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SCOTUS Revives Cornell 403b Lawsuit: What Fiduciaries Must Know

Bonita Hatchett-Bodle*
Hall Benefits Law

Fiduciaries must treat plan management as an active compliance obligation to avoid legal exposure, says a Hall Benefits Law practitioner.

On April 17, 2025, the US Supreme Court issued a unanimous per curiam opinion in *Cunningham v. Cornell University* . Docket No.: 1:16-cv-06525 (S.D.N.Y. 2019), 86 F.4th 961 (2d Cir. 2023), *rev'd and remanded*, Docket No. 23-1007 (U.S. Apr. 17, 2025). It revived a long-running fiduciary breach claim brought by participants in the university's 403(b) retirement plan. The Court's decision, though brief, delivered a clear procedural message: when plaintiffs present evidence raising genuine disputes of material fact, courts must not dispose of fiduciary breach claims at the summary judgment stage.

The Court did not articulate new standards under ERISA, nor did it evaluate the underlying conduct of Cornell's fiduciaries. By vacating the Second Circuit's affirmance of summary judgment, the Court confirmed what lower courts must do when confronted with well-supported claims about plan mismanagement: allow the case to proceed. Although narrow in scope, the opinion arrives at a moment of heightened scrutiny of retirement plan and health plan governance. For fiduciaries—particularly in the higher education and nonprofit sectors—the decision serves as a reminder that legal exposure often turns not on the final outcome, but on the depth and deliberation of the process leading there.

Case Background

Cornell's 403(b) retirement plan serves a large employee population, including faculty, administrative professionals, and staff. For years, the plan employed two recordkeepers—TIAA-CREF and Fidelity—and offered an unusually broad lineup of investment options. That approach, while once common among university plans, came under legal scrutiny in 2016 when several participants filed a lawsuit under ERISA. 29 U.S.C. §1104(a)(1)(B).

The plaintiffs' core allegations were grounded in a straightforward claim: Cornell's fiduciaries failed to prudently manage the plan's administrative costs. They argued that:

- Maintaining two recordkeepers unnecessarily inflated fees;
- The university failed to solicit competitive bids for services;
- Several investment options were duplicative or high cost; and
- Revenue-sharing arrangements clouded transparency, increasing participant costs.

* Bonita Hatchett-Bodle is a partner at Hall Benefits Law.

The US District Court for the Southern District of New York granted summary judgment in favor of Cornell. The Second Circuit affirmed, concluding that while the university's plan administration may not have been optimal, it did not rise to the level of an ERISA breach.

The Supreme Court disagreed. Without evaluating the merits of the fiduciaries' conduct, the Court found that the plaintiffs had submitted sufficient evidence to raise factual disputes concerning the plan's recordkeeping fees and administrative structure. Those disputes, the Court held, warranted further development at trial—not summary dismissal.

The Supreme Court's Analysis and Holding

At its core, the Court's opinion rested on a procedural foundation: whether the plaintiffs had presented enough evidence to survive summary judgment. The Court concluded that they had—finding that factual disputes regarding fees and plan administration warranted further proceedings. The Court reiterated that summary judgment is appropriate only when there is no genuine dispute of material fact. That bar, it reminded, is not easily met—particularly in fiduciary breach litigation where the evidentiary record is complex and often contested.

The plaintiffs in *Cunningham* produced evidence suggesting that Cornell's dual-recordkeeper arrangement resulted in unnecessary costs. They also introduced comparative data indicating that peer institutions had achieved cost savings by consolidating services. In light of this, the Court concluded that the lower courts erred in resolving factual disputes in favor of Cornell without allowing the claims to proceed to trial.

Crucially, the Court did not pass judgment on whether the fiduciaries breached their duties. It took no position on whether retaining multiple recordkeepers was, in itself, imprudent. Instead, the Court confined its opinion to one essential point: when participants offer plausible evidence of plan mismanagement, courts must allow the factual record to develop1.

Revisiting Recordkeeping Oversight

The Cornell case brings renewed attention to a key—and increasingly litigated—aspect of fiduciary oversight: administrative and recordkeeping fees. These costs, while less visible than investment performance, can erode participant outcomes over time. They also present a growing legal risk.

Under ERISA, fiduciaries must act "with the care, skill, prudence, and diligence under the circumstances then prevailing" that a prudent person would exercise2. This standard focuses on the quality of decision-making processes, not outcomes.

