

ERISA and Prescription Drug Costs: The Latest on Fiduciary Breach Class-Action Lawsuits

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Lawsuits over what ERISA group health plans pay for prescription drugs continue full speed ahead, with plaintiffs in *Lewandowski v. Johnson & Johnson* filing an amended complaint to try to shore up standing, a dismissal in the lawsuit against Wells Fargo, and a new case filed against JPMorgan landing in court just this month.

For prior Trucker Huss alerts on the original *Lewandowski* complaint and the court's dismissal, see <https://www.truckerhuss.com/2024/03/the-cost-of-drugs-johnson-johnson-lawsuit-could-signal-the-opening-of-a-new-area-of-erisa-class-action-litigation-against-health-plan-fiduciaries> (<https://www.truckerhuss.com/2024/03/the-cost-of-drugs-johnson-johnson-lawsuit-could-signal-the-opening-of-a-new-area-of-erisa-class-action-litigation-against-health-plan-fiduciaries>), and <https://www.truckerhuss.com/2025/01/lewandowski-v-johnson-johnson-unable-in-first-try-to-pursue-fiduciary-breach-claims-for-high-costs-of-drugs> (<https://www.truckerhuss.com/2025/01/lewandowski-v-johnson-johnson-unable-in-first-try-to-pursue-fiduciary-breach-claims-for-high-costs-of-drugs>).

Lewandowski v. Johnson & Johnson

In early 2024, plaintiff Ann Lewandowski filed a class action lawsuit against Johnson & Johnson (J&J) and the fiduciaries of J&J's prescription drug benefits program (the "J&J Defendants") in the District of New Jersey (the "Court"). Lewandowski's claims were premised on an alleged violation of ERISA's fiduciary duty of prudence. At a high level, Lewandowski claimed that the J&J Defendants acted imprudently by failing to manage the drug costs of two J&J-sponsored health plans. The initial complaint contained many allegations, including that the J&J Defendants did not meet their fiduciary obligations (for example, by failing to engage in

a prudent and reasoned decision-making process before entering into the PBM contract that included such high costs). The initial complaint alleged that Lewandowski was injured by the alleged fiduciary breaches of the J&J Defendants, because as a result she:

- paid higher premiums for health coverage; and
- paid higher out of pocket costs for prescription drugs.

Dismissal

On January 24, 2025, the Court dismissed Lewandowski's claims involving breach of fiduciary duty, ruling that Lewandowski lacked Article III standing.^[1] Article III of the United States Constitution limits federal judicial power to the resolution of "cases" and "controversies," which has been interpreted by the courts as requiring plaintiffs to establish that: (i) they have sustained an injury that is concrete, non-hypothetical, particularized and actual or imminent; (ii) the injury was likely caused by the defendant; and (iii) the injury would likely be redressed by judicial relief (i.e., a court could take action to solve or fix the problem at hand).

Relying on the Third Circuit's decision in *Knudsen v. Met Life Group, Inc.*^[2] ("*Knudsen*"), the Court analyzed each of Lewandowski's alleged injuries as follows:

- Payment of Higher Premiums – The Court found this alleged injury to be speculative, and that the allegation that she paid more in premiums due to higher drug costs to be a conclusory allegation.
- Payment of Higher Out of Pocket Costs for Prescription Drugs – The Court found that because Lewandowski had reached her annual out-of-pocket maximum for prescription drugs through the payment of **other** medical expenses, even if she paid more for prescription drugs it didn't increase her total costs for the year; therefore, she suffered no harm and there was nothing to be redressed by the Court.

Based on the above, the Court dismissed the claims regarding breaches of fiduciary duty with leave to amend.

Second Amended Complaint^[3]

Lewandowski filed a second amended complaint on March 10, 2025 (the "Amended Complaint"). This complaint added several new allegations in an attempt to address the standing issues raised by the Court and also added a new plaintiff, Robert Gregory, a retiree enrolled in Johnson & Johnson's retiree medical plan.

Higher Premiums – To address the Court's determination that the payment of higher drug costs by the plan resulted in higher premiums was speculative, the Amended Complaint adds the following:

- Reference to a number of government and/or independent studies supporting the contention that higher drug costs lead to higher premiums for participants.
- A description of COBRA premium costs and retiree health plan premium costs (which are entirely paid by former employees), and explains how high costs in the plan directly impact COBRA and retiree premium rates. (The initial complaint had focused on the premium rates paid by active employees, which was highly subsidized by the employer.)

Higher Out of Pocket Costs – To address the Court's determination that because Lewandowski had met her out of pocket maximum for the year on other out of pocket claims, her alleged harm was not redressable by the Court, the Amended Complaint adds the following:

- First, a detailed chronology of when and how Lewandowski met her out of pocket maximum in 2023, concluding with an allegation that the actual amount she spent out of pocket would have been \$210 less than what she actually paid for the year. The Amended Complaint also argues that because she allegedly overpaid for drugs earlier in the year (before meeting her out of pocket maximum) she paid the costs sooner than she otherwise would have, thereby causing her to lose on potential interest she could have earned on that money and negatively impacting her cash position.
- Second, the Amended Complaint details the out-of-pocket costs of the newly added defendant, Robert Gregory. Notably, Gregory alleges that he did not reach his out-of-pocket maximum for prescription drugs.

