

PUBLICATION

Johnson & Johnson Beats Back (Again) Class Action Alleging Breaches of Fiduciary Duty Regarding Prescription Drug Program



Clarissa A. Kang

Plan fiduciaries notched another victory in a much-watched, bellwether case alleging breaches of fiduciary duty for failures to manage the drug costs of employer-sponsored health plans. In a November 26, 2025, order in the Johnson & Johnson (“J&J” or “Defendants”) prescription drug class action *Lewandowski v. Johnson and Johnson*, the U.S. District Court for the District of New Jersey dismissed the latest iteration of a complaint filed by participants in the J&J plans, but granted leave to file a third amended complaint within 30 days of the order (by December 26, 2025). The order, like the January 2025 order dismissing the earlier version of the complaint, held that the plaintiffs lacked constitutional standing for their ERISA breach of fiduciary duty claims because they had not shown that they suffered an injury in fact, that any injury was caused by the alleged breaches, and that any injury would likely be redressed by judicial relief. After the order, the plaintiff-participants chose not to amend their complaint; however, they may appeal.

For prior Trucker Huss articles on earlier versions of the *Lewandowski* complaint and the court’s dismissal of the first amended complaint, see:

- [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/) (<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/>).
- [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/) (<https://www.truckerhuss.com/2025/01/lewandowski-v-johnson-johnson-unable-in-first-try-to-pursue-fiduciary-breach-claims-for-high-costs-of-drugs/>).
- [ERISA and Prescription Drug Costs: The Latest on Fiduciary Breach Class-Action Lawsuits](https://www.truckerhuss.com/newsletter/erisa-and-prescription-drug-costs-the-latest-on-fiduciary-breach-class-action-lawsuits/) (<https://www.truckerhuss.com/newsletter/erisa-and-prescription-drug-costs-the-latest-on-fiduciary-breach-class-action-lawsuits/>).

Plaintiffs Ann Lewandowski and Robert Gregory (the “Plaintiffs”) sought to bring a class action on behalf of participants and beneficiaries of two J&J group health plans and on behalf of the plans themselves – a plan for active employees and another for retirees (collectively, the “Plans”). Asserting two claims for breaches of fiduciary duty under sections 502(a)(2) and 502(a)(3) of ERISA the Plaintiffs alleged that the Plans’ fiduciaries

failed to prudently manage the Plans' prescription drug benefits and carefully monitor the Plans' pharmacy benefit manager (PBM) and prescription drug costs to ensure that the Plans and their participants and beneficiaries paid only reasonable amounts for prescription drugs. The Plaintiffs accused the Defendants of agreeing to direct participants to a mail-order pharmacy that charges higher prices than retail pharmacy for the same drug, failing to incentivize use of generic drugs over higher-priced branded drugs, failing to engage in a prudent and reasoned decision-making process before agreeing to a PBM contract that caused participants to pay higher prices for drugs, and failing to negotiate lower drug prices. They alleged that the breaches of fiduciary duty harmed the Plans by requiring excessive payments for prescription drugs and harmed the participants and beneficiaries by increasing premiums and out-of-pocket costs. Lewandowski also asserted a claim for alleged failure to provide requested plan governing documents, which the Defendants did not challenge in their motion to dismiss.

After an earlier motion to dismiss the first amended complaint, Plaintiffs attempted to shore up their allegations regarding an injury-in-fact by adding, in the second amended complaint, allegations regarding how employee contributions towards premiums increase when plans overpay for prescription drugs, citing reports and articles. Plaintiff Lewandowski alleged she paid more in both employee premium contributions (when an active employee) and COBRA premiums (after termination of employment) than she would have absent the Defendants' fiduciary breaches. Plaintiff Gregory alleged that after retirement, his premium contributions towards retiree coverage are "even greater" than the amount he paid as an employee. (Gregory, a retiree, was also added as a named plaintiff in the second amended complaint.) The second amended complaint also added new allegations about out-of-pocket costs. Lewandowski alleged that even though she "nominally" reached her out-of-pocket maximum, Defendants' conduct caused her to pay more out of pocket for prescription drugs than she otherwise would have paid. Gregory asserted that he paid more out of pocket for a generic drug in October 2024.

Defendants moved to dismiss the breach of fiduciary duty claims in the second amended complaint, again challenging the Plaintiffs' standing and the adequacy of the breach of fiduciary duty allegations. Defendants argued that Plaintiffs had no concrete harm or injury in fact to have standing to bring the breach of fiduciary duty claims. As to alleged harm of increased premiums, Defendants argued that setting premiums was not a fiduciary function and therefore no fiduciary duty breach exists. Defendants also argued that increased premiums and out-of-pocket costs were speculative.

