Harter Secrest & Emery LLP

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EMPLOYEE BENEFITS AND EXECUTIVE COMPENSATION

SUPREME COURT REJECTS DEFINED BENEFIT PLAN PARTICIPANTS' RIGHT TO SUE FOR FIDUCIARY BREACHES

In *Thole v. U.S. Bank, N.A.*, the Supreme Court ruled that a defined benefit plan's participants did not have the right to sue the plan' fiduciaries in connection with approximately $750 million in investment losses allegedly arising from the fiduciaries' breach of duty. The Court held that the plaintiffs had not experienced an injury sufficient to grant them standing to sue under Article III of the U.S. Constitution. The majority opinion explained that, "Thole and Smith have received all of their monthly benefit payments so far, and the outcome of this suit would not affect their future benefit payments. If Thole and Smith were to lose this lawsuit, they would still receive the exact same monthly benefits that they are already slated to receive, not a penny less. If Thole and Smith were to win this lawsuit, they would still receive the exact same monthly benefits that they are already slated to receive, not a penny more. The plaintiffs therefore have no concrete stake in this lawsuit."

While the holding was specific to defined benefit plan participants' lawsuits in connection with investment losses, the case potentially signals a change in the Court's approach to Employee Retirement Income Security Act of 1974 ("ERISA") litigation more generally. The majority opinion rejected the participants' attempt to assert that an injury to the plan trust was an injury to the plan participants, in accordance with the traditional view under trust law that an injury to a trust provides grounds for a lawsuit by a beneficiary of a trust. While the majority acknowledged past precedent that trust law "informs" the interpretation of ERISA, the opinion went on to state that " In the private trust context, the value of the trust property and the ultimate amount of money received by the beneficiaries will typically depend on how well the trust is managed, so every penny of gain or loss is at the beneficiaries' risk. By contrast, a defined-benefit plan is more in the nature of a contract." In a concurring opinion, Justice Thomas (joined by Justice Gorsusch) went even further, stating "I continue to object to this Court's practice of using the common law of trusts as the "starting point" for interpreting ERISA." In contrast, the Court's rejection of trust law principles of recourse and the finding that participants lacked standing drew a vigorous dissent by four of the justices.

Following the filing of the lawsuit and prior to the case reaching the Supreme Court, U.S. Bank had contributed approximately $311 million to the plan, leaving the plan well-funded once again. Accordingly, the Court noted that the plaintiffs had only alleged that the plan was underfunded for a period of time, and hence their complaint did not assert that "the plan's mismanagement was so egregious that it substantially increased the risk that the plan and the employer would fail and be unable to pay the participants' future benefits." The Court did not, therefore, decide whether plaintiffs in that situation would necessarily have standing to bring a lawsuit.

Practice Group Leader
Paul W. Holloway

Retirement
Mark R. Wilson

Health and Welfare
Thomas J. Hurley
John W. Brill

Executive Compensation
Christopher M. Potash

Counsel
Leslie E. DesMarteau
Lisa G. Pelta
Joseph E. Simpson

Associates
Amanda M. Karpovich
Paige N. Monachino
Crosby A. Sommers

Benefits Litigation Counsel
Megan K. Dorritie
Erika N. D. Stanat

In fact, the majority noted that even in that case, the guarantee provided by the Pension Benefit Guaranty Corporation might prevent a plaintiff from suffering the requisite injury, although it did not decide the issue. However, the majority opinion confirmed that the Secretary of Labor still has the right to sue to enforce ERISA, and that other plan fiduciaries likewise could bring a claim against a breaching fiduciary on behalf of the plan. While the dissent expressed doubt as to the effectiveness of these protections, defined benefit plan fiduciaries should bear in mind that their fiduciary obligations continue to be subject to potential enforcement.

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