No. 25-498

In the Supreme Court of the United States

WINSTON R. ANDERSON, ET AL., PETITIONERS

v.

INTEL CORPORATION INVESTMENT POLICY COMMITTEE, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE INVESTMENT COMPANY INSTITUTE AS AMICUS CURIAE IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICUS CURIAE*

The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds, closed-end funds, and unit investment trusts in the United States, as well as UCITS and similar funds offered in other jurisdictions. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately

* No counsel for any party authored this brief in whole or in part, and no person or entity, other than amicus curiae or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

managed accounts. ICI represents more than 29,500 regulated funds globally and over 80 percent of U.S. open-end funds; its members manage more than $37 trillion invested in funds registered under the Investment Company Act of 1940, serving more than 120 million American investors. See ICI, Our Members, https://www.ici.org/our-members (last visited July 7, 2026). ICI's mission is to strengthen the foundation of the asset management industry for the ultimate benefit of the long-term individual investor.

Registered funds such as mutual funds, as well as CITs, play a central role in helping average Americans achieve their retirement savings goals. In 2025, an estimated 67.9 million households owned mutual funds inside tax-deferred accounts such as 401(k) and other defined contribution plans, individual retirement accounts, and variable annuities. See ICI, Ownership of Mutual Funds and Shareholder Sentiment, 2025, 31(8) ICI Rsch. Perspective 1, 8 (2025). ICI and its members therefore have a direct and substantial interest in ensuring that the regulation and oversight of defined contribution plans further Congress's purpose of enabling U.S. workers to achieve their retirement savings goals.

ICI's experience and expertise uniquely position it to offer a practical industry perspective on the consequences of Petitioner's proposed pleading rule. As a threshold matter, ICI's members manage the bulk of assets held in tax-deferred retirement accounts such as 401(k) and other defined contribution plans and IRAs. As such, ICI's members have a broad perspective on the various considerations that impact a plan's evaluation of investment alternatives, including among other factors, investment objectives, glide paths, asset-allocation

policies, rebalancing protocols, liquidity profiles, cost structures, and volatility targets. ICI's members also play a key role in designing new or innovative investment strategies and fund structures for plans to meet participants' varied needs, including those that provide greater diversification, reduced volatility, exposure to private market assets, and other characteristics that may appeal to plan fiduciaries and participants. Plan participants will be disadvantaged if fear of litigation were to drive plan fiduciaries to select only the most commonly used funds as plan investment alternatives over newer and innovative offerings.

ICI submits this brief to explain why a plaintiff seeking to plausibly infer an imprudent fiduciary process based on comparative performance must identify meaningful comparators that account for the specific features of the fund being challenged, and why a pleading rule that permits comparisons to funds or benchmarks that do not share meaningful characteristics and objectives to the challenged fund would harm participants by fostering defensive conformity among investment managers and plan fiduciaries rather than reasoned, informed fiduciary judgment.

SUMMARY OF THE ARGUMENT

The prudence standard under the Employee Retirement Income Security Act (ERISA) is process-based and context-dependent. It focuses on fiduciary conduct under the circumstances then prevailing, not on retrospective assessment of outcomes. 29 U.S.C. 1104(a)(1)(B); *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. 409, 425 (2014); *Hughes* v. *Northwestern Univ.*, 595 U.S. 170, 178-179 (2022). When a claim is inherently comparative because it challenges performance or fees, ICI

respectfully submits that Federal Rule of Civil Procedure 8 (Rule 8) plausibility is best implemented by requiring comparative facts that make the inference of a process failure more plausible than the alternative inference of mere ordinary market variance across disparate investment products. *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 556-557 (2007); *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009). Where a plaintiff seeks to infer imprudence from comparative performance or fees—rather than from direct evidence of process failure—a complaint does not plausibly allege a breach unless it identifies a comparator that shares comparable objectives, risks, liquidity constraints, and time horizon, and that would have been available to a prudent fiduciary evaluating the challenged investment decision at the time it was made.

ERISA's independent diversification duty underscores why context matters. Diversification is a core fiduciary obligation under ERISA, requiring fiduciaries to minimize the risk of large losses (even though a diversified approach is unlikely to maximize returns in every market environment). 29 U.S.C. 1104(a)(1)(C). In the defined contribution context, plan fiduciaries discharge this duty by offering a diverse menu of investment options that enables participants to construct properly diversified portfolios suited to their individual circumstances and risk tolerances. *Hughes* likewise demonstrates that prudence is context-specific. Moreover, prudence turns on the circumstances confronting the fiduciary. 595 U.S. at 176-177.

