Supreme Court's Decision in *Thole v. U.S. Bank* a Win for Fiduciaries of Defined Benefit Plans

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Earlier this month, the Supreme Court issued its opinion in the case of *Thole v. U.S. Bank*, holding that participants in defined benefit pension plans do not have standing to bring breaches of fiduciary duty claims under ERISA unless and until their own benefit has actually been impacted. This decision is a big win for sponsors and fiduciaries of defined benefit plans, as it greatly limits the types of breach of fiduciary duty cases that can survive the initial pleading stage.

Plaintiffs James Thole and Sherry Smith are both retirees from U.S. Bank and are presently receiving monthly benefits under U.S. Bank's defined benefit plan. They brought several claims under ERISA, including breach of fiduciary duty and equitable relief claims. The plaintiffs alleged that the fiduciaries of the plan breached their duties of loyalty and care, which caused the plan to lose almost $750 million following the economic downturn in 2008.

The Supreme Court held that the plaintiffs did not have standing under Article III of the Constitution (commonly referred to as the "standing to sue doctrine") to assert these claims. The central crux of the majority's opinion is that the plaintiffs did not actually suffer an injury: they had been receiving the same benefits since retirement, and their monthly benefits had not been impacted. In fact, the majority noted that win or lose, the plaintiffs would continue to receive the exact same benefits from the plan. As a result, they had no "concrete stake" in the lawsuit to establish standing under Article III.

In reaching this holding, the majority distinguished defined benefit plans from defined contribution plans (such as a 401(k) plan). In defined contribution plans, participants are entitled to the funds that accumulate in their own accounts. The majority stated that participants' rights in a defined contribution plan flow from an equitable or property interests in trusts. In a defined benefit plan, however, participants' rights or more contractual than equitable. As a result, plaintiffs could not assert equitable or property interests in the plan as a basis for establishing standing.

The majority did leave open a small door for future plaintiffs. The majority stated that it did not have to decide whether plaintiffs could establish standing if the mismanagement of the defined benefit plan "substantially increased" the risk that future benefits would not be paid. The majority did not have to address this issue because it was not briefed by the parties. However, that leaves enough wiggle room for plaintiffs' attorneys to try to establish standing in the future.

What does this decision mean for plan sponsors and fiduciaries? Practically, not much has changed. Many courts have already established precedent that a participant in a defined benefit plan needed to prove actual harm to his/her benefit in order to prevail in lawsuit regarding the prudence of the management of investments. This decision will now make it harder for participants of a defined benefit plan to bring fiduciary duty claims that will survive a motion to dismiss. Contact your Vorys lawyer if you have questions about recent trends in fiduciary litigation or your defined benefit plans generally.