



Supreme Court Decision Shields Corporate DB Plans from Participant Lawsuits

By Bridget Hickey June 5, 2020

On Monday, the **U.S. Supreme Court** ruled that participants in a defined benefit pension who have received all their benefits so far cannot sue for breaches of fiduciary duty under the Employee Retirement Income Security Act of 1974 (ERISA), because their monthly benefits have not suffered and they lack a concrete stake in the decision.

Plaintiffs **James Thole** and **Sherry Smith**, retired participants in **U.S. Bank's** defined benefit retirement plan, filed a class action against **U.S. Bank** for alleged mismanagement resulting in pension losses of \$750 million in 2008, causing the plan to become underfunded.

The plaintiffs alleged that U.S. Bank invested pension plan assets in its own mutual funds, paid itself excessive management fees, and made imprudent investments that allowed it to manipulate accounting rules, boost reported incomes, inflate stock prices, and exercise lucrative stock options. Thole and Smith sought approximately \$750 million in losses, plus injunctive relief, including replacement of the plan's fiduciaries. They also sought attorney's fees.

In 2014, while litigation was ongoing, the plan became overfunded and U.S. Bank sought to dismiss the case. The **U.S. District Court for the District of Minnesota** dismissed the case on the basis that suit was moot due to the plan being overfunded. The Eighth Circuit affirmed on the ground that Thole and Smith lacked statutory standing.

In a 5-to-4 ruling handed down by Justice **Brett Kavanaugh** and joined by the other conservative justices, the court found the plaintiffs did not have Article III Constitutional standing. To establish standing under Article III, Kavanaugh noted, a plaintiff must demonstrate that he or she suffered an injury in fact that is concrete, particularized, and actual or imminent, that the injury was caused by the defendant, and that the injury would likely be redressed by the requested judicial relief.

"In a defined-benefit plan, retirees receive a fixed payment each month, and the payments do not fluctuate with the value of the plan or because of the plan fiduciaries' good or bad investment decisions," Kavanaugh wrote.

“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,” Kavanaugh concluded. “The plaintiffs therefore have no concrete stake in this lawsuit.”

The ruling will make it harder for plan participants in corporate plans subject to ERISA to sue over how defined benefit pensions are managed, lawyers say.

"This was a case to watch," says **George Michael Gerstein**, co-chair of fiduciary governance at law firm **Stradley Ronon Stevens & Young**. "It will go a long way, I think, towards protecting plan sponsors of defined benefit plans from the litigation that perhaps confronts them."

"It definitely raises the bar for lawsuits of this type," says **Josh Lichtenstein**, ERISA and benefits partner at law firm **Ropes & Gray**. "If you are a defined benefit plan fund this can give you some reassurance that you're less likely to be sued for investment decisions that you make as long as the plan remains well funded, or there are other factors that just basically aren't putting the plan's ability to pay out its benefit obligations at risk."

While the ruling will make it harder for plan participants to sue, the **Department of Labor** and the named fiduciary that hired an investment manager still have the right to sue an investment manager, notes **S. John Ryan**, a partner at the law firm **Seward & Kissel** in an email.

"It is important to remember under ERISA defined benefit [traditional pensions] are significantly different from defined contribution (401(k)s) and this case involved a defined benefit plan, most participant class action litigation under ERISA involves 401(k) plans," Ryan adds.

The court's decision was notable for its shift from analyzing ERISA claims under trust law to contract law. Defined benefit plans are more like contracts by nature than trusts, because benefits are fixed and do not change irrespective of how well or poorly the plan is managed, the ruling stated.

That shift brought a firmly worded and lengthy dissent from Justice **Sonia Sotomayor**, who attacked the premise and noted the change from the court's past decisions.

"It is hard to overstate the harmful consequences of the Court's conclusion," Sotomayor wrote, arguing that the court's ruling disrupts the purpose of ERISA and the trust funds it requires.

"After today's decision, about 35 million people with defined-benefit plans will be vulnerable to fiduciary misconduct," she wrote.

"It will be interesting to see if future defined benefit plaintiffs pick up elements of her dissent to argue in favor of the "egregious" standing standard reflected in the majority opinion," writes **Jordan Mamorsky** of **The Wagner Law Group** in an email. "Stay tuned."

The court's ruling hinted that Thole and Smith may have established standing if the complaint had successfully demonstrated that "mismanagement of the plan 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 pension benefits."

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