckerhuss.com (<mailto:info@truckerhuss.com>)

Website: www.truckerhuss.com (<https://www.truckerhuss.com>)

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