



What Does the Johnson & Johnson Lawsuit Mean for USI Clients?

On Thursday, February 15, 2024, a [Compliance Update](#) was sent to USI's Employee Benefits clients summarizing a class action lawsuit filed in federal court by plan participants alleging their employer, Johnson & Johnson, and group health plan fiduciaries breached their fiduciary duties under ERISA. The Compliance Update also provided some high-level considerations for group health plan fiduciaries.

Read [Pharmacy Costs Under Scrutiny in Recent Litigation](#) to learn more.

Litigation Highlights Fiduciary Responsibilities and Transparency Requirements

Under the lawsuit, plaintiffs challenge the plan and its fiduciaries' processes for evaluating, selecting, and monitoring the pharmacy benefit manager ("PBM"). Additionally, the plaintiffs allege Johnson & Johnson failed to evaluate its service providers, including its benefits broker, for potential conflicts of interest.

This lawsuit reflects a recent trend in litigation against ERISA-covered group health plans as a result of new transparency requirements under the Consolidated Appropriations Act of 2021 and ERISA fiduciary obligations. This also calls into question how brokers can assist group health plan fiduciaries in selecting, evaluating, and monitoring PBM contracts and pharmacy prices.

USI's Approach to Pharmacy Consulting

USI is focused on a transparent model around fees associated with pharmacy. Our national pharmacy team has built and implemented strategies and solutions that best serve our client's fiduciary interests:

1. Clear Options Rx – USI's proprietary pharmacy process helps employers manage their fiduciary obligations by streamlining pharmacy management through 3 key activities:

- USI-negotiated pharmacy contracts emphasizing improved, client-favorable wording.
- Open market procurement allowing for regular pricing checks of competitive bidders.
- Clear Guard reconciliation of pharmacy contracts versus actual plan performance.

- 2. Pricing Options** – USI has experience evaluating myriad pharmacy pricing options, including traditional pricing, pass through, national average drug acquisition cost, average script pricing and price per pill.
- 3. OMNI Solutions** – USI's pharmacy solution set includes over 15 options intended to help employers better manage pharmacy plan expenses.

USI remains an objective pharmacy consultant that does not sponsor revenue generating coalitions or receive overrides from any PBM. As a broker committed to transparency, USI proactively discloses compensation (direct and indirect) from the group health plan through our service agreement and the required ERISA 408(b)(2) compensation disclosures.

How USI Can Help

USI's National Pharmacy and Employee Benefits Compliance teams will continue to monitor developments. Contact your local USI benefits consultant or email ebolutions@usi.com to learn more about USI's solutions and strategies to help limit exposure to fiduciary risk.