In practice, prudent oversight of recordkeeping involves:

- **Fee benchmarking**: Comparing plan costs to similarly situated plans using independent data.
- **Competitive bidding**: Issuing requests for proposals (RFPs) at regular intervals to test the market.
- **Evaluating fee structures**: Understanding whether asset-based pricing or per-participant fees serve participants best.
- **Scrutinizing revenue-sharing**: Identifying whether such arrangements obscure actual costs or introduce unequal participant fee burdens.
- **Incorporating performance metrics**: Linking service provider compensation to quantifiable outcomes when appropriate.

In the *Cornell* litigation, plaintiffs argued that fiduciaries failed to engage in these kinds of reviews. Rather than reassessing the recordkeeping structure, the plaintiffs claimed, the university relied on legacy arrangements without sufficient justification. This, they alleged, led to excess fees and missed opportunities to improve the plan.

The Supreme Court did not evaluate those claims. The Court's decision, however, ensures that the plaintiffs will have an opportunity to prove their allegations —an outcome with broad implications for other plans facing similar allegations1.

Lessons for Fiduciaries: Process and Precision Matter

While *Cunningham* does not redefine fiduciary standards, it reinforces a truth that many plan sponsors have come to understand the hard way: process matters. Courts will look not only at what decisions were made, but how—and whether those decisions were grounded in informed, well-documented deliberations.

1. Documentation is Non-Negotiable
Meeting minutes, benchmarking data, RFP results and legal opinions serve a purpose beyond good governance—they are the paper trail of prudence.

2. The Status Quo Must Be Challenged
Courts have consistently rejected "we've always done it this way" as a defense. Longstanding vendor relationships and fee structures should be re-evaluated periodically.

3. Peer Comparisons Are Now Baseline
Benchmarking against peer plans is no longer a best practice—it is a litigation shield. Without it, fiduciaries may find themselves out of step with evolving standards.

4. Transparency Isn't Just Good Practice—It's Protective
Revenue-sharing arrangements require careful monitoring. If participants can't discern the cost of services, fiduciaries may be vulnerable to claims of concealment or imprudence.

5. Higher Ed Is No Longer Immune
Colleges and universities have increasingly become targets of fiduciary litigation. The nonprofit label offers no immunity from ERISA's rigorous standards.

Contextualizing *Cornell*: A Broader Judicial Trend

The *Cornell* ruling is best understood alongside several recent cases that clarify how courts interpret ERISA fiduciary responsibilities.

Hughes v. Northwestern University (2022)
The Court rejected the idea that the presence of low-cost investment options absolves fiduciaries of the duty to remove imprudent ones. *Hughes v. Northwestern University* , Docket No.: 19-1401, 595 U.S. 170 (2022).

Tibble v. Edison International (2015)
In *Tibble*, the Court held that fiduciaries have a continuing duty to monitor plan investments beyond initial selection. *Tibble v. Edison International* , 575 U.S. 523, 525 (2015).

Intel Corp. Investment Policy Committee v. Sulyma (2020)
The Court ruled that participants must have actual knowledge—not merely disclosure—to trigger ERISA's statute of

limitations for fiduciary breach claims. *Intel Corp. Investment Policy Committee v. Sulyma* , Docket No.: 18-1116, 589 U.S. 178 (2020).

The Common Thread

Taken together, these decisions—*Tibble*, *Hughes*, *Sulyma*, and now *Cornell*—form a consistent doctrinal trend. Courts are demanding active engagement from fiduciaries: more scrutiny, more documentation, and more willingness to reevaluate even longstanding plan features.

Conclusion

The Supreme Court's decision in *Cunningham v. Cornell University* did not establish new fiduciary duties. However, it made one principle unmistakable: where participants present credible evidence of imprudence, they deserve a chance to be heard. That threshold, once rarely crossed, is now well within reach—especially in cases involving fees, service provider arrangements, and long-unquestioned governance practices.

Fiduciaries who treat plan management as a passive and static compliance obligation may face increasing legal exposure. Those who approach plan management as a living, documented process—anchored in prudence, transparency, and benchmarking—are far better positioned to navigate the current legal landscape.
In today's ERISA litigation environment, process is not just a best practice, it is the standard of care.