A pleading rule that permits allegations to proceed without identifying an appropriate and meaningful comparator would contravene the holding in *Hughes* that the "circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to

the range of reasonable judgments a fiduciary may make based on her experience and expertise." 595 U.S. at 177. Otherwise, plaintiffs are enabled to cherry-pick benchmarks or data points with the benefit of hindsight. In doing so, plaintiffs would be permitted to transform predictable tradeoffs that fiduciaries make when selecting among different investment strategies into plausible allegations of imprudence.

The diversification duty is all the more critical because federal law and regulatory guidance support access to the full investment universe subject to fiduciary safeguards, not litigation-driven exclusions. The Department of Labor (DOL) has recognized the importance of preserving fiduciary discretion to diversify plan investment menus. To this end, DOL has clarified that private equity exposure may be consistent with ERISA when offered in defined contribution plans through appropriate structures and supported by prudent process. Information Letter from Louis J. Campagna, Chief, Div. of Fiduciary Interpretations, U.S. Dep't of Lab. to Jon W. Breyfogle, Groom L. Grp. (June 3, 2020). That guidance underscores that ERISA's fiduciary framework can accommodate evolving investment strategies where the fiduciary's selection and monitoring process is sound. Executive Order 14330 and DOL's 2026 proposed rule regarding the selection of designated investment alternatives likewise reflect the practical concern that litigation risk can distort fiduciary decision-making and impede participant access to diversified retirement products that enable participants to construct a diversified investment portfolio within a plan. Exec. Order No. 14330, 90 Fed. Reg. 38,921 (Aug. 12, 2025); Fiduciary Duties in Selecting Designated Investment Alternatives, 91 Fed. Reg. 16,088 (Mar. 31, 2026).

This Court's reasoning in *Jones* v. *Harris Associates L.P.*, 559 U.S. 335 (2010), confirms the point. In another construct involving a statutorily created fiduciary duty for fund advisers under Section 36(b) of the Investment Company Act of 1940, as amended, the Court endorsed a framework that evaluates allegedly excessive fees in context—including by using comparisons to genuinely comparable funds—while avoiding de facto rate-setting and unmoored judicial second-guessing. *Id.* at 346-347, 351. That logic applies with equal force to ERISA imprudence claims premised on relative fees or performance. Comparisons may do useful work only when the comparisons are apt.

ICI therefore urges the Court to adopt a narrower rule than Petitioners describe. ICI does not contend that every ERISA prudence complaint must identify an appropriate benchmark, or that plaintiffs must satisfy a special ERISA pleading test. A plaintiff may plead direct facts about fiduciary process, conflicts, failure to monitor, or whether the plan fiduciary considered similar alternatives in selecting an investment option. But when the plaintiff's chosen theory depends on comparative underperformance or relative cost to infer a purported process failure, ordinary plausibility principles require facts showing that the comparison is apt and meaningful. Otherwise, the allegation shows only the expected result that different investments produced different outcomes.

The court of appeals opinion is consistent with that reasoned approach, and its decision should be affirmed.

ARGUMENT

I. ERISA's Process-Based Prudence Standard Requires Meaningful Comparative Facts To Support Outcome-Based Claims

A. Fiduciary conduct is evaluated under the circumstances then prevailing, not by a hindsight-driven comparison of outcomes

ERISA's prudence standard derives from trust law and asks whether fiduciaries undertook an appropriate investigation and deliberation at the time of the challenged decision. 29 U.S.C. 1104(a)(1)(B); *Fifth Third Bancorp* v. *Dudenhoeffer*, 573 U.S. at 419, 425 (2014); *Tibble* v. *Edison Int'l*, 575 U.S. 523, 528-530 (2015). That standard reflects the reality that fiduciaries make investment decisions under inherent uncertainty about the future. A pleading rule that equates later underperformance with earlier imprudence would demand prescience, not prudence. It would also conflate outcome with process and impose a standard that no fiduciary—however diligent—could reasonably satisfy. Moreover, defined contribution plans serve workers over multi-decade horizons, utilizing investment products across asset classes, styles, and strategies. A diversified portfolio may well trail a more concentrated or more aggressive alternative over a short time frame cherry-picked by a plaintiff—not because the fiduciary process was deficient, but because of intrinsic uncertainty as to expected returns over multi-decade time horizons. A pleading standard that treats this predictable variance as a basis for litigation would transform ERISA's process inquiry into a judicial second-guessing of investment decisions.

