

Employee Relations LAW JOURNAL

ERISA Litigation

No Leg to Stand On: Potential Standing Defenses to ERISA Health Plan Claims

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Excessive fee cases under the Employee Retirement Income Security Act (ERISA)¹ continue to expand, with plaintiffs pursuing new theories that extend beyond the initial focus on 401(k) plans. Do the plaintiffs in these cases have a leg to “stand” on? This column reviews some recent developments and offer some tips for plan sponsors who may face such claims.

An emerging trend in excessive fees litigation is employees bringing ERISA claims against employers, plans and plan administrators alleging that they were poor fiduciaries of a health insurance plan's assets. However, recent district and circuit court cases, drawing on earlier Supreme Court precedent, have given plan sponsors and fiduciaries a blueprint for challenging the standing of plaintiffs raising these kinds of claims. Those cases show that where a benefit is fixed and defined, like the benefits from a health plan, plaintiffs will have difficulty establishing standing absent a clear, non-speculative showing that there was a diminution in the benefits they received.

Attacking a plaintiff's standing and convincing the court to dismiss a claim on that basis often allows plan sponsors and fiduciaries to dispose of excessive fee challenges prior to the commencement of discovery. As a result, employers should be aware of the favorable case law for challenging standing in ERISA excessive fee actions challenging the management of a health insurance plan assets.

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REQUIREMENTS OF STANDING

As is true in any case brought in federal court, a plaintiff must establish Article III standing to obtain relief for their ERISA claims.

To establish standing, a plaintiff must prove:

- (1) They have suffered a concrete and particularized “injury in fact,”
- (2) The injury is fairly traceable to the actions of the defendant; and
- (3) Plaintiff’s injury is not speculative but instead will be redressed by a decision granting the requested relief.²

“To establish injury in fact, a plaintiff must show that he or she suffered an invasion of a legally protected interest that is concrete and particularized and actual or imminent, not conjectural or hypothetical.”³ To be “concrete,” an injury-in-fact must “be real and not abstract.”⁴ If a plaintiff lacks proper standing, their claim must be dismissed by the court under Federal Rule of Civil Procedure 12(b)(1).⁵

THE SUPREME COURT’S RULING IN THOLE

In *Thole v. U.S. Bank N.A.*, the Supreme Court upheld the dismissal of a group of retiree plaintiffs alleging mismanagement of defined benefit pension plan, holding that the plaintiffs lacked standing because they continued to receive the full value of their benefits regardless of any alleged mismanagement.⁶ The plaintiffs in that case had a vested, defined-benefit pension plan with U.S. Bank.⁷ The plaintiffs did not allege their pension payments had been reduced, instead claiming that U.S. Bank “violated ERISA’s duties of loyalty and prudence by poorly investing the assets of the plan.”⁸ As a result of this alleged mismanagement, plaintiffs claimed that the plan had suffered \$750 million in losses.⁹ However, as the Court noted, the plaintiffs did not “sustain[] any monetary injury.”¹⁰

The Supreme Court affirmed the dismissal of plaintiffs’ complaint for lack of standing.¹¹ The Court specifically found that plaintiffs lacked a concrete injury because their pension contributions would remain the same regardless of “the plan fiduciaries’ good or bad investment decisions.”¹² This is because the plaintiffs “possess[ed] no equitable or property interest in the plan.”¹³ Accordingly, a loss in the plan’s value does not affect the plaintiffs’ legal interests. Furthermore, the Court found that plaintiffs also failed the redressability prong of the standing test because a positive or negative outcome in their litigation would not materially affect the pension benefits that the plaintiffs’ received.¹⁴ The Court made clear that the outcome of the case turned on the plaintiffs having a vested, defined-benefit pension plan.¹⁵ In contrast, if plaintiffs had a defined-contribution plan

where U.S. Bank's fiduciary decisions could have resulted in a different amount of benefits for the plaintiffs, the Court may have found standing.¹⁶

That the plaintiffs' benefits remained consistent independent of any fiduciary decisions ultimately lead the Court to conclude that the plaintiffs' injuries were not particularized enough to obtain standing. As the Court declared, "[T]here is no ERISA exception to Article III."

OTHER COURTS FOLLOW SUIT

The Court's reasoning regarding standing and defined employer benefits set the stage for future circuit and district decisions addressing ERISA challenges to the management of health plans.

