***Thole v. U.S. Bank, N.A.*, No. 17-1712**

In a 5-4 decision issued this morning, the Supreme Court held that participants in a pension plan lack Article III standing to pursue an ERISA fiduciary breach lawsuit if they cannot demonstrate that the lawsuit would alter their entitlement to benefits.

Background: Two participants in the U.S. Bank defined-benefit pension plan filed a lawsuit alleging that the plan's assets had been mismanaged during the period from 2007-2010, such that the plan lost $750 million in assets. But the participants were entitled to fixed monthly benefits, and the district court dismissed the case because the participants' benefits would be paid whether or not U.S. Bank made additional contributions to the plan. The Eighth Circuit affirmed.

Issue: Whether an ERISA plan participant or beneficiary has Article III standing to seek restoration of plan losses caused by fiduciary breach without demonstrating individual financial loss or the imminent risk thereof.

Court's Holding: In an opinion written by Justice Kavanaugh and joined by Chief Justice Roberts and Justices Thomas, Alito, and Gorsuch, the Supreme Court held that ERISA plan participants whose benefits will be unaffected by a fiduciary breach lawsuit lack Article III standing to pursue such a lawsuit. The Court held that, if the plaintiffs' benefits will be the same despite the lawsuit, then they lack the concrete injury that is required to invoke federal judicial authority. The Court rejected the plaintiffs' arguments that ERISA was different—in particular, the arguments that ERISA's trust-law heritage or statutory scheme entitled the plaintiffs to file suit without demonstrating an individualized stake in the outcome.

Justice Thomas filed a concurring opinion, which was joined by Justice Gorsuch. In addition to the reasons specified by the majority, Justice Thomas would have concluded that the plaintiffs lacked standing because, in his view, fiduciary duties are owed to the plan (and not to individual plan participants) and individual participants lack a legal or equitable stake in the trust's assets.

Justice Sotomayor dissented. In an opinion joined by Justices Ginsburg, Breyer, and Kagan, she criticized the Court's conclusion that the plaintiffs lacked a concrete injury sufficient to satisfy Article III. In her view, plan participants have an interest in the financial integrity of their retirement plan, breach of fiduciary duty is a cognizable injury irrespective of the financial consequences, and participants ought to be entitled to sue as representatives of the plan itself.

Mayer Brown filed an *amicus* brief in support of respondent on behalf of the Chamber of Commerce.