B. Where a theory of liability is comparative, plausibility requires truly comparable facts

Rule 8 requires more than a recital of elements and more than a results-only narrative. *Bell Atl. Corp.* v. *Twombly*, 550 U.S. 544, 556-557 (2007); *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009). In a case alleging imprudence in selecting and/or maintaining plan investments, that principle has a specific consequence: alleging that Investment A underperformed Investment B (or a composite comparator to Investment A) over a given time frame is not probative of imprudence unless the time frame is relevant to the investment strategy of Investment A and the two investments share (among other traits) comparable objectives, risks, liquidity constraints, and investment time horizons. The court of appeals recognized this principle, holding that allegations of underperformance do not state a claim when the proposed comparator funds have "different aims, different risks, and different potential rewards." Pet. App. 13 (citation omitted). A comparator may have a higher return than the investment that it is measured against simply because it is more or less aggressive, diversified, or liquid, contemplates a different investment time frame, or is designed for an entirely different role within a retirement portfolio. Without facts that plausibly allege why the comparator investment is a meaningful comparator to the challenged investment, the allegation does not support a plausible inference that a fiduciary process was flawed.

ICI does not propose the adoption of a formulation with a rigid or all-inclusive checklist for meaningful comparability. Rather, ICI supports the consideration of certain features as practical indicia of meaningful

comparability that connect outcome-based allegations to a plausible inference of a fiduciary process failure at the time a decision was made. This approach is consistent with both the court of appeals' analysis in this case and with DOL's proposed rule on fiduciary duties in selecting designated investment alternatives, which recognizes that the relevance of any benchmark turns on its relationship to the particular investment and that no single benchmark is meaningful for every investment alternative. See 91 Fed. Reg. 16,088, 16,101-102 (Mar. 31, 2026).

That is not a heightened pleading rule, and neither is it unique to ERISA. It is the ordinary operation of plausibility doctrine in a case based on comparison, as both the district court and court of appeals recognized. A plaintiff who asks a court to infer a flawed fiduciary process from relative outcomes must plead facts showing why the relative outcome says something about the challenged process. Otherwise, the complaint fails to connect outcome to process: it does not identify a comparator that would have been appropriate and available to a prudent fiduciary evaluating the challenged decision at the time it was made, and therefore does not support a plausible inference that the fiduciary's judgment was deficient. See *Dudenhoeffer*, 573 U.S. at 415 (prudence is evaluated based on circumstances "then prevailing"); *Hughes* v. *Northwestern Univ.*, 595 U.S. 170, 176-177 (2022) (prudence inquiry is context-specific turning on specific circumstances at the time the fiduciary acted); Pet. App. 9-13 (affirming dismissal where plaintiffs failed to allege a meaningful comparator).

The facts of this case illustrate this exact point. The court of appeals explained that Intel's customized funds

sought lower volatility and reduced downside risk, including the tradeoff that in rising markets the funds might underperform funds that did not seek reduced volatility. Pet. App. 5-9. The Intel plan fiduciaries evaluated the funds using customized composite benchmarks built from the underlying asset-class benchmarks and the target allocations of the challenged funds, an approach consistent with DOL's recognition that fiduciaries may use benchmarks tailored to an investment's specific characteristics. See 91 Fed. Reg. at 16,101-102. Petitioners instead compared the funds to equity-heavy retail funds, style averages, and indices with different aims, risks, and potential rewards. Such allegations do not plausibly plead imprudence. They simply plead that a different strategy performed better during the time frame selected by plaintiffs.

