What Dismissal Rulings May Mean For ERISA Forfeiture Cases

By **Rick Nowak, Brantley Webb and Nancy Ross** (August 4, 2025)

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Since September 2023, Employee Retirement Income Security Act plaintiffs firms have filed approximately 60 class actions by our count, challenging the long-standing practice of plan sponsors using plan forfeitures to offset their employer contributions in 401(k) and 403(b) plans.

Specifically, the plaintiffs in these cases allege that using forfeitures to offset contributions is a breach of ERISA's fiduciary duties of prudence and loyalty, a prohibited transaction, and violates ERISA's anti-inurement clause.

The initial motion to dismiss rulings in these lawsuits — including seven decisions issued since this May — show some positive trends among the district courts. But with dozens of motions still pending all over the country, and five pending appeals, the legal landscape remains unsettled.

However, in a significant turn of events, the U.S. Department of Labor **filed** an amicus brief on July 9 in the U.S. Court of Appeals for the Ninth Circuit, urging the court to affirm the U.S. District Court for the Northern District of California's Feb. 5 **dismissal** of the forfeiture claims in Hutchins v. HP Inc.

This affirmative step may encourage more district and appellate courts to dismiss these forfeiture lawsuits.

Motion to Dismiss Rulings

By our count, 10 federal district courts in eight states have issued substantive rulings on motions to dismiss in 16 forfeiture cases since May of last year.

Of those, the district courts granted motions to dismiss in 12 cases, including six with prejudice, and denied motions to dismiss in the remaining four. That is a 75% win rate for plan sponsors.

The table below is a chronological list of the motion to dismiss rulings to date.

Date	Case	Outcome
May 24, 2024	*Perez-Cruet v. Qualcomm Inc.* (S.D. Cal.)	Denied
Aug. 12, 2024	*Rodriguez v. Intuit Inc.* (N.D. Cal.)	Denied
Sept. 5, 2024	*Naylor v. BAE Systems Inc.* (E.D. Va.)	Granted with prejudice
Sept. 19, 2024	*Dimou v. Thermo Fisher Scientific Inc.* (S.D. Cal.)	Granted

Dec. 19, 2024	*Barragan v. Honeywell International Inc.* (D.N.J.)	Granted
Feb. 5, 2025	*Hutchins v. HP Inc.* (N.D. Cal.)	Granted with prejudice
March 3, 2025	*McManus v. The Clorox Co.* (N.D. Cal.)	Denied
April 29, 2025	*Sievert v. Knight-Swift Transportation Holdings Inc.* (D. Ariz.)	Granted with prejudice
May 2, 2025	*Madrigal v. Kaiser Foundation Health Plan Inc.* (C.D. Cal.)	Granted
May 29, 2025	*Bozzini v. Ferguson Enterprises LLC* (N.D. Cal.)	Granted
June 4, 2025	*Steen v. Sonoco Products Co.* (D.S.C.)	Granted
June 13, 2025	*Wright v. JPMorgan Chase & Co.* (C.D. Cal.)	Granted with prejudice
June 18, 2025	*Matula v. Wells Fargo & Co.* (D. Minn.)	Granted with prejudice
June 23, 2025	*McWashington v. Nordstrom Inc.* (W.D. Wash.)	Granted with prejudice
June 30, 2025	*Buescher v. North American Lighting Inc.* (C.D. Ill.)	Denied
July 31, 2025	*Cain v. Siemens Corp.* (D.N.J.)	Granted

Five of the dismissed cases are now on appeal. Four of them are in the Ninth Circuit — Hutchins v. HP Inc., Sievert v. Knight-Swift Transportation Holdings Inc., Wright v. JPMorgan Chase & Co. and McWashington v. Nordstrom Inc. — and one is in the U.S. Court of Appeals for the Eighth Circuit, Matula v. Wells Fargo & Co.

The deadline to appeal has passed in the only other case that was dismissed with prejudice — Naylor v. BAE Systems Inc.

