Legal Update Article

Supreme Court: Plaintiffs Who Suffered No Injury Lack Standing to Sue Under ERISA

By Howard Shapiro

June 5, 2020

Meet the Authors

Howard Shapiro
(He/Him)
Principal
504-208-5835
Howard.Shapiro@jacksonlewis.com

Related Services

ERISA Complex Litigation

The plaintiffs' expectations surely suffered a blow after reading the Supreme Court's initial observation in their case: "If [the plaintiffs] were to *lose* this lawsuit, they would still receive the exact same monthly benefits that they are already slated to receive, not a penny less. If [the plaintiffs] were to *win* this lawsuit, they would still receive the exact same monthly benefits that they are already slated to receive, not a penny more." ***Thole v. U. S. Bank N. A.***, No. 17-1712, 2020 U.S. LEXIS 3030, *6 (June 1, 2020).

In a 5-4 decision, starting from this proposition, the Court held that participants and beneficiaries in defined benefit plans lack Article III standing to sue to assert fiduciary breach claims under the Employee Retirement Income Security Act (ERISA) of 1974, as amended, for fiduciary mismanagement of the plan's assets because they suffered no injury in fact and there was no injury that could be redressed by the requested judicial relief.

Writing for the majority, Justice Brett Kavanaugh emphasized this dispute arose in the context of a defined benefit plan. That was of "decisive importance" because under a defined benefit plan, retirees receive a fixed payment each month that does not vary based upon the value of the plan or the fiduciaries' good or bad investment decisions.

Background

The plaintiffs alleged an ERISA breach of fiduciary duty, claiming plan fiduciaries invested defined benefit plan assets in U.S. Bank's proprietary mutual funds, while paying the bank excessive fees. They alleged this fiduciary misconduct caused $750 million of defined benefit plan asset losses. They also sought at least $31 million in attorney's fees. During the litigation process, the plan sponsor contributed approximately $311 million to the defined benefit plan.

No Monetary Injury

The Court concluded the plaintiffs suffered no monetary injury because their retirement benefits remained constant, regardless of the plan's value at any time. This meant that the plaintiffs had no concrete stake in the lawsuit.

Noting that the plaintiffs' counsel might have a stake in the suit, the Court held that an interest in attorney's fees does not create standing where standing does not exist on the merits. The Court also held that if the plaintiffs had not received their vested pension benefits, they would have Article III standing to recover benefits due to them under ERISA § 502(a)(1)(B).

Argument Based on Trust Law Rejected

The Court distinguished the applicability of trust law. The majority held that participants in a defined benefit plan differed from beneficiaries of a private trust. In the trust context, the Court explained, the ultimate amounts of money beneficiaries receive depends on how well the trust is managed, but a defined benefit plan is more like a contractual promise. The Court noted that benefits from a defined benefit plan will not change, regardless of how well or poorly the plan is managed. Holding that because plan participants possess no equitable or property interest in the plan, the Court dismissed the plaintiffs' analogy to trust law.

In his concurring opinion, Justice Clarence Thomas opined that the common law of trusts should not be the starting point for interpreting ERISA. Instead, he stated the starting point of the analysis should be the statutory language of ERISA itself.

Other Arguments Rejected

Plaintiffs claimed they could proceed as representatives of the plan; they also argued standing as assignees. As to their representative standing on behalf of the plan, the Court held that in order to represent the interests of others, litigants must still sustain an injury in fact that provides a sufficiently concrete interest in the in outcome of the dispute. This holding could have distinct consequences for class certification where named plaintiffs may seek to represent others although they have not been injured by the challenged conduct. Along the same lines, the Court rejected plaintiffs' effort to describe themselves as assignees, as there was nothing in the complaint suggesting that the plan's claims were assigned to Plaintiffs.

Plaintiffs also argued they had standing because ERISA provides defined benefit plan participants a general cause of action to sue for restoration of plan losses. However, relying upon its earlier holding in *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1549 (2016), the majority held that a litigant does not satisfy the injury-in-fact requirement whenever a statute grants a statutory right a litigant sues to vindicate. The Court did note that this holding did not implicate suits to obtain plan information. However, even with this qualification, the application of *Spokeo* to ERISA litigation is significant.

Plaintiffs contended that if plan participants cannot sue to target fiduciary misconduct, no one will regulate plan fiduciaries meaningfully. The Court held that plaintiffs' assumption that if a party lacks standing no one will have standing universally is insufficient where no standing exists. The majority also rejected the factual predicate for this argument because ERISA fiduciaries who manage defined benefit plans face a "regulatory phalanx." In addition, the Court rejected claims raised by plaintiffs' *amici* arguing that standing to sue exists here because egregious mismanagement of a defined benefit plan substantially increases the risk of plan failure and an employer's inability to pay future benefits. The Court brushed off this argument noting that plaintiffs did not assert this theory of standing. The Court also held that the bare allegation of underfunding is insufficient to demonstrate increased risk that a plan and its plan sponsor would fail. While noting that it did not decide this point, in footnote 2 of the opinion, the Court observed that any claim of standing based upon an increased-risk-of-harm theory also likely fails if plan participants have their benefits guaranteed in full by the Pension Benefit Guaranty Corporation.

The Court observed that standing should not be more complicated than it needs to be. The Court held there was no ERISA exception to Article III standing and reiterated that standing fails because plaintiffs have received all of their vested pension benefits to date and are legally entitled to receive those benefits for the rest of their lives. The Court concluded by stating that Plaintiffs have no concrete stake in the dispute and lack standing because winning or losing would not change Plaintiffs' monthly pension benefits.

Implications

Thole will affect various areas of ERISA litigation. Many cases attacking mismanagement of defined benefit plan assets likely will become more challenging to pursue. Past examples illustrate this. Between 2013-2016, many cases were filed asserting that Church Plans were underfunded under ERISA standards. Given the *Thole* holding, standing would have been difficult to assert. Where cases allege fiduciary misconduct affects plan assets, standing will be a primary hurdle for class plaintiffs.

The class action arena also may be affected by *Thole*. The Court holds that litigants must sustain an injury in fact that provides a sufficiently concrete interest in the outcome of the dispute. In many class action litigations, the plaintiffs do not participate in particular investments they challenge on behalf of the entire plan. A standing argument might affect class certification in these cases.

Finally, the Court's reliance on *Spokeo* is significant. ERISA is replete with statutory requirements. Often a violation of an ERISA statutory requirement results in no harm and no injury to plan participants. Yet, many class actions are filed. For example, consider COBRA notices where a slight variance from the statute produces no injury or harm to class members. These statutory claims, where there is no injury or harm to class members, now are subject to a standing challenge under *Spokeo* and *Thole.*

Please contact a Jackson Lewis attorney with any questions about this case or ERISA.