C. Historical experience confirms that innovations serving participants often precede consensus and lack perfect benchmarks at adoption

Index funds, target-date funds, and other now-familiar retirement products were not created with settled peer groups that had long performance histories. ICI's members have been central to the creation, growth and continued development of these products. As such, ICI has unique expertise in how these products have evolved and how issues such as inapt comparators could stifle investment product growth and innovation. In the case of target-date funds, DOL has recognized that funds with the same target date may differ materially in investment strategy, glide path, and fees, and that those differences can affect performance. See U.S. Dep't of Lab., Target Date Retirement - Funds-Tips for ERISA Plan Fiduciaries (Feb. 2013). The U.S. Government Accountability

Office (GAO) has likewise reported that target-date funds are widely offered and have become a dominant retirement option for 401(k) participants, while design variation materially affects performance and risk. See U.S. Gov't Accountability Off., GAO-24-105364, 401(k) Retirement Plans: Department of Labor Should Update Guidance on Target Date Funds (2024). A pleading regime that treats any shortfall against an inapt comparator as actionable would deter fiduciaries from adopting improvements to fund investment menus. Fiduciaries must be able to select investments that may not deliver the highest returns in a given market cycle in order to provide the diversification that protects participants across the varying market conditions they will encounter over their working lives and into retirement.

Agency guidance confirms why that discipline is necessary. DOL's target-date fund guidance instructs fiduciaries to establish a process for comparing and selecting target-date funds, to understand the funds' investments and glide path, and to document the process. That guidance does not treat all funds sharing the same target date as interchangeable. To the contrary, it recognizes that target-date funds vary in their allocation, risk, fees, glide path style, and expected performance. A complaint that ignores those differences among funds in the same category cannot transform an outcome gap into a plausible imprudent process claim.

II. Participants Are Harmed When Pleading Rules Encourage Defensive Conformity Over Informed Fiduciary Judgment

A. Pleading rules shape fiduciary incentives and participant options and outcomes

The needs of plans and their participants are not served by a regime that shifts fiduciary decision-making from what is most likely to advance long-horizon retirement outcomes to what most effectively reduces litigation exposure. When plaintiffs may proceed on underperformance or "too expensive" theories without alleging a like-for-like comparator, fiduciaries are rationally incentivized to hew closely to prevailing industry practices, even where independent judgment and plan-specific tailoring would better serve participants. That incentive is especially powerful in the defined contribution context, where fiduciaries must design plan investment menus for heterogeneous participant populations and must weigh risk, cost, liquidity, diversification, and expected future withdrawals holistically.

B. A regime that does not require meaningful comparators encourages uniformity, discourages tailoring, and diverts plan assets

Plan participants are not homogeneous, and neither are their retirement saving goals. They differ in age, income, risk tolerance, contribution patterns, and retirement horizons. A 25-year-old participant with a 40-year investment horizon has fundamentally different retirement savings needs than a 60-year-old participant five years from retirement. Likewise, a participant who will rely entirely on a single retirement account has a different risk profile than one who has other retirement accounts or sources of retirement income. Plan

populations also vary across employers: the workforce of a technology startup or financial services firm may have a different demographic and risk profile than that of a decades-old industrial company. One of the core strengths of ERISA's fiduciary framework is the latitude it affords plan fiduciaries to customize investment lineups to reflect these differences. While a one-size-fits-all menu limited to the most conventional, most widely-used options may have a lower litigation risk profile, other menus may better serve the interests of participants. Fiduciaries therefore must be permitted to evaluate new investment options in light of plan-specific circumstances, including the role an investment option plays in enabling plan participants to craft a diversified investment portfolio from the investment menu. In ICI's institutional experience, a pleading approach that treats deviation from prevailing practices as presumptively suspect would tend to promote uniformity, suppress menu evolution and optionality, and skew fiduciary attention toward a litigation posture. This defensive conformity can be expected to chill prudent innovation, discourage risk-managed plan menu design, increase fiduciary-liability pressure, and divert resources that otherwise may be used to provide or enhance benefits. Participants ultimately risk bearing those costs through investment menus that may provide reduced retirement accumulation and fewer investment options tailored to participants' preferences.

C. Diversification is an independent statutory duty that should not be undermined by inapt comparisons

ERISA expressly requires fiduciaries to diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly

prudent not to do so. 29 U.S.C. 1104(a)(1)(C). That statutory command reflects ERISA's basic judgment that fiduciary prudence is not measured by whether an investment strategy later captured the highest return available when viewed in hindsight.

Hughes reinforces that fiduciary prudence is context-specific, not a hindsight comparison of isolated outcomes. 595 U.S. at 177-179. That duty and context-specific inquiry matters here because diversification necessarily involves tradeoffs. A diversified or risk-managed portfolio will often lag the best-performing concentrated exposure during some windows. That predictable tradeoff cannot by itself support a plausible inference of imprudence. Contextual comparator requirements prevent plaintiffs from converting prudent risk management and plan menu compositions that address the needs of a particular plan into a plausible allegation of breach simply by the plaintiff selecting mismatched benchmarks that represent the strategy that happened to win the last market cycle (however short that may be).

