MEMORANDUM

TO: ERISA Trust Fund Clients
FROM: Shaamini Babu and Sabrina Putri
DATE: July 9, 2025
RE: *Cunningham et al v. Cornell University et al.*

The recent Supreme Court ruling in *Cunningham et al* v. *Cornell University*, Case No. 23-1007 (April 17, 2025) ("*Cunningham*") addresses the pleading standard in any suit regarding a prohibited transaction claim.

- Plaintiffs, plan participants, alleged that Cornell University and the Trustees engaged in prohibited transactions for recordkeeping services with the Teachers Insurance and Annuity Association of America-College Retirement Equities Fund and Fidelity Investments Inc. by entering in an agreement to pay excessive recordkeeping fees. Participants alleged violation of ERISA §406(a)(1)(C) which states:

  > "Except as provided in [ERISA §408] (1) 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."

- District court dismissed the prohibited-transaction claim.

- Second Circuit affirmed the district court's decision and also held that ERISA §408(b)(2)(A) is incorporated into ERISA §406(a)'s prohibitions which requires plaintiffs to plead that a transaction was "unnecessary or involved unreasonable compensation" to survive a motion to dismiss.

- Supreme Court granted certiorari to decide whether a plaintiff can state a claim for relief by simply alleging that a plan fiduciary engaged in a transaction proscribed by ERISA §406(a)(1)(C), or whether a plaintiff must plead allegations that disprove the applicability of the ERISA §408(b)(2)(A) exemption.

- Supreme Court reversed the Second Circuit's decision and concluded that plaintiffs do not have to plead and prove that §408 exemption applies. At the pleading stage, it is sufficient for a plaintiff plausibly to allege the three elements set forth in §406(a)(1)(C):

  1. A transaction occurred;
  2. Defendant knew (or should've known); and
  3. Involved a "party in interest"

- Supreme Court held that §408 sets out affirmative defenses, so it is defendants fiduciaries who bear the burden of proving that a §408 exemption applies to an otherwise prohibited transaction under §406. This means that if defendants fiduciaries establish that an otherwise prohibited transaction under §406(a)(1)(C) was for "services necessary for the . . . operation of the plan" and "no more than reasonable compensation [was] paid therefor" pursuant §408(b)(2) then the defendants cannot be held liable for causing the plan to enter into the transaction.