Winsor v. Sequoia Benefits & Insurance Services, LLC

In *Winsor v. Sequoia Benefits & Insurance Services, LLC*, the Ninth Circuit upheld the dismissal on standing grounds of an excessive fee challenge to the fiduciaries of a company's multiple employer welfare arrangement (MEWA) insurance benefit.¹⁷ The plaintiffs were employees of a company that hired the defendant to manage its MEWA, or a health insurance program that allows a company to pool their benefits with other employers to obtain insurance discounts.¹⁸ Plaintiffs asserted the defendant company had fiduciary duties to the plan because it exercised control over the plan's assets.¹⁹ Plaintiffs alleged that the defendant breached this duty by retaining commissions from insurers chosen to provide benefits to employees and by allowing the insurers to charge excessive administrative fees.²⁰ As a result, plaintiffs alleged that they paid higher contributions to their health benefits than they otherwise would have and the insurance plan should recover these excessive fees.²¹

The Ninth Circuit, citing to *Thole*, rejected plaintiffs' theory that they had an equitable interest in MEWA benefits such that they had standing.²² The court noted that the MEWA program provided "a set level of agreed-upon benefits" that did not change based on the management of the plan's assets.²³ The plaintiffs received the same amount of benefits regardless of the plan's management.²⁴ The court found that the plaintiffs had failed to sufficiently articulate how a favorable ruling would result in the excessive fees being remediated to plaintiffs rather than their employer or their health plan.²⁵ Accordingly, plaintiffs lacked standing because they could not successfully assert a concrete injury of how the health plan's alleged mismanagement affected them.²⁶ Instead, their complaint focused on injuries to the health plan itself, which the plaintiffs lacked an ownership interest in under *Thole*.²⁷ The consistent benefit plaintiffs received independently of any plan asset management rendered them unable to obtain standing to bring their excessive fees claim, expanding the reasoning of *Thole* from defined-benefit pensions to also include health plans.

Knudsen v. MetLife Group, Inc.

Similarly, in *Knudsen v. MetLife Group, Inc.*, the Third Circuit upheld the dismissal of a class action alleging MetLife increased employee insurance premiums in violation of ERISA by not directing drug rebates the company received to insurance premiums.²⁸ MetLife established an employee health plan for employees, and hired a pharmacy benefit manager to obtain drug volume discounts and rebates for employees under the plan.²⁹ The company directed the drug rebates to itself rather than lowering employee contributions to the health plan.³⁰ Plaintiffs, former MetLife employees, asserted that this practice violated ERISA and their contributions and insurance costs would have been lowered if MetLife properly managed the rebates by directing them towards employee contributions towards insurance expenses instead of itself.³¹ As a result of these alleged ERISA violations, plaintiffs claimed they paid higher out-of-pocket costs.³²

The district court dismissed the complaint, finding that the Supreme Court's decision in *Thole* and earlier Third Circuit precedent categorically barred assertions of an injury based on increased out-of-pocket costs.³³ As a result, Plaintiffs lacked a concrete injury that would give them standing.³⁴

The Third Circuit rejected the bright line rule the district court adopted, but still found that the plaintiffs lacked standing. The Third Circuit reached this conclusion because plaintiffs did not allege with enough specificity how the employers' actions regarding the rebates caused their insurance costs to increase.³⁵ The court found that plaintiffs did not specify which of their insurance costs increased or the circumstances of that alleged increase.³⁶ Furthermore, the plaintiffs did not plead sufficient facts to establish that the challenged drug rebates were used to calculate their out-of-pocket costs or that a change in the allocation of the rebates would lead to lower costs for the plaintiffs.³⁷ Plaintiffs further failed to establish they had an "individual right" to the rebates withheld by MetLife, "such that[] MetLife's purportedly unlawful retention of the monies harmed Plaintiffs."³⁸ As a result, plaintiffs did not assert a non-speculative, concrete injury, and lacked standing.

District Courts

In addition to the above circuit court decisions, a number of districts have also applied *Thole* to find that plaintiffs lack standing when asserting excessive fee ERISA claims for defined employer benefits.

In *Scott v. UnitedHealth Group, Inc.*, plaintiffs alleged that UnitedHealth breached its fiduciary duty under ERISA in managing their insurance plans by using "cross-plan offsetting" whereby the insurance company withheld part of a payment to a healthcare provider in order to offset a debt owed by the provider to UnitedHealth from an overpayment on a

different insurance plan.³⁹ Plaintiffs alleged that UnitedHealth's offsetting scheme was a misuse of the funds the plaintiffs had contributed towards their insurance.⁴⁰ However, plaintiffs did not allege they had been denied any benefits under the plan.⁴¹ The U.S. District Court for the District of Minnesota court, citing *Thole*, found the plaintiffs lack standing.⁴² The court noted that *Thole* "squarely holds that an injury to a plan that does not affect a plaintiff's benefits does not give that plaintiff standing to sue on behalf of the plan."⁴³ The plaintiff's failure to allege any additional concrete injuries lead the court to dismiss their complaint.⁴⁴

Smith v. UnitedHealth Group, Inc., featured a similar challenge to the insurance company's cross-plan offsetting.⁴⁵ This time, the plaintiffs argued that UnitedHealth's failure to fully reimburse the medical provider for their medical expenses by using an offset was a denial of benefits to the plaintiffs personally, not just to their health plan.⁴⁶ The Minnesota district court rejected the plaintiffs' assertions and noted that plaintiffs were never charged for the amounts offset by the insurance company. The court, citing *Thole*, once again found a lack of standing because plaintiffs had no interest in the plan's assets and received all promised benefits.⁴⁷