That point also answers Petitioners' likely contention that a benchmark requirement improperly insulates innovative products. ICI does not urge an exact-twin rule. The proper requirement is a meaningful comparator, not an identical comparator. Plaintiffs may use the best available comparator (be it a fund, a commercially available benchmark, or a custom composite benchmark) when no ideal peer exists. But they must plead why that comparator investment is appropriate—*i.e.*, that it shares comparable aims, risks and/or potential for reward with the challenged investment, such that the comparison is probative of a fiduciary process failure. Such a pleading requirement leaves room for diversification

and product innovation by plan fiduciaries, while curtailing litigation that measures the risk-reward profile of a given strategy only through the lens of hindsight. To be clear, this limitation does not suggest that diversification immunizes all underperformance from scrutiny. A fiduciary who selects and maintains a plan investment menu that does not provide participants with the opportunity to construct a diversified investment portfolio, who selects and maintains a menu through a deficient process, or who selects materially inferior options relative to true peers, remains fully accountable under ERISA's prudence standard.

III. The Court Should Require Meaningful Comparisons When Plaintiffs Rely On Comparative Underperformance

A. The meaningful-comparison requirement follows from ordinary plausibility principles, not from a heightened ERISA pleading rule

The relevant question is not whether a plaintiff has identified the perfect comparator. It is whether the purported comparator shares comparable aims, risks and/or potential rewards with the challenged investment, such that an inference of imprudence is plausible from divergent outcomes. The information available when the fiduciary acted is not a separate element; it is part and parcel of the ordinary plausibility analysis.

That formulation implements Rule 8 without converting ERISA into a regime of hindsight-driven performance guarantees. A meaningful comparator does inferential work only when it accounts for the features that fiduciaries actually evaluate. A fee difference for different services, or different returns produced by greater asset class concentration or less liquidity, does not by

itself suggest a deficient process. A principle of meaningful comparability serves an important screening function. It separates allegations that plausibly suggest a fiduciary process failure from allegations that merely reflect ordinary market variation. A fee or performance differential, especially one explainable by differences in mandate, services, risk profile, liquidity, or time horizon, does not by itself make an allegation of fiduciary breach plausible. Rule 8 requires more, and ERISA's prudence standard demands a comparison that meaningfully supports the inference the plaintiff asks the court to draw.

DOL's 2026 proposed rule, although not final and not binding, reflects the same practical point: the relevance of any benchmark turns on its relationship to the particular designated investment alternative, and no single benchmark is meaningful for every investment alternative. See 91 Fed. Reg. 16,088, 16,101-102. The Court need not rely on the proposal as authority to recognize that benchmark fit is what makes an allegation that an investment option was imprudent relative to its comparators probative rather than misleading.

Nor would this approach in any way preclude plaintiffs from pleading direct process defects. It applies only when comparisons are used to support an inference of breach to ensure that such comparisons are meaningful in nature.

This approach implements Rule 8 plausibility and this Court's ERISA guidance. *Twombly*, 550 U.S. at 556-557; *Iqbal*, 556 U.S. at 678; *Dudenhoeffer*, 573 U.S. at 425; *Hughes*, 595 U.S. at 176-177. It asks the plaintiff to plead the facts that make the chosen comparison probative, while leaving room for complaints that allege

direct process defects or deficiencies relative to genuinely like-for-like alternatives.

Further, this approach remains entirely consistent with *Hughes*. The Court in *Hughes* declined to impose a categorical pleading shortcut divorced from context, reaffirming that ERISA prudence requires an examination of the specific factual setting alleged in the complaint. 595 U.S. at 175-177. Where the plaintiff's own theory is inferential and comparative, requiring the plaintiff to plead facts that make the chosen comparison meaningful is not a heightened ERISA-only pleading rule; it is the ordinary operation of Rule 8 plausibility in a case where comparison is the alleged basis for inferring deficient process.

