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FIDUCIARY BRIEF

2025–26 401(k) Litigation: What Plan Sponsors Need to Know

ERISA fiduciary litigation didn't slow down in 2025 — it broadened. Here's what changed, and what it means for how your plan should be governed in 2026.

WHY IT MATTERS NOW

155 ERISA fiduciary class actions were filed in 2025, with defined contribution plans named in roughly two-thirds of all ERISA class action litigation. Plaintiff firms have refined repeatable claims around fees, investments, and documentation — and in April 2025, the Supreme Court's unanimous ruling in Cunningham v. Cornell made one category of claim significantly easier to bring, lowering the pleading bar plan sponsors now have to clear just to get a case dismissed.

THREE TRENDS TO KNOW

Trend	What's Happening
Forfeiture claims	Nearly 80 class actions have challenged the use of forfeited employer contributions since 2023. Courts increasingly reject these at the motion-to-dismiss stage, but appeals are now pending in four federal circuits.
Cunningham v. Cornell (Apr. 2025)	The Supreme Court ruled plaintiffs no longer need to plead that a prohibited-transaction exemption doesn't apply — sponsors must now prove the exemption applies themselves, as an affirmative defense.
DOL siding with sponsors	The DOL has filed multiple amicus briefs backing plan sponsors in forfeiture and fee litigation, signaling a more “pro-system” enforcement posture — though this hasn't slowed plaintiff firm filings.

WHAT THIS MEANS FOR YOUR PLAN

- If your plan offsets forfeitures against future employer contributions, confirm that practice is documented and consistent with your plan document — this remains the single most litigated fiduciary issue of the past two years.
- Post-Cunningham, sponsors should be prepared to affirmatively demonstrate — not just assume — that service-provider fees fall within a prohibited-transaction exemption. That means current benchmarking data on hand, not just a signed contract.
- Courts continue to emphasize process over outcomes: documented committee meetings, a current Investment Policy Statement, and regular fee reviews remain a sponsor's strongest defense regardless of which claim theory is trending.

CWM'S TAKE

None of this means your plan is a target — most of these suits settle or get dismissed, and plan sponsors are winning more often than they used to. But “we followed the process” only holds up in court if the process was actually documented. That's the gap we most often find when we sit down with a plan for the first time.

Want to see how your plan's documentation would hold up? A complimentary CWM Fiduciary Benchmarking Study will tell you.

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