Miller & Chevalier

EB Flash: Defined Benefit Plan Participants Do Not Have Article III Standing to Sue

Employee Benefits Alert
06.02.2020

In *Thole v. U.S. Bank*, N.A., 590 U.S. ___, slip opinion (decided June 1, 2020), the Supreme Court, in a 5-4 split decision, held that the plaintiffs, two retired participants in U.S. Bank's defined benefit pension plan, did not have standing under Article III of the Constitution to sue for relief under the Employee Retirement Income Security Act of 1974 (ERISA) because they did not suffer any actual financial injury. The participants alleged that the plan fiduciaries had mismanaged the plan, violating their ERISA duties of loyalty and prudence and causing substantial losses to the plan.

Affirming the decision of the Court of Appeals for the Eighth Circuit which had upheld dismissal of the claims, Justice Kavanaugh, joined by Chief Justice Roberts and Justices Thomas, Alito, and Gorsuch, concluded that the participants did not have Article III standing to bring the complaint because they "have received all of their monthly benefit payments so far, and the outcome of this suit would not affect their future benefit payments . . . . [They] would still receive the exact same monthly benefits that they are already slated to receive, not a penny less . . . . [and] not a penny more." Slip op. at 2-3.

Background

U.S. Bank sponsored a defined benefit plan which, according to participants and retirees James Thole and Sherry Smith, suffered a loss of approximately $750 million as a result of a non-diversified contrarian investment strategy. The participants filed a putative class action against U.S. Bank and the plan fiduciaries (collectively, Bank), alleging that the Bank's investment decisions violated ERISA's duties of loyalty and prudence. As retirees, the participants received their defined benefit under the plan and did not allege that their benefits had been or would be diminished by the alleged misconduct.

After the filing of the lawsuit, the Bank made a substantial contribution to the plan, fully funding the plan, and moved to dismiss the complaint. The district court granted the dismissal and the 8th Circuit affirmed.

Reasoning and Holding

In the Supreme Court's majority opinion, Justice Kavanaugh began by reciting the requirements needed to establish Article III standing, including the necessity of a "concrete, particularized, and actual or imminent" injury. *Id.* at 1. The majority noted that the fact that the participants' suit involved a defined benefit plan, not a defined contribution plan, was "[o]f decisive importance to this case". *Id.* The distinction between these types of plans was fundamental to the Court's decision because "[i]n 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. By contrast, in a defined-contribution plan, such as a 401(k) plan, the retirees' benefits are typically tied to the value of their accounts, and the benefits can turn on the plan fiduciaries' particular investment decisions." *Id.* Thus, "regardless of the plan's value at any one moment and regardless of the investment decisions of the plan's fiduciaries. Thole and Smith have been paid all of their monthly pension benefits so far, and they are legally and contractually entitled to receive those same monthly payments for the rest of their lives." *Id.* at 2. Even though it was "[n]o small thing" that the "plaintiffs' attorneys requested at least $31 million in attorney's fees", the attorneys' interest in the case was not enough to establish standing. *Id.* at 2-3.

Observing that "[c]ourts sometimes make standing law more complicated than it needs to be," the majority addressed each of the participants' four primary arguments. *Id.* at 8. Justice Kavanaugh first disagreed with the assertion that, as under trust law, "an ERISA defined-benefit plan participant possesses an equitable or property interest in the plan" sufficient to constitute an injury for purposes of standing. *Id.* at 3. The Court reasoned that the analogy to trust law was improper because the participants, as beneficiaries of a defined benefit plan, were guaranteed a certain amount of benefits which would not vary and did not "depend on how well the trust is managed". *Id.* at 4.

The Court disagreed with the participants' second argument that that they were representatives of the defined benefit plan, stating that representatives must nevertheless establish an injury, which they could not do, nor could they show that the plan's claims had been assigned to them or that they were otherwise "appointed to represent the plan." *Id.* at 5. The participants' third argument that ERISA granted them a right to bring a claim as beneficiaries of the defined benefit plan fared no better, with Justice Kavanaugh quoting the Court's prior decisions rejecting the view that "a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." *Id.* Here, the majority reinforced the distinction, stating that a "cause of action does not affect the Article III standing analysis." *Id.*

Fourth, the plaintiffs argued that without the right to sue for suspected improper fiduciary conduct "no one will meaningfully regulate plan fiduciaries." *Id.* at 6. The Court rejected this argument, pointing out that employers sponsoring ERISA defined benefit plans have "strong incentives to root out fiduciary misconduct because the employers are entitled to the plan surplus and are often on the hook for plan shortfalls." *Id.* As a result, "about the last thing a rational employer wants or needs is a mismanaged retirement plan." *Id.* The Department of Labor's authority to enforce ERISA's fiduciary obligations, the Pension Benefit Guaranty Corporation's obligations "to pay the vested pension benefits of the retirees, often in full", and other federal and state criminal laws further supported the majority's views. *Id.* at 7-8 and n.2.

Lastly, the Court discussed an alternative theory presented by amici for the participants which contended that they could "sue if the 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." *Id.* at 7. The Court skirted the issue, stating that the participants did not assert such a theory, nor did they put forward sufficient facts to show that the mismanagement had been egregious to such a degree. *Id.* at 8.

Acknowledging that participants alleged that the plan had been underfunded, according to the majority, such "a bare allegation of plan underfunding does not itself demonstrate a substantially increased risk that the plan and the employer would both fail." *Id.*

The majority therefore concluded that the dismissal was proper for lack of Article III standing: the participants "have received all of their vested pension benefits so far, and . . . . [w]inning or losing this suit would not change the plaintiffs' monthly pension benefits." *Id.*

Justice Thomas's concurrence took issue with analogies to trust law and that Article III standing looks to the rights of the person asserting the claim. In his view, the participants asserted a private claim on behalf of the plan which belonged to the plan, not to the participants, and had not been assigned. Slip op., Concurrence at 2.

In the dissenting opinion, Justice Sotomayor, joined by Justices Ginsburg, Breyer, and Kagan, strongly disagreed with the majority for holding that the "Constitution prevents millions of pensioners from enforcing their rights to prudent and loyal management of their retirement trusts." Slip op., Dissent at 1. She maintained that the participants had an "equitable interest" that had "support in traditional trust law." Slip op., Dissent at 4. Further, she would recognize the participants' Article III "standing because a breach of fiduciary duty is a cognizable injury, regardless whether that breach caused financial harm or increased a risk of nonpayment." Slip op., Dissent at 10.

The decision is posted here.