B. *Jones* v. *Harris Associate*s confirms that requiring apt comparisons prevents unmoored judicial second-guessing

In *Jones*, this Court addressed the standard for evaluating whether an investment adviser's fee is so disproportionately large as to constitute a breach of the adviser's "fiduciary duty with respect to the receipt of compensation" under Section 36(b) of the Investment Company Act. 559 U.S. at 345. The Court endorsed the *Gartenberg* framework[1] because it evaluates fees in context, including comparisons to comparable funds, and thereby avoids de facto rate-setting by courts. *Id.* at

[1] The *Gartenberg* factors reference a non-exhaustive list of considerations courts use to assess whether fees violate the *Jones* "so disproportionately large" standard and include, among other factors, fee structures as compared to fees paid by similar funds. *Jones* v. *Harris Assocs. L.P.*, 559 U.S. 335, 344 n.5 (2010) (citing *Gartengerg* v. *Merrill Lynch Asset Management, Inc.*, 694 F.2d 923, 929-932 (2d Cir. 1982)).

346-347, 350-353. The Court recognized that meaningful comparisons, grounded in the specific characteristics of the funds and services at issue, are essential to prevent courts from substituting their own preferences for the judgment of fiduciaries and investment professionals. *Id.* at 336 ("[T]he Court must be wary of inapt comparisons based on significant differences between those services and must be mindful that the [1940] Act does not necessarily ensure fee parity between the two types of clients."). The same administrability principle applies here. When plaintiffs plead imprudence based on performance or fees, courts need context and meaningful comparators to determine whether the pleaded facts give rise to a plausible inference of a fiduciary breach. Without comparability, courts are pushed toward substituting hindsight for fiduciary judgment, the same institutional-competence problem *Jones* sought to avoid.

C. A meaningful-comparison standard protects participants and is administrable

ICI submits that the meaningful-comparison standard protects participants in at least three ways. First, it preserves fiduciary capacity to diversify plan investment options and innovate prudently for long-horizon outcomes, rather than defaulting to undifferentiated menus driven by a desire to mitigate against the risk of litigation. Second, it reduces the risk that speculative litigation costs, settlement pressure, and the diversion of plan sponsor time and attention will ultimately be borne by participants through higher fees or reduced investment offerings. Third, it maintains accountability by allowing lawsuits that plausibly indicate deficient process, excessive cost for like exposures, or persistent underperformance against true peers or meaningful comparators.

This standard is also both administrable and consistent with existing precedent. Courts can assess comparator similarity using the same objective, features recognized by the court of appeals: investment aims or objectives, risk profile, and potential for rewards. They need not become investment allocators. Additionally, imposing meaningful-comparison requirements screens only non-probative comparisons. Valid claims survive because the comparison is plausibly like-for-like, such as a cheaper available share class of the same fund with no apparent justification for the more expensive class, identical strategies with lower fees, or persistent underperformance versus true peers or comparators with comparable objectives and constraints. What would not survive is a comparison that faults a diversified, risk-managed, or other strategy merely because another strategy happened to perform better over a plaintiff-selected time window.

D. *Cunningham* v. *Cornell University* does not undermine a meaningful-comparison requirement

Cunningham v. *Cornell University* addressed pleading burdens for ERISA prohibited-transaction claims, holding that plaintiffs need not plead and disprove the applicability of Section 1108 exemptions to state a claim under Section 1106(a)(1)(C). 604 U.S. 693, 709 (2025). Outcome-based comparative theories are different. When plaintiffs seek to infer imprudence from relative fees or performance, the core comparator features—investment objectives, related risks, and potential for reward—are generally accessible from public sources or disclosures made available to plans and plan fiduciaries. Requiring a meaningful comparison in that

setting is an ordinary plausibility requirement. It asks plaintiffs to plead the facts that make their chosen comparison probative; it does not demand internal committee minutes or privileged deliberations before discovery. Thus, *Cunningham* does not relieve plaintiffs of pleading facts necessary to the theory they choose to assert. There, the Court applied ordinary affirmative-defense principles to ERISA's prohibited-transaction provisions. This case involves a different claim and a different pleading issue. Where plaintiffs allege that an investment was imprudent because another investment performed better or cost less, the comparison itself is the factual basis for the asserted inference of breach. Plaintiffs therefore must plead enough about that comparison to make it meaningful. Many of the relevant features—including investment aims or objectives, risk profile, potential returns, and, for registered funds, prospectuses and regulatory filings—are available from plan disclosures or public materials.

The standard that the court of appeals applied and that ICI endorses is, thus, both workable and consistent with this Court's precedent in related areas, including the longstanding requirement that plaintiffs plead allegations that support a plausible inference of liability.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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