



## Breach of Fiduciary Duty Claim Against ERISA Fiduciaries Can Proceed to Jury Trial

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There is no statutory right to a jury trial under ERISA. For this reason, breach of fiduciary duty claims have historically been considered equitable claims to be heard by a judge. Last week, however, a New York federal judge in the Second Circuit declined to grant a request by Cornell University to appeal, in the middle of the case, a decision granting plaintiffs the right to a jury trial on at least one claim.

A group of current and former University employees originally sued Cornell University and its retirement committee in August 2016, alleging the defendants breached their fiduciary duties under ERISA by allowing their retirement plan to pay excessive fees and retain imprudent investment options. In September of 2017, the court partially granted several of the defendants' motions to dismiss. In May of 2018, plaintiffs asked the court to certify a class of almost 30,000 plan participants.

Last month, the court found that at least one of the plaintiffs' claims—an attempt to hold the plan's fiduciaries personally liable for losses by the plan—was the type of claim that should be brought before a jury. Soon after, Cornell University filed a request to appeal the decision. In its denial, the court reasoned that if on appeal the jury were deemed to be an improper fact finder, on remand, no additional testimony would be required and the jury's verdict could be considered on an advisory basis.

The Cornell University decision is surprising because just one month earlier courts in the Second Circuit separately denied plaintiffs the opportunity to present their cases before a jury in similar cases against New York University and Columbia University. Thus, the Cornell University decision created a split within the Second Circuit and could set a precedent for bringing a claim under ERISA that can be put to a jury.

[Here](#) is a link to the order.

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### Author

[David Rogers](#)

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David Rogers

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