Trends in District Court Rulings

While dismissals currently lead denials by a count of 12-4, an even higher percentage of the rulings since the early decisions in **Perez-Cruet v. Qualcomm Inc.** and **Rodriguez v. Intuit Inc.**, listed in the above table, have favored plan defendants, including a stretch of seven consecutive decisions from April to June of this year.

However, as soon as the benefits industry started to breathe a sigh of relief, on June 30, the U.S. District Court for the Central District of Illinois went the other way and **largely denied** the motion to dismiss in Buescher v. North American Lighting Inc.

Most recently, however, the U.S. District Court for the District of New Jersey **granted** the motion to dismiss on July 31 in Cain v. Siemens Corp.

Thus, the legal landscape remains uncertain while we wait to see how more district courts and the appellate courts view these new forfeiture claims.

Article III Standing

Several plan defendants have made standing arguments in their motions to dismiss.

On June 18 in Matula v. Wells Fargo, the U.S. District Court for the District of Minnesota **dismissed** the forfeiture lawsuit on standing grounds.

Although the plaintiffs argued that the plan's forfeitures should have been used to reduce their share of the plan's recordkeeping and administrative expenses, or allocated directly to their plan accounts, the district court held that this was not sufficient to establish standing because the plaintiffs were ultimately seeking benefits that the plan had not promised.

The court emphasized that the plan did not authorize using forfeitures to pay individualized plan fees or to top off participant accounts.

Citing Eighth Circuit precedent, i.e., the 2024 **decision** in Smith v. UnitedHealth Group Inc., and the U.S. Supreme Court's 2020 **decision** in Thole v. U.S. Bank NA, the court held that because the plaintiffs were already receiving the benefits due under the plan, they lacked standing to challenge how Wells Fargo used the plan's forfeitures.[1]

Prior to the Wells Fargo decision, some other district courts determined that the plaintiffs had adequately alleged standing before ultimately holding that they failed to state an actionable forfeiture claim.

For example, in Barragan v. Honeywell International Inc. in December, the U.S. District Court for the District of New Jersey **granted** the defendants' motion to dismiss for failure to state a claim.

For example, in Dimou v. Thermo Fisher Scientific Inc. in September, the U.S. District Court for the Southern District of California concluded that the plaintiff had sufficient standing to sue because, accepting her assertions in the complaint as true, she "suffered a 'concrete and particularized' injury traceable to the Fiduciary Defendants' conduct" that was redressable by the court.

Per Se Fiduciary Breach: Duties of Prudence and Loyalty

The vast majority of forfeiture complaints espouse the theory that allocating forfeitures to offset employer contributions is a per se fiduciary breach, because, according to the plaintiffs, forfeitures should first be used to pay plan expenses or allocated directly to participant accounts.[2]

On this view, as stated in the June 6 complaint filed in the U.S. District Court for the District of Massachusetts in Heet v. National Medical Care Inc. d/b/a Fresenius Medical Care North America, "using forfeitures to 'pay plan administrative expenses' would always be in the participants' best interest because that option would reduce or eliminate amounts otherwise charged to their accounts to cover such expenses."[3]

While a few courts have accepted these conclusory assertions as sufficient at the pleading stage,[4] the majority of courts have agreed with the decision in Hutchins v. HP and rejected this per se theory as

overbroad and inconsistent with the Supreme Court's directive that duty of prudence claims require a context-specific inquiry.[5]

This includes looking at the reasonable conduct of a plan sponsor's peers. In addition, these courts, **including** the U.S. District Court for the Central District of California, quoting prior precedent in Wright v. JPMorgan Chase, have emphasized that the plaintiffs' "theory ignores that ERISA does not require fiduciaries to 'maximize pecuniary benefits' or to 'resolve every issue of interpretation in favor [of] plan beneficiaries.'"[6]

In its amicus brief, the DOL agreed that the plaintiff's theory in that case goes too far, explaining that "the mere fact that the HP Plan Committee decided to use Plan forfeitures to fund matching contribution benefits — an option explicitly granted by the Plan document and the proposed Treasury regulation — does not state a plausible claim for breach."[7]

The DOL also emphasized that the plaintiff "makes no allegation that the fiduciary's administration of the Plan caused him to receive less than the full contribution promised to him by HP under the Plan."[8]

Prohibited Transaction and Anti-Inurement Clause Claims

Out of the 16 motion to dismiss rulings to date, only the two earliest courts in the table, Qualcomm and Intuit, permitted the prohibited transaction and anti-inurement claims to proceed to discovery.