Finally, in *Duke v. Luxottica U.S. Holding Corp.*, the U.S. District Court for the Eastern District of New York dismissed part of a plaintiff's ERISA complaint over her former employer's management of its pension plan due to lack of standing.⁴⁸ The plaintiff, like in *Thole*, had a defined benefit pension plan and alleged that had her employer used updated mortality assumptions, her pension payments would have been higher.⁴⁹ The court, invoking *Thole*, found this argument to be speculative, noting that any recovery on the plaintiff's claim would be to the pension plan itself rather than the plaintiff.⁵⁰ The plaintiff's benefits, being pre-defined, would remain the same regardless of the case's outcome.⁵¹

IMPLICATIONS FOR EMPLOYERS

The Supreme Court's decision in *Thole* and its circuit and district court progeny show that standing can be an effective defense against some of the more recent excessive fees cases that focus on health insurance plans. Under the reasoning outlined above, unless plaintiffs can establish a clear link between a plan's alleged mismanagement and an actual or imminent effect on the benefits they receive, employers should not hesitate to challenge their standing under the standards articulated in the cases discussed above.

Furthermore, employers should consider the implications of these rulings when structuring their benefit packages and how they allocate health benefit-related cost-saving measures like drug rebates. So long as employer actions do not diminish the benefits an employee receives, an employer likely has a strong defense against a potential mismanagement ERISA claim on standing grounds.

Given these developments, should a company face an ERISA suit, they should carefully review the complaint to determine whether (1) plaintiffs are alleging a concrete, personal monetary harm from the alleged plan mismanagement or (2) plaintiffs' allegations are merely arguing that the plan itself suffered an injury, but plaintiffs were not denied any promised benefit. If the complaint is closer to (2), an employer has strong precedents under *Thole*, *Winsor*, *Knudsen*, and related district court cases to successfully argue that plaintiffs lack a concrete injury that would give them standing. If this argument applies, an employer can stop an ERISA claim in its tracks by dismissing the complaint for lack of jurisdiction.

Notes

1. 29 U.S.C. § 1001 et seq.
2. *Thole v. U. S. Bank N.A.*, 590 U.S. 538, 540 (2020) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992)).
3. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016), as revised (May 24, 2016) (internal citations omitted).
4. *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 381 (2024).
5. See Fed. R. Civ. Pro. 12(b)(1).
6. *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020).
7. *Id.* at 540.
8. *Id.* at 541.
9. *Adedipe v. U.S. Bank, Nat. Ass'n*, 62 F. Supp. 3d 879, 899 (D. Minn. 2014), *aff'd* on other grounds *sub nom. Thole v. U.S. Bank, Nat'l Ass'n*, 873 F.3d 617 (8th Cir. 2017), *aff'd sub nom. Thole v. U. S. Bank N.A.*, 590 U.S. 538, 140 S. Ct. 1615, 207 L. Ed. 2d 85 (2020).
10. *Thole*, 590 U.S. at 540.
11. *Id.* at 542.
12. *Id.* at 540.
13. *Id.* at 543.
14. *Id.* at 541.
15. *Id.* at 540.
16. *Id.* at 540.
17. *Winsor v. Sequoia Benefits & Insurance Services, LLC*, 62 F.4th 517 (9th Cir. 2023).
18. *Id.* at 521.
19. *Id.* at 522.
20. *Id.*
21. *Winsor v. Sequoia Benefits & Ins. Servs. LLC*, No. 21-CV-00227-JSC, 2021 WL 5053087, at *2-3 (N.D. Cal. Nov. 1, 2021), *aff'd*, 62 F.4th 517 (9th Cir. 2023).

22. Winsor, 62 F.4th at 528.
23. Id.
24. Id. at 527.
25. Id. at 526.
26. Id. at 529.
27. Id. at 527-28.
28. Knudsen v. MetLife Grp., Inc., 117 F.4th 570 (3d Cir. 2024).
29. Id. at 573-574.
30. Id.
31. Id. at 574-575.
32. Id. at 575.
33. Id. at 575-576.
34. Id.
35. Id. at 578.
36. Id. at 581-82.
37. Id. at 582.
38. Id. at 582.
39. Scott v. UnitedHealth Grp., Inc., 540 F. Supp. 3d 857, 859 (D. Minn. 2021).
40. Id. at 862.
41. Id.
42. Id. at 863.
43. Id. at 865.
44. Id.
45. Smith v. UnitedHealth Grp. Inc., No. 22-CV-1658 (NEB/DJF), 2023 WL 3855425 (D. Minn. May 4, 2023), aff'd, 106 F.4th 809 (8th Cir. 2024).
46. Id. at *6.
47. Id. at *6-7.
48. Duke v. Luxottica U.S. Holdings Corp., No. 21CV06072JMAAYS, 2023 WL 6385389, at *7 (E.D.N.Y. Sept. 30, 2023).
49. Id. at *1.
50. Id. at *6.
51. Id.

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