The court held that Plaintiffs' new allegations were insufficient to establish injury in fact, causation, and redressability necessary for standing. The court found persuasive the dismissal of a similar case brought by health plan participants alleging breaches of fiduciary duty related to an employer's prescription drug program – *Navarro v. Wells Fargo & Co.* from U.S. District Court for the District of Minnesota ([see our prior article describing the Wells Fargo dismissal \(https://www.truckerhuss.com/newsletter/erisa-and-prescription-drug-costs-the-latest-on-fiduciary-breach-class-action-lawsuits/\)](https://www.truckerhuss.com/newsletter/erisa-and-prescription-drug-costs-the-latest-on-fiduciary-breach-class-action-lawsuits/)). The *Wells Fargo* court dismissed the complaint for lack of standing, holding that the alleged harm in the form of higher premiums and out-of-pocket costs for participants was speculative and therefore not redressable by judicial review. The same plaintiffs' firm represents the participant-plaintiffs in both *J&J* and *Wells Fargo*.

Interestingly, the *J&J* court cited to the *Wells Fargo* court's characterization of the Wells Fargo health plan as a "defined-benefits plan," which the *J&J* court viewed as also applicable to the J&J Plans. (This term is most often used to describe a type of retirement plan.) The court noted that it describes a plan that is funded by employer and/or employee contributions into a general pool, undifferentiated into individual accounts. The

benefits do not fluctuate with the value of the plan assets, plan investments, or the amount of the contributions. The court noted that the structure of a defined benefit plan reflects risk borne by the employer, as the employer is obligated to make up any shortfall in the asset pool to be able to pay benefits, and reduction of the general asset pool does not affect participants' entitlement to benefits or cause them any injury. Placing the health plans into a "defined benefits" bucket, the *Wells Fargo* and *J&J* courts could rely, in part, on the U.S. Supreme Court's 2020 ruling in *Thole v. U.S. Bank N.A.*, an often-cited case holding that participant-plaintiffs in a lawsuit alleging mismanagement of plan investments in a defined benefit retirement plan lacked standing as their benefits were unaffected by the alleged mismanagement.

The *J&J* court, adopting the reasoning in *Wells Fargo*, held that the connection between the amount of participants' contributions and out-of-pocket costs, on one hand, and the fees the Plans paid the PBM, on the other, was "tenuous at best." The causal effect of the excessive fees paid to the PBM on the Plaintiffs' contribution rates and out-of-pocket costs was "too speculative." The court noted that the Plans vested the Defendants with "sole discretion" to set participant contribution rates ("[t]he Sponsor shall establish each year the amount of Participant contributions"), and that participant contribution rates might be affected by factors that are independent of prescription drug benefits (such as market trends, administrative expenses, non-drug medical costs, factors impacting employees, etc.). The court read language in the Plans about the source of funding as authorizing the Defendants to require participants to fund all plan expenses, not just expenses related to their own individual benefits, arguably extrapolating a little further than the plain language. ("Benefit under this Plan shall be funded through contributions made by the Company and by the enrolled Participants.") The court also noted that under the Plans, the Plaintiffs are responsible for the full out-of-pocket costs for prescription drugs until they have met their annual deductible (and reached the out-of-pocket maximum), after which the Plans paid most of the costs for the Plaintiffs' prescription drugs for the remainder of the year. It called Plaintiffs' allegations about overpaying for certain prescriptions at the pharmacy "selective" when compared against plan benefits of over \$200,000 paid to Lewandowski and over \$121,000 paid to Gregory in the same year when they were complaining about overcharges of \$210 and \$10, respectively. The court deemed the allegations speculative and insufficient to establish the necessary causal connection for any injury because there are "too many variables" regarding how participant contribution rates are set.

As to redressability, the final required element of standing, the court noted that if the Plaintiffs were to prevail in the case and were granted all of the requested relief, the Defendants still are permitted to increase Plan participants' contribution amounts, because the Defendants have the sole discretion under the terms of the Plans to set participant contribution rates. The court concluded that no standing exists.

It is interesting that the *J&J* court relied so heavily on the reasoning and holdings of the *Wells Fargo* court – which is another district court in a different circuit. However, that is not surprising because the basic allegations of the operative complaints were similar, as the same law firm represents both sets of plaintiffs. A somewhat similar case, brought against JP Morgan and brought by the same plaintiffs' law firm, is awaiting a ruling on a pending motion to dismiss which also asserts lack of standing arguments – *Stern v. JP Morgan Chase & Co.*

On December 18, 2025, the *J&J* Plaintiffs filed a notice stating that they would not be filing an amended complaint, that they were voluntarily dismissing Lewandowski's third claim related to failure to provide required documents, and that the court should enter judgment. Plaintiffs specifically reserved the right to appeal from the judgment and the order on the motion to dismiss. We might see an appeal in the near future.

So far, this new wave of prescription drug putative class actions – based on the rulings in *J&J* and *Wells Fargo* – has not overcome the threshold requirement of standing. While it remains to be seen whether these kinds of cases will surmount the standing hurdle, they are a reminder to plan sponsors and fiduciaries to examine their prescription drug programs and arrangements with their PBMs to curb potential overcharges, avoid abdicating control to PBMs, and maintain oversight over PBMs.