

## *Participants in fully funded plans can't bring ERISA suits – ruling, Pensions & Investments, ft. Nancy Hendrickson*

*Nancy Hendrickson, partner and co-chair of KD's Financial Services Practice Group, is quoted in Hazel Bradford's article on the SCOTUS ERISA case published in Pensions & Investments on June 1, 2020.*

*Participants of defined benefit plans that are not underfunded do not have standing to sue plan fiduciaries for mismanagement, the Supreme Court ruled Monday in a 5-4 decision.*

*The ERISA case, Thole vs. U.S. Bank, was dismissed after a lower court and the 8th U.S. Circuit Court of Appeals said participants did not have statutory standing to assert breach of fiduciary because the participants had not suffered any individual financial harm and there were enough plan assets to cover benefits. The participants in the U.S. Bancorp Pension Plan filed suit in 2013 claiming that plan fiduciaries engaged in misconduct, failed to diversify investments and invested in high-risk equities, including a proprietary mutual fund, that caused \$750 million in losses. U.S. Bank later replaced those amounts, causing the plan to be overfunded.*

*The decision was "surprising," since the Supreme Court typically rules "on the narrowest grounds possible," said Nancy Hendrickson, a partner with Kaufman Dolowich & Voluck LLP. By ruling out standing in such cases, "participants in defined benefit plans are essentially left with no way to challenge or seek redress for improper actions taken by plan fiduciaries and could also have implications for other types of class actions, Ms. Hendrickson said in a statement.*