

Supreme Court Holds Defined Benefit Plan Participants Lack Standing to Sue Over Allegedly Imprudent Investment Decisions

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In a recent 5-4 decision, the Supreme Court, in [*Thole v. U.S. Bank N.A.*](#), 590 U.S. ____ (2020), held that participants in defined benefit pension plans lack standing to sue plan fiduciaries for allegedly imprudent plan investments where the participants continue to receive their full benefits and no imminent risk that they will cease receiving their full benefits appears.

Defined benefit plans—once the staple of employer-sponsored retirement plans but now a diminishing share of that group—guarantee a monthly payment in retirement using a formula based on years of service and compensation. Sponsors set aside funding on an ongoing basis and assume the risk that bad investments or erroneous actuarial assumptions may require additional contributions in later years to ensure that payments continue to flow. No participant owns any particular interest in the fund that pays a defined benefits pension; rather, the participant gains the right to a periodic (usually monthly) payment in a defined amount according to the plan’s formula. This type of pension plan differs from defined *contribution* plans, such as 401(k) or 403(b) plans, where employees contribute a defined portion of their earnings to an individual investment account (and employers may contribute to individual employee investment accounts in a defined amount, matching some portion of employee contributions). In a defined *contribution* plan the value of the individual retirement account that an employee accumulates through contributions and investment growth determines what benefits will be available to the employee in retirement.

The Court, in *Thole*, held that defined benefit plan participants lack standing to sue over allegedly imprudent investments because they are “legally and contractually entitled to receive [the] same monthly payments for the rest of their lives” regardless of investment performance. The plan sponsor, rather than the participant, bears the risk of making additional contributions should plan assets drop below the level required to fund plan benefits.

Justice Kavanaugh, writing for the majority, further explained:

[Plaintiffs] have received all of their monthly benefit payments so far, and the outcome of this suit would not affect their future benefit payments. If [Plaintiff’s] 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 [Plaintiffs] *win* the 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.

In a dissenting opinion, Justice Sotomayor applied traditional trust law principles to reach a different conclusion. She would have ruled that participants in an ERISA plan maintain an “equitable interest in the subject matter of the trust” that provides them with standing to sue over the alleged mismanagement of trust assets, even when they are experiencing no current loss. *Thole* thus marks an instance in which the Supreme Court has departed from common law principles of trust law to construe ERISA.

Thole involved a defined benefit pension plan that, while underfunded when the suit started, became fully funded (by additional employer contributions) during the course of the litigation. The case thus left unanswered whether standing for participants might exist if a fund faced an imminent funding crisis that might soon require a reduction in benefit payments. This unexamined hypothetical may be of particular interest to trustees of multiemployer defined pension plans who face decisions about partition or benefit reductions.

Defined benefit pension plan fiduciaries should welcome *Thole* as an important protection against disruptive litigation that second-guesses decisions that do not affect the participants’ retirement security. The decision, however, neither obviates the fiduciary duty to invest with care, skill, prudence, and diligence, nor eliminates potentially significant legal and financial consequences to a fiduciary for poorly investing plan assets. Although plan participants may not have standing to sue for imprudent investments, the Department of Labor has the authority to file an action on its own behalf. Moreover, plan sponsors remain responsible for making up any shortfalls in defined benefit plan funding.

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