Every other court to address these claims — even the two other courts that allowed fiduciary breach claims to proceed — concluded that using forfeitures to offset employer contributions is not a prohibited transaction and does not violate the anti-inurement clause.[9]

With respect to the prohibited transaction claims, every district court since Intuit has held that the reallocation of forfeitures within a plan, including using them to offset contributions, is not a transaction under ERISA Sections 406(a) or 406(b).[10]

The DOL agreed with this position in its amicus brief, noting that the HP court "correctly dismissed Plaintiff's self-dealing prohibited transaction claim under Ninth Circuit precedent."[11]

Similarly, every district court to address the anti-inurement clause claim since Intuit has held that a plan sponsor's indirect or incidental receipt of benefits arising from the forfeitures reducing their matching contribution obligations is not sufficient to state an anti-inurement claim.

The courts have emphasized that ERISA's anti-inurement clause generally requires the reversion of plan assets to the plan sponsor.[12] Because the forfeitures never leave the plan, the anti-inurement clause is not triggered.

Plan Language Challenges

Because courts have not been receptive to the overbroad per se theory, plaintiffs firms have sought to leverage a 2017 DOL enforcement action from the U.S. District Court for the Western District of Kentucky,

Acosta v. Allen, arguing that the plan defendants failed to comply with the terms of the plan when using forfeitures.[13]

In these cases, the plaintiffs typically contend — often falsely — that the plan required that any forfeitures first be used to pay plan expenses before they could be used to offset forfeitures. The plaintiffs in Intuit were able to avoid dismissal on this basis.

However, other courts dismissing forfeiture claims have distinguished Intuit because the plaintiff there alleged — by pointing to specific plan language — that the plan only authorized the use of forfeitures for a particular type of employer contributions.[14]

On the flip side, some plan defendants have successfully leveraged their plan language to secure dismissal of forfeiture claims.

For example, where the plan language does not confer discretion in how to allocate forfeited amounts, defendants have successfully argued that the plaintiffs were improperly challenging a settlor function, rather than a fiduciary function.[15]

Plan defendants have also successfully leveraged plan terms that do not authorize using forfeitures in the way that plaintiffs demand, e.g., paying plan administrative expenses.

For example, the court in Wright v. JPMorgan Chase held that the plaintiffs' forfeiture claims failed because the plan terms did not permit the plan's fiduciaries to allocate forfeitures to pay administrative expenses.[16]

Takeaways for Plan Sponsors

From a plan governance perspective, now is a good time for plan sponsors to review both their plan language and their administrative practices regarding their use of forfeitures, while keeping an eye on the developing law.

Plan sponsors may also wish to evaluate any plan provisions regarding the use of forfeitures to pay plan expenses.

For example, their plans may provide that forfeitures may only be used to cover plan expenses that would otherwise be paid for by the plan sponsor, and not plan expenses that are charged directly to participants or deducted from their accounts.

Additionally, plan sponsors should review the plan terms describing employer contributions, and the vesting schedule for those contributions, to ensure that they align with plan sponsor objectives.

Plan sponsors should also stay apprised of any regulatory developments regarding the use of forfeitures.

For example, the Internal Revenue Service and the U.S. Department of the Treasury may finalize their February 2023 proposed regulations, which affirm that forfeitures may be used to offset employer contributions.[17]

In addition, with new DOL leadership, and the DOL filing an amicus brief in the Ninth Circuit, the DOL may take a more proactive role in helping plan sponsors and fiduciaries navigate complex plan administration issues, such as the use of forfeitures, including perhaps through proposed regulations or subregulatory guidance.

