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Employee Benefit Plan Review

# Supreme Court Rules Defined Benefit Plan Members Cannot Sue Fiduciaries If Payments Unaffected

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In *Thole v. U.S. Bank, N.A.*, the U.S. Supreme Court affirmed, in a 5-4 decision, the U.S. Court of Appeals for the Eighth Circuit's judgment that defined benefit plan participants lack standing to pursue claims of fiduciary breach when the plan is fully funded. Although the Eighth Circuit ruled that participants lack statutory standing to sue under the Employee Retirement Income Security Act of 1974 ("ERISA") when the plan satisfies the statutory funding target attainment percentage, the Supreme Court focused on the broader issue of Article III standing. Article III standing requires a plaintiff to demonstrate a concrete injury caused by the defendant and that the injury would likely be redressed by the requested judicial relief. Because the *Thole* participants would receive the exact same benefits regardless of the outcome of the case, the Court ruled that the participants did not have a concrete stake in the claims asserted.

## No Injury, no Standing

The named plaintiffs are two retired defined benefit plan participants who originally filed the lawsuit in 2013 as a putative class action stemming from financial losses the plan sustained during the Great Recession. The plaintiffs alleged that the plan fiduciaries violated their ERISA duties of loyalty and prudence by making risky investment decisions, including investing plan assets in U.S. Bank's own proprietary mutual funds and paying themselves excessive management fees, which caused the plan to suffer approximately $750 million in losses. U.S. Bank voluntarily contributed $311 million to the plan during the district court proceedings and, in doing so, caused the plan's assets to exceed the statutory minimum funding target attainment percentage. The plaintiffs requested that U.S. Bank repay the remaining losses and also sought injunctive relief, including the removal and replacement of the plan's fiduciaries.

"Of decisive importance" to the Court was the fact that the plan at issue is a defined-benefit plan rather than a defined contribution plan. A defined-benefit plan entitles a retiree to a fixed payment every month, irrespective of the plan's financial performance or investment decisions, while a defined contribution plan's (i.e., 401(k) plan) benefits often turn on the plan's investment decisions. Thus, these plaintiffs had received all monthly pension benefits to which they were entitled, and would continue to receive those plan benefits regardless of whether they won or lost the case. Even if the plan ultimately failed, the Pension Benefit Guaranty Corporation ("PBGC") would be required by law to pay the participants' vested retirement benefits. As a result, in a relatively short and straightforward majority opinion, the Court determined that the participants had no concrete injury and affirmed the dismissal of the case due to lack of standing.

### Plaintiffs' Standing Arguments

The participants set forth various theories in support of their standing to sue. First, they analogized the plan participants to trust beneficiaries insofar as they have equitable interests in the plan that were harmed when the plan's assets diminished. Indeed, the dissent explains that ERISA requires plan assets to be held in trust for the benefit of the participants and beneficiaries. Thus, according to the participants, just as a trust beneficiary can sue for mismanagement of the trust, ERISA participants should be permitted to sue for mismanagement of a plan. The Court rejected the trust law analogies and explained that in a trust, the ultimate amount of money a beneficiary receives depends heavily on the management of the trust, whereas defined benefit plan participants receive a fixed amount no matter the circumstances.

Second, the participants asserted that they actually represented the plan in a capacity equivalent to an assignee or shareholder. The dissent agreed, remarking that similar to a corporation, a plan could not act on its own and requires participants to act on its behalf. Plan fiduciaries are certainly not going to assert claims against themselves, much like corporate fiduciaries will not sue themselves. Thus, participants must step in and hold fiduciaries accountable for misconduct. Again, the Court disagreed and noted that even as shareholders, the participants would be required to maintain some financial stake in the action and that the participants were never appointed or otherwise legally entitled to represent the plan.

Third, the participants argued that ERISA protects their rights and entitles them to vindicate those rights through the court system. The court noted that even if a defendant violates a statute, the plaintiff must still suffer an injury before he or she can sue, and "[t]here is no ERISA exception to Article III." The dissent strongly disagreed with the majority's view that Article III requires plaintiffs to suffer a financial injury under these circumstances. According to the dissent, an injury to the plaintiffs' interest in an appropriately managed plan gives the plaintiffs a sufficiently concrete stake in the case.

Finally, the participants claimed that if they could not sue for plan mismanagement and breaches of fiduciary duties, then no one could, and such mismanagement could continue unchecked and undeterred, contrary to the protections of ERISA. The dissent pointed out that the very purpose of ERISA is to prevent retirement plan failure in the first place, and that the Court's position that the PBGC would serve as a "backstop" disregards the purpose of ERISA and ignores the risk that the PBGC was listed as a program at "high risk" of insolvency. The Court remarked that the fact no one has standing to sue does not create an injury. The justices also explained that employers and plans have strong incentives to avoid misconduct, as they are often on the hook for losses and also must contend with the U.S. Department of Labor.

### Possible Impact on Future Cases

The Court did leave the door open for potential cases in which a plan participant alleges such egregious and specific mismanagement that a plan carries a substantially increased risk of failure and inability to pay pension benefits. Still, the Court reiterated that even if a plan failed, the PBGC serves as a backstop to cover the pension benefits.

The *Thole* opinion underscores the tension between ERISA's purpose to protect the rights of beneficiaries from plan mismanagement and fiduciary misconduct, and the notion that ERISA plans are largely contractual in nature even if governed by federal statute. The former view, held by the dissent, would find that plan participants may suffer a cognizable injury when a plan is mismanaged even if they do not personally suffer a monetary loss, as fiduciary misconduct could cause tens of millions of plan participants to suffer losses.

The majority view, however, focuses more narrowly on monetary injury and limits participants' rights in this case to their pension benefits. As a result, *Thole*'s holding restricts lawsuits by defined benefit plan participants when the plans are not underfunded and when the participants' benefits are not affected.

It should be noted that while this case requires defined benefit plan participants to suffer some sort of monetary injury to establish standing, claims for violations of other ERISA provisions do not necessarily require a financial injury, such as statutory requests for plan documents and related information.

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