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Supreme Court’s Thole v. U.S. Bank Ruling Has Constitutional Implications, PlanAdvisor, ft. Nancy Hendrickson

Nancy Hendrickson, partner and co-chair of Kaufman Dolowich & Voluck's Financial Services Practice Group, is quoted in John Manganaro's PlanAdviser article on the SCOTUS Thole vs US Bank opinion.

Normally the Supreme Court strives to structure its rulings with the narrowest possible scope and implications, but that is not always the case.

A divided U.S. Supreme Court ruled on Monday in the complex case known as Thole v. U.S. Bank.

In a 5-4 split, the Supreme Court’s conservative majority has sided with the two lower courts that have ruled in the case, joining them in rejecting the plaintiffs’ calls to revive the fiduciary breach lawsuit that cites the Employee Retirement Income Security Act (ERISA). In simple terms, the courts have determined that pension plan participants who have not seen their own benefit payments reduced or otherwise altered cannot sue their employer on behalf of the whole pension plan for failing to live up to ERISA’s fiduciary duties.

A number of attorneys focused on ERISA have already voiced positive opinions about the ruling . . .

However, plaintiffs’ attorneys have voiced concern about both the structure and substance of the ruling. Their concerns match those included in the dissenting opinion filed by the Supreme Court’s four liberal-leaning justices. For her part, Nancy Hendrickson, co-chair of the financial services practice group at Kaufman Dolowich & Voluck, says the ruling is surprising.

“This is a surprising decision,” she says. “It’s an ERISA case, and the issue was whether plaintiffs, who were participants in a defined benefit [DB] plan, had standing to sue the plan fiduciaries for alleged ERISA violations. Usually, we expect the court to rule on the narrowest grounds possible. But here, the court did not limit its analysis or holding to ERISA cases. Instead, the court found that plaintiffs did not have standing under Article III under the United States Constitution.”

According to Hendrickson, the Supreme Court focused on the fact that the plan was legally obligated to pay the lead plaintiffs the same benefits even if the plan incurred losses—which it did to the tune of hundreds of millions of dollars.

“Nevertheless, the court concluded that plaintiffs had not suffered any pecuniary injury and therefore did not have standing under Article III of the Constitution,” Hendrickson says. “However, as Justice Sonya Sotomayor points out in the dissent, plaintiffs did not merely seek monetary relief. They also sought injunctive and equitable relief. The court did not even address that point.”

Consequently, according to Hendrickson’s early analysis, participants in defined benefit plans are essentially left with no way to challenge or seek redress for improper actions taken by plan fiduciaries.

“The court also rejected analogy to the law of trusts in the context of ERISA cases,” Hendrickson observes. “Justice Clarence Thomas actually said in his concurrence that ‘fiduciary duties created by ERISA are owed to the plan, not petitioners.’ Justice Thomas made the point most explicitly that he wants the court to reconsider ‘loose analogies in both our standing and ERISA jurisprudence.’”

This means the ruling could have broad implications for ERISA cases, as it will likely spawn litigation concerning the nature of a plan fiduciary’s duty—an issue that before now seemed relatively well-settled.

“The case could also have broader implications outside the ERISA context, particularly in class actions where there are no actual monetary losses or in cases where individual plaintiffs seek to vindicate non-pecuniary rights,” Hendrickson says.