Conclusion

In summary, although many courts have now rejected plaintiffs' forfeiture theories at the pleading stage, the law is still evolving and plaintiffs firms continue to file forfeiture lawsuits at a frenetic pace.

By our count, this year has already seen almost 30 new ERISA class actions with forfeiture claims filed across the country.

However, with five appeals now pending, if appellate courts begin to reject these forfeiture claims, and the IRS and DOL take a more proactive approach via rulemaking and other guidance on how plan forfeitures may be used, the ERISA plaintiffs bar may turn its attention elsewhere. In the meantime, forfeitures should remain an area of focus for plan sponsors.

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Disclosure: Brantley Webb and Nancy Ross are currently representing Nordstrom in the case of McWashington v. Nordstrom, and Nancy Ross is currently representing Siemens in the case of Cain v. Siemens, discussed above.

[1] Although not a final ruling, a District of Massachusetts magistrate judge in Nykiel v. Smith & Nephew, No. 1:24-cv-12247 (D. Mass, July 11, 2025), Dkt. 59, recently issued a Report and Recommendation that the district court grant the plan defendants' motion to dismiss the forfeiture claims for lack of standing.

[2] The only exception, according to plaintiffs, is if the plan sponsor is on the verge of insolvency and unable to fulfill its contribution obligations.

[3] See, e.g., Heet v. Fresenius Medical Care, No. 25-cv-11644 (D. Mass., filed June 6, 2025), Compl. ¶ 74 (Dkt.

1).

[4] Buescher v. N. American Lighting; McManus v. Clorox Co.; Perez-Cruet v. Qualcomm Inc.

[5] Hutchins v. HP Inc.; Wright v. JPMorgan Chase; Steen v. Sonoco Prods.; Madrigal v. Kaiser Found. Health Plan; Sievert v. Knight-Swift Transp.; Barragan v. Honeywell Int'l; Dimou v. Thermo Fisher; Naylor v. BAE Systems; Cain v. Siemens Corp.

[6] Wright v. JPMorgan Chase (quoting Wright v. Oregon Metallurgical Corp., 360 F.3d 1090, 1100 (9th Cir. 2004)).

[7] DOL Brief, at 15.

[8] Id. at 17-18.

[9] Hutchins v. HP Inc.; Buescher v. N. American Lighting (allowing fiduciary breach claims to proceed); McWashington v. Nordstrom; Wright v. JPMorgan Chase; Steen v. Sonoco Prods.; Naylor v. BAE Systems; Dimou v. Thermo Fisher; Barragan v. Honeywell Int'l.; Sievert v. Knight-Swift Transp.; Madrigal v. Kaiser Found. Health Plan; McManus v. Clorox Co. (allowing fiduciary breach claims to proceed).

[10] See, e.g., Dimou v. Thermo Fisher (an "intra-plan transaction, like forfeiture reallocation," does not "implicate a prohibited transaction").

[11] DOL Brief, at 7, n.1.

[12] Dimou v. Thermo Fisher; Barragan v. Honeywell Int'l; Hutchins v. HP Inc.

[13] No. 17-cv-00784 (W.D. Ky., filed Dec. 27, 2017).

[14] See Hutchins v. HP Inc. (dismissing claim by distinguishing Intuit on the basis that the plaintiffs in Intuit alleged the forfeiture allocations were not authorized by the plan); Wright v. JPMorgan Chase (same); Bozzini v. Ferguson (same); McWashington v. Nordstrom.

[15] Naylor v. BAE Systems.; McWashington v. Nordstrom.

[16] But see McManus v. Clorox Co. (finding cognizable breach-of-fiduciary-duty claim even though defendants' use of forfeitures was undisputedly consistent with the plan's terms, but the plan expressly permitted use of forfeitures to pay plan expenses generally, as sought by plaintiffs).

[17] Use of Forfeitures in Qualified Retirement Plans, 88 FR 12282-01, https://www.govinfo.gov/content/pkg/FR-2023-02-27/pdf/2023-03778.pdf.