Navigating The New Wave Of Voluntary Benefit ERISA Suits

By **Lindsey Camp, Chelsea Ashbrook McCarthy and Todd Wozniak** (January 23, 2026)

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A new trend in Employee Retirement Income Security Act class actions is targeting employers and benefits consultants over voluntary benefit programs, such as accident, critical illness, cancer and hospital indemnity insurance.

On Dec. 23, three complaints filed in the U.S. District Court for the Northern District of Illinois — Pimm v. United Airlines Inc., Brewer v. CHS/Community Health Systems Inc. and Braham v. Laboratory Corporation of America Holdings — and one in the U.S. District Court for the Southern District of New York, Fellows v. Universal Services of America LP, claimed that the voluntary benefit programs made available to employees of the defendant-employers are subject to ERISA, and that the administration of the programs violates ERISA.

According to the complaints, the actions of the defendant-employers and benefit consultants have caused employees to pay excessive and unreasonable premiums for the voluntary benefit programs.

Employers, plan fiduciaries and brokers of voluntary benefit programs are facing increased liability as a result of this new wave of litigation, and should review their policies and practices to help minimize the litigation risk associated with these programs.

What Are Voluntary Benefit Programs?

Voluntary benefit programs are supplemental insurance products that are offered by employers on a strictly voluntary basis and fully paid by employees. Such programs are appealing to employers and employees alike.

To employees, such products can be an additional perk of employment, providing employees access to products that they may not otherwise seek out on their own, and with the advantage of discounted group pricing.

To employers, these products can be listed as an additional benefit of employment, allowing employers to distinguish themselves among competitors at a relatively low cost, since employees pay the full cost of voluntary benefits.

Though employers often view these programs as having little to no ligation risk because employers do not subsidize the premiums or administer the programs, ERISA may apply under certain circumstances, triggering possible fiduciary obligations.

When Are Voluntary Benefit Programs Subject to ERISA?

ERISA governs "employee welfare benefit plan[s]," which it defines as any plan, fund or program that was established, or is maintained, by an employer "for the purpose of providing for its participants or their beneficiaries, through the purchase of insurance or

otherwise" with "medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death or unemployment," pursuant to Title 29 of the U.S. Code, Section 1002(1).

A voluntary benefit plan is generally excluded from the definition of an employee welfare benefit plan, because it is not established or maintained by the employer.

The U.S. Department of Labor has established a safe harbor that, if met, ensures that the voluntary benefit plan is not considered to be an employee welfare benefit plan, and is therefore exempt from ERISA.[1]

In the recently filed class actions, the plaintiffs assert that their employers failed to comply with the DOL safe harbor, and that the plans meet the definition of employee welfare benefit plans that are subject to ERISA and its fiduciary duties.

The DOL's safe harbor exempts voluntary plans from ERISA if all four of the following conditions are met:

- The employer does not pay or contribute to the payment of premiums;
- The employer does not receive any compensation other than reasonable administrative cost reimbursement;
- Employee participation is completely voluntary; and
- The employer does not endorse the program beyond allowing payroll deductions, and allowing the insurance carrier or broker to advertise the availability of the benefit to employees.

The nonendorsement factor is often viewed as the most difficult of the safe harbor requirements to satisfy, because there is no clear definition of what is considered to be an endorsement. However, the DOL and some courts have provided limited guidance regarding the circumstances in which an employer is considered to have endorsed a program.

According to the DOL, examples of employer actions that may constitute endorsement include using the employer's name and logo on program communication material, saying that the employer arranged the program, negotiating or designing coverage terms, seeking out a specific insurer, assisting employees with enrollment or claims, and distributing information that associates the voluntary benefit with other ERISA benefits.[2]

Additionally, courts have held that the following conduct by an employer can be considered endorsement: promoting a group policy to employees as part of the employer's customary benefits package, e.g., at open enrollment;[3] involving itself in assessing the quality of particular types of coverage to be offered;[4] and making a program available to employees on a pretax basis as part of the employer's cafeteria plan.[5]

Ultimately, the key question in the endorsement inquiry is whether the employer's activities with respect to the voluntary benefit would lead an employee to reasonably conclude that the program is part of the ERISA benefits that the employer offers. The more endorsement indicators that are present, the more likely it is that the employer will be found to have endorsed the voluntary benefit.

What Are the Plaintiffs' Primary Theories of Liability?

The four new complaints are nearly identical and contend that all the voluntary benefit programs at issue are ERISA plans.[6] The complaints allege that the employers and benefits brokers involved are plan fiduciaries, and that their actions with respect to the voluntary benefit programs violate ERISA.

In support of their allegation as to the fiduciary status of the employers, the plaintiffs allege that the employers are plan fiduciaries because they have discretionary authority in the administration of the voluntary benefit plans.

As a result of this alleged fiduciary status, the plaintiffs argue that the employers have a duty to select insurers for their employees with care, and have a duty to diligently and prudently select voluntary insurance benefit administrators.

Moreover, the plaintiffs allege that the employers have a duty to monitor compensation of all plan service providers to ensure that the service providers are receiving only reasonable compensation for services to the plan.

To that end, according to the plaintiffs, the employers have a duty to ensure that the fees paid to third-party service providers are not excessive by reviewing benefits, premiums, carriers, claims and commissions, and by comparing the fees the program charges to reasonable fees in the marketplace.