Reduced Benefits – The Amended Complaint also adds another alleged injury, that higher drug costs resulted in reduced benefits for participants. It alleges the amount that the plan allegedly overpaid for drugs would have been used to deliver additional benefits to participants.

As of the date of this article, the J&J Defendants have not yet responded to the Amended Complaint.

Navarro v. Wells Fargo & Co.[4]

Very similar allegations were made by plaintiffs in *Navarro, et al. v. Wells Fargo & Co.* (Navarro). Like the plaintiff in the J&J Case, the Wells Fargo plaintiffs are alleging that the fiduciaries breached their fiduciary duties by not taking proper measures to ensure plan costs for prescription drugs were reasonable. The *Navarro* suit also included a claim of a prohibited transaction. In general, ERISA prohibits transactions between a health plan and its service providers unless no more than reasonable compensation is paid for the services. The complaint alleged that Wells Fargo paid extremely high administrative fees (over \$25 million) to the PBM, Express Scripts. The plaintiffs claimed further that the amount of the administrative fees greatly exceeded the fees paid to Express Scripts by plans comparable in size to (or smaller than) Wells Fargo's plan; therefore, the compensation was "excessive" and resulted in a prohibited transaction. Similar to *Lewandowski*, the complaint alleges that the plaintiffs were harmed by these fiduciary breaches by having to pay higher premiums and out of pocket costs. The plaintiffs also sought injunctive relief.

Dismissal

On March 24, 2025, the district court dismissed the fiduciary breach claims on a basis similar to *Lewandowski*. Relying heavily on *Knudsen* (just as the Court did in *Lewandowski*), the court found that the complaint's contention that higher drug prices directly caused plaintiffs to incur higher premiums and out-of-pocket costs to be entirely speculative. In summing up its findings, the court stated, "[w]hile compelling and detailed, Plaintiff's allegations are simply too speculative to show concrete individual harm, too tenuous to show causation, and too conjectural to show redressability." With regard to a request for prospective injunctive relief requiring that Wells Fargo reduce participants' contribution amounts, the court found that because all of the plaintiffs are no longer participants in the Wells Fargo group health plan they "have no concrete stake in the lawsuit" regarding any prospective relief." The dismissal was without prejudice, which means the Wells Fargo plaintiffs will also be able to file an amended complaint.

Seth Stern et al v. JPMorgan Chase & Co

On March 13, 2025, plaintiffs who are current or former participants in the JPMorgan-sponsored health plan filed a complaint against JPMorgan, certain members of the board of directors and certain executives for breaching their fiduciary duties by mismanaging the prescription drug plan. Notably, all three of the named plaintiffs have not met their out-of-pocket maximum.

The PBM in this case is CVS Caremark (CVS). The lawsuit is brought by the same law firm that brought the *Lewandowski* suit. The allegations regarding breach of fiduciary in the complaint are very similar to allegations made in *Lewandowski* and *Navarro*, but differ in certain respects as described below.

- **Conflict of Interest** – The complaint scrutinizes JPMorgan’s business relationship with CVS for conflicts of interest. It alleges that JPMorgan abandoned its joint venture, Haven Healthcare, because of pushback from its private banking healthcare clients, including CVS and other PBMs. Haven Healthcare was formed with the goal of eliminating the need for healthcare intermediaries, including PBMs. The complaint appears to use this as evidence that JPMorgan was fully aware of the excessive pricing issues with CVS and chose not to pursue ways to minimize that in their PBM contract with the plan, due to its business relationship with CVS.
- **Contract Language** – The plaintiffs allege that JPMorgan could have negotiated contractual terms that would have minimized or eliminated excessive compensation paid to CVS. They cite to papers from industry groups who have provided examples of “bad” contract language that should be removed from contracts and tools for negotiating better contracts.
- **Vertical Integration** – The complaint discusses the vertical integration of CVS with Cordavis (a drug manufacturer)—which is partially owned by CVS—and the alleged failure by JPMorgan to address that in its PBM contract. The complaint alleges that the plan’s formulary only contained the biosimilar for Humira that was manufactured by Cordavis, even though it is significantly more expensive than other Humira biosimilars.

Conclusion

We expect the plaintiffs’ bar will continue to bring excessive fee cases against the fiduciaries of employer-sponsored health plans. If they are able to establish standing and survive a motion to dismiss, the flood gates will open. Even if plaintiffs are not successful with the specific claims described above, we believe they will continue to bring lawsuits against the employer-sponsored plans under different theories.

[1] The Court did not dismiss the claim involving a failure to provide documents under ERISA.

[2] 117 F.4th 570 (3d Cir. 2024).

[3] The First Amended Complaint was filed on May 20, 2024, prior to the Court’s ruling.

[4] Case No. 0:24-cv-3043 (D. Minn., July 30, 2024).

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