

## Publications

# Third Circuit Affirms Dismissal of ERISA Claims Based on Employer's Retention of Prescription Drug Rebates

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On September 25, 2024, the United States Court of Appeals for the Third Circuit affirmed the dismissal of a putative class action lawsuit alleging that an employer violated ERISA by retaining approximately \$65 million in prescription drug rebates earned by its self-funded health plan. The Third Circuit found that the plaintiffs' allegations that their purported financial injury—higher out-of-pocket costs for prescription drug coverage—was caused by the employer's retention of rebates was speculative and, as a result, the plaintiffs failed to adequately allege Article III standing. The decision in *Knudsen v. MetLife Group, Inc.* is a major victory for employers and is a significant roadblock for plaintiffs attempting to plead ERISA claims predicated on allegedly excessive health plan fees.

## Plaintiffs' Complaint

In *Knudsen*, two individuals filed a putative class action against their former employer alleging that they paid "excessive amounts" towards their out-of-pocket costs for health insurance coverage, including the cost of coverage, co-pays and co-insurance. The plaintiffs alleged that the plan earned approximately \$65 million in prescription drug rebates over a five-year period. According to the plaintiffs, the employer wrongfully retained 100% of the prescription drug rebates, when the rebates should have been retained by the plan, allocated to plan participants, and otherwise used for participants' benefit.

The employer-sponsored health plan was self-funded, meaning that the employer, as opposed to a third-party insurer, was financially responsible for all claims for benefits. The plan was funded through a combination of employee and employer contributions. The plaintiffs alleged that participants have paid, on average, around 30% of overall contributions to the plan, with the employer paying the balance of the plan's expenses.

The plaintiffs alleged that if the employer had allocated the rebates to the plan, the employer "may have" reduced participant contributions, "may have" reduced co-pays

and co-insurance for prescription drug benefits, and “may have” distributed rebates to participants in proportion to their contributions to the plan.

The plan’s documents provided that the employer would receive rebates and apply the rebates towards plan expenses, but noted that rebates were not considered in calculating any co-payments or co-insurance amounts.

The plaintiffs asserted ERISA breach of fiduciary and prohibited transaction claims, and alleged the employer violated ERISA’s anti-inurement provision. The plaintiffs sought disgorgement of profits and injunctive and declaratory relief.

## The Third Circuit’s Opinion

The Third Circuit affirmed the dismissal of the complaint on the basis that the plaintiffs failed to adequately allege Article III standing, *i.e.*, (i) an injury-in-fact, (ii) that is fairly traceable to a defendant’s conduct, and (iii) that is likely to be redressed by a favorable judgment:

- The plaintiffs failed to allege a concrete financial injury because they failed to allege “which out-of-pocket costs increased, in what years, or by how much.”
- The plaintiffs failed to allege concrete facts establishing that the employer’s alleged ERISA violations, *i.e.*, retention of prescription drug rebates, was the but-for-cause of their alleged injury, *i.e.*, increased out-of-pocket costs. For example, the complaint did not include any well-pleaded factual allegations demonstrating that rebates are, under the plan’s documents, used to calculate the participants’ out-of-pocket costs and that if the rebates had been deposited in the plan’s trust, this would have resulted in lower out-of-pocket costs. The Third Circuit held that the plaintiffs must show that they have an “individual right” to the rebates such that the employer’s retention of the rebates resulted in a financial injury.
- The plaintiffs’ allegations permitted an inference that their out-of-pocket costs still could have increased, even if the employer deposited rebates into the plan’s trust. The complaint alleged if the employer had deposited the rebates into the plan’s trust, the employer “may have” reduced participant contribution amounts and cost-sharing amounts, and “may have” distributed rebates to participants. The Third Circuit held that such allegations were insufficient to support Article III standing, citing Groom’s victory in *Winsor v. Sequoia Benefits & Insurance Services, LLC*. In *Winsor*, the Ninth Circuit dismissed ERISA claims for lack of Article III standing where the plaintiffs alleged that a broker’s receipt of commissions from a health insurer resulted in participants paying higher contribution amounts. The Ninth Circuit held that the plaintiffs failed to allege that the broker’s receipt of commissions resulted in participants paying higher contributions for their coverage because the employer, and not the broker, set the contribution amounts.

Critically, the Third Circuit declined to hold that the Supreme Court’s decision in [\*Thole v. US Bank N.A.\*](#) required the dismissal of *all* cases brought by participants in self-funded health plans alleging that mismanagement of plan assets increased the participants’ out-of-pocket costs—even where the participants received all of the benefits they were owed under the plan’s terms. The Third Circuit emphasized that financial harm, “even if only a few pennies,” is a concrete, non-speculative injury. The Third Circuit held that a plaintiff could, in theory, allege a concrete financial injury sufficient to establish Article III standing where an employer charged participants more for their coverage than is allowed under plan documents. The Third Circuit held, however, that the plaintiffs in *Knudsen* failed to assert such a concrete, non-speculative injury.

When concluding its opinion, the Third Circuit left open the district court’s ability on remand to exercise its discretion to allow the plaintiffs to file an amended complaint.

## Key Takeaways

The *Knudsen* decision is a major victory for employers. The Third Circuit’s opinion underscores that in order to adequately allege Article III standing, plaintiffs must assert well-pleaded allegations demonstrating a concrete, non-speculative financial injury that was caused by the employer’s alleged ERISA violation. The Third Circuit’s opinion follows the Ninth Circuit’s opinion in *Winsor* in dismissing claims brought by participants alleging that they paid “too much” for their health insurance coverage. In both cases, the allegations of injury were found to be too speculative to establish Article III standing.

The Third Circuit’s opinion included a strong emphasis on the terms of plan documents. While the Third Circuit held that *Thole* did not necessarily foreclose ERISA lawsuits alleging excessive fees against sponsors of self-funded health plans where the plaintiffs

received all of the benefits they were owed under the plan, it is notable that the court specifically tied a plaintiff's ability to do so to whether the employer followed the terms of the plan's documents.

The *Knudsen* opinion will likely impact the resolution of other recently-filed cases alleging excessive health plan fees. We are continuing to monitor developments in this dynamic area of ERISA litigation.