With respect to the brokers, the plaintiffs allege that they are functional fiduciaries subject to ERISA, because — as a matter of industry practice — they exercise discretion in administering voluntary benefit plans by withholding information about lower-cost options to maximize commissions.

According to the plaintiffs' identical allegations in all four complaints, voluntary benefit plan brokers "may screen the bids they receive from carriers, selectively presenting to the employer only a curated set of alternatives, removing from consideration options which the broker deems to provide an insufficient commission."

In addition, the plaintiffs allege that brokers can be functional fiduciaries by engaging in self-dealing through commission structures tied to high-premium products. Moreover, a broker's alleged interest in maximizing its commission is in direct conflict with participants' interest in lower costs.

The four complaints allege that the fiduciaries violated their duties with respect to the management and administration of the voluntary benefit plans by "failing to monitor, negotiate, and ensure prudent and reasonable carrier selection, broker commissions, and loss ratios."

The complaints also claim that fiduciaries engaged in self-dealing and, as alleged co-fiduciaries, were liable for other fiduciaries' conduct.

The plaintiffs argue that the employers had no process in place to select or monitor the insurance carriers and brokers, or to ensure that the brokers' commissions were reasonable. Further, the plaintiffs allege that the employers and brokers engaged in ERISA-prohibited transactions by causing the brokers to collect excessive commissions from plan assets.

The plaintiffs in these cases claim that they suffered financial harm by overpaying for the

voluntary benefits. Among other things, the plaintiffs seek disgorgement of profits, removal of breaching plan fiduciaries and, critically, remuneration for all plan losses.

Why Now?

These novel lawsuits aim to expand the scope of ERISA liability and the types of defendants that can be held liable under ERISA, including benefit consultants and brokers.

To that end, in order to push these lawsuits, plaintiffs may be leveraging data that was gathered regarding service provider compensation, which was disclosed pursuant to the Consolidated Appropriations Act of 2021.

The CAA bolstered certain disclosure requirements to increase transparency about the costs paid to benefit plan service providers. It requires covered service providers to disclose direct or indirect compensation of $1,000 or more that they receive for the services they provide to the plan.

Effective December 2021, this includes commissions, bonuses, overrides and noncash compensation. This requirement provides fiduciaries better information to monitor the reasonableness of fees, and gives participants more data to claim that such fees were not reasonable.

These lawsuits may also be propelled by the U.S. Supreme Court's landmark 2025 decision in Cunningham v. Cornell University, which significantly eased a plaintiff's burden to plead the existence of an ERISA-prohibited transaction and drive a case into costly discovery.

What Can Employers and Brokers Do to Reduce Litigation Risk?

To help minimize litigation risk, employers should consider reviewing what voluntary benefit plans are available to employees and assess whether they satisfy the requirements of the DOL safe harbor.

If the plans do not satisfy all four requirements, employers should consider making modifications to bring those benefit offerings within the safe harbor, thereby reducing the risk that ERISA fiduciary obligations attach to those plans.

Regardless, employers should consider creating a process to monitor the voluntary benefit programs that are offered to their employees, including monitoring the commissions that are charged by the various brokers, akin to what many employers maintain to monitor retirement plans and health plans.

Employers should also be aware that group health plans have additional compliance burdens under the Consolidated Omnibus Budget Reconciliation Act and the Affordable Care Act, in addition to ERISA. As such, employers should be mindful when dealing with voluntary plan arrangements involving health benefits.

Brokers and advisers can also take steps to minimize risk. These steps could include reviewing the likelihood that the plans they broker could be subject to ERISA, setting forth fiduciary obligations clearly in service provider agreements and documenting the basis for their commission rates.

Conclusion

This new wave of ERISA litigation targeting voluntary benefit plans will result in increased scrutiny of how such programs are selected, priced and administered.

While time will ultimately tell how the plaintiffs' claims will fare in court, plan sponsors, fiduciaries, brokers and advisers should proactively review their policies and processes relating to their voluntary plan arrangements in order to mitigate litigation risk.

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[1] See 29 C.F.R. § 2510.3-1(j).

[2] DOL Advisory Opinion 94-23A (1994).

[3] Kanne v. Connecticut Gen. Life Ins. Co., 867 F.2d 489, 493 (9th Cir. 1988).

[4] Steigleman v. Symetra Life Ins. Co., 701 F. Supp. 3d 924, 933 (D. Ariz. 2023), aff'd, No. 23-4082, 2025 WL 602175 (9th Cir. Feb. 25, 2025).

[5] Stoudemire v. Provident Life & Acc. Ins. Co., 24 F. Supp. 2d 1252, 1258 (M.D. Ala. 1998).

[6] Braham v. Lab. Corp. of Am. Holdings et al., No. 1:25-cv-15583 (Dec. 23, 2025 N.D. Ill.); Pimm v. United Airlines Inc. et al., No. 1:25-cv-15581 (Dec. 23, 2025, N.D. Ill.); Brewer v. CHS/Community Health Systems et al., No. 1:25-cv-15578 (Dec. 23, 2025, N.D. Ill.); Fellows v. Univ'l Servs. of Am. LP, No. 1:25-cv-10659 (Dec. 23, 2025, S.D.N.Y.).