ERISA Fiduciaries Get Protection as a result of High Court Ruling

This week's ruling of the U.S. Supreme Court is potentially positive news and has promising favorable future implications for fiduciaries of ERISA-regulated employee pension plans who might be faced with allegations of financial and investment mismanagement of retirement plan assets. The case, *Thole vs. U.S. Bank N.A.*, could have the effect of substantially reducing the ability of individual plaintiffs to bring successful cases against fiduciaries of adequately funded ERISA pension plans.

In a 5-4 decision, the Court held that retirees under a defined benefit pension plan could not sue over alleged mismanagement of pension assets because the retirees were found to have no concrete stake in the outcome of the lawsuit. The majority opinion concluded that the plaintiff-retirees lacked standing to bring suit because, win or lose, they would still receive the exact same monthly benefits they are already entitled to receive.

In an attempt to bring a class action lawsuit, two plaintiffs filed against U. S. Bank under the Employee Retirement Income Security Act of 1974 (ERISA), alleging that U.S. Bank's pension plan fiduciaries violated ERISA's duties of loyalty and prudence by poorly investing the plan's assets. The plaintiffs sought relief by requesting: the repayment of approximately $750 million to the plan in losses suffered due to mismanagement; injunctive relief, including replacement of the plan's fiduciaries; and attorney's fees. The District Court dismissed the case, and the Eighth Circuit affirmed on the ground that the plaintiffs lack statutory standing. The Supreme Court affirmed the decision of the Eighth Circuit.

The majority opinion of the Supreme Court rejected the plaintiffs' arguments and found them to be insufficient to establish standing. Among other things, the Court disavowed the notion that an ERISA participant has an equitable or property interest in the defined benefit pension plan and its underlying assets. Further, the Court saw no actual injuries or harm to the plaintiffs where their fixed pension benefit would remain the same regardless of the outcome of the case. Lastly, the Court held that, although ERISA afforded a cause of action, there had to be demonstrated harm or injury to the plaintiffs in order for them to have standing to sue – meaning that an allegation of a statutory violation was not alone enough to give standing and basis for the lawsuit.

As a point of clarification, a footnote in the Court's opinion states that the Court declined to rule on whether pension plan participants would be able to bring a similar suit if fiduciary mismanagement jeopardized the employer's and the plan's ability to make benefit payments on a go-forward basis because those facts had not been alleged in the case. However, the footnote does express some level of doubt even for claims of this nature because of the backstop on plan benefits that is provided by the Pension Benefit Guaranty Corporation, which continues to make pension plan payments for underfunded pension plans in the case of bankruptcy or insolvency of a pension plan sponsor.

It is also noteworthy that the minority dissenters expressed a view that the decision was contrary to "common sense and longstanding precedent" that has already established that ERISA suits simply are a method of holding employers accountable for wrongdoing. The minority stated that the effect of this decision was to relegate pensioners to the role of mere bystanders with no stake in the underlying assets of their pension plans.

It is too early to say with any certainty how the *U.S. Bank* case will impact the type and volume of future lawsuits by pension plan participants who allege mismanagement of plan assets. There are, however, early indications that there could be a significant reduction in fiduciary-breach suits against fiduciaries of defined benefit pension plans. Armed with the reasoning, holdings and

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conclusions of the Supreme Court in *U.S. Bank*, ERISA fiduciaries may now have some new grounds to mount a successful defense against plaintiff-participant allegations, particularly in class actions.

However, the Court's opinion differentiates fiduciary obligations under defined benefit pension plans from those under defined contribution plans, like 401(k) and 403(b) plans. For these types of individual account plans, the amount of a participant's plan benefit can turn on the plan fiduciaries' investment decisions. As a result, it remains to be seen what implications the *U.S. Bank* decision could have for the recent persistent trend of litigation against fiduciaries of defined contribution plans which typically involve allegations of breaches of fiduciary duty in the selection and performance of, and fees charged by, defined contribution plan investments.