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An Eventful Month in Health Plan Fiduciary Litigation: An Update on the Wells Fargo, Johnson & Johnson, and JP Morgan Chase Lawsuits

This Client Alert explores the evolution of lawsuits against health plan fiduciaries. On March 13, 2025, a class action complaint was filed against JP Morgan Chase and its medical plan fiduciaries (“JP Morgan”) for engaging in prohibited transactions and breaching their ERISA fiduciary duties. This complaint is very similar to the complaints discussed in previous Client Alerts that were filed against Johnson & Johnson (“J&J”) ([February 2024](#)), and Wells Fargo ([August 2024](#)).

The same week, plaintiffs amended and refiled their complaint against J&J attempting to shore up some of the deficiencies noted in that court’s recent dismissal of their original claims, as detailed in our prior [Client Alert](#). A little more than a week later, the *Wells Fargo* court issued its opinion dismissing claims of breach of fiduciary duties levied against Wells Fargo by plan participants.

Navarro v. Wells Fargo Dismissed

The *Wells Fargo* plaintiffs claimed they paid more out-of-pocket for numerous drugs in the PBM’s formulary that were allegedly priced excessively high. The court pointed out those comparisons were only a narrow subset of the overall formulary, and participants were only responsible for the full out-of-pocket costs up to their deductible, after which Wells Fargo paid most of the cost.

Using similar analysis as applied in *J&J*, the court dismissed the complaint because the plaintiffs’ injuries were “speculative and, ultimately, not redressable.” The court’s opinion pointed out that the plaintiffs received the benefits promised to them under the plan documents, even if they paid more for them. And even if Wells Fargo would have negotiated better terms and paid less for the services provided by their pharmacy benefit manager (“PBM”), plaintiffs provided no concrete evidence that they would have paid any less for those benefits.

Nonetheless, we suspect the plaintiffs are unsatisfied with this result and may challenge the court’s order.

J&J Amended Complaint

Ms. Lewandowski alleged the J&J plan fiduciaries breached their duty to her and the plan by overpaying the plan’s PBM for numerous prescription drugs. In dismissing her complaint, the court found Ms. Lewandowski did potentially suffer an injury each time she paid higher prices for drugs under the plan but that she was not ultimately harmed because she met her prescription drug maximum each year and any award the court provided would go back to J&J under the terms of the plan document.

Contacts

John E. Schembari

Omaha
402.231.8886
john.schembari@kutakrock.com

Michelle M. Ueding

Omaha
402.661.8613
michelle.ueding@kutakrock.com

William C. McCartney

Omaha
949.852.5052
william.mccartney@kutakrock.com

P. Brian Bartels

Omaha
402.231.8897
p.brian.bartels@kutakrock.com

Ruth S. Marcott

Minneapolis
612.334.5044
ruth.marcott@kutakrock.com

Sevawn Foster Holt

Little Rock
501.975.3120
sevawn.holt@kutakrock.com

John J. Westerhaus

Omaha
402.231.8830
john.westerhaus@kutakrock.com

Marcus P. Zelzer

Minneapolis
612.334.5037
marcus.zelzer@kutakrock.com

Emma L. Franklin

Omaha
402.231.8842
emma.franklin@kutakrock.com

Aaron D. Schuster

Kansas City
816.960.0090
aaron.schuster@kutakrock.com

Jacob S. Gray

Minneapolis
612.334.5053
jacob.gray@kutakrock.com

Jason Kotlyarov

Kansas City
816.502.4622
jason.kotlyarov@kutakrock.com

In response, attorneys for Ms. Lewandowski and the class amended their complaint to add facts to attempt to provide more concrete support for how J&J's fiduciary breaches also led to increased premiums and reduced wages. The class also added a named plaintiff who had not reached his prescription drug out-of-pocket maximum in hopes of overcoming the redressability argument. J&J may respond to this amended complaint with another motion to dismiss, likely referencing the result in *Wells Fargo* described above.

New Lawsuit Filed Against JP Morgan Chase

Similar to the allegations against J&J and Wells Fargo, plaintiffs allege JP Morgan and its health plan fiduciaries mismanaged the administration of the prescription drug plan and failed to prudently select and oversee the PBM. The JP Morgan plaintiffs also allege unreasonable PBM compensation and inflated prescription drug prices caused participants to pay more out-of-pocket for prescription drugs, pay higher premiums, and suppressed their wages. But unlike in *Wells Fargo* and *J&J*, the JP Morgan complaint alleges that not only were some of the prescription drugs in the formulary inflated, but all the generic drugs in the formulary were overpriced, on average by 211%.

The JP Morgan complaint then goes beyond the *J&J* and *Wells Fargo* cases by alleging plan fiduciaries violated their duty to make decisions for the exclusive benefit of plan participants by allowing outside business factors to influence their decisions. One such allegation, intended to highlight these conflicts of interest, relates to Humira and its biosimilar alternatives. The plaintiffs assert there are a number of biosimilars available in the market for Humira, but the PBM formulary only included one, Hyrimoz, at more than double the cost of the others. Hyrimoz is produced by an affiliate of the PBM, explaining why CVS/Caremark might want to exclude other biosimilars from competing with its own product in the formulary. Plaintiffs also point to the longstanding banking relationship between JP Morgan and its PBM, CVS/Caremark, whereby JP Morgan had received millions of dollars through transactions with Caremark and CVS; thus implying JP Morgan willingly overpaid CVS/Caremark to strengthen its business relationship with the PBM, causing plan participants and beneficiaries to pay higher prescription drug costs.

In both the *J&J* and *Wells Fargo* cases, the courts held that J&J and Wells Fargo had discretion in setting contributions and cost-sharing requirements under their plan documents, and plaintiffs failed to prove that any plan savings would result in lower premiums or out-of-pocket costs to the plaintiffs. The JP Morgan complaint alleges plan fiduciaries failed to follow the plan documents by allowing CVS/Caremark to retain drug manufacturer rebates yet charge participants co-insurance on the pre-rebate cost of the drug resulting in participants paying a higher percentage of cost-sharing than stated in the plan documents. If plaintiffs succeed on this issue, many prescription drug plans utilizing traditional PBM models could be implicated.

Action Items

While these lawsuits continue to be resolved through costly litigation, employers can take valuable steps to reduce their risk of ending up in this unenviable position.

- Establish a fiduciary committee for health and welfare benefits, adopt a committee charter, and delegate fiduciary responsibility to the committee.
- Engage qualified prescription drug plan consultants to assist in comparing PBMs and prescription drug arrangements.
- Collect consultants' compensation disclosures, analyze direct and indirect compensation arrangements, and ensure consultants do not have conflicts of interest.
- Request and review PBM agreements, fee and rebate arrangements, and formularies, and negotiate reasonable terms. Avoid simply signing the PBM's standard form agreement.
- Collect and review benchmark information from other plans and pharmacies and compare to current and prospective vendor agreements or proposals.
- Periodically subject PBMs and other vendors to requests for proposals.
- Document the policies and procedures used to obtain, review, and monitor proposals, agreements, benchmarking information, and vendor performance. It is critical that health plan fiduciaries document their procedural prudence.

If you have questions about fiduciary matters or these action items, please contact a member of Kutak Rock's [Employee Benefits Practice Group](#).

