

17-1712 THOLE V. U.S. BANK, N.A.

DECISION BELOW: 873 F.3d 617

LOWER COURT CASE NUMBER: 16-1928

QUESTION PRESENTED:

This case presents two independent, substantial legal issues that have divided the courts of appeals regarding when an ERISA plan participant may invoke the remedies Congress explicitly authorized to police fiduciary misconduct and protect federally guaranteed benefits.

Petitioners are participants in a pension plan managed by respondents. After respondents' fiduciary breaches caused \$750 million in losses to the plan, petitioners sued, seeking injunctive relief under 29 U.S.C. 1132(a)(3) and restoration of the plan's losses under 29 U.S.C. 1132(a)(2). The Eighth Circuit affirmed dismissal of both claims because petitioners had not yet suffered any individual financial harm-the plan did not (yet) face a risk of default.

In so holding, the Eighth Circuit departed from holdings of other circuits under both Sections 1132(a)(3) and 1132(a)(2), and rejected the long-held position of the Department of Labor, which has repeatedly urged the courts of appeals to let these claims proceed.

The questions presented are:

1. May an ERISA plan participant or beneficiary seek injunctive relief against fiduciary misconduct under 29 U.S.C. 1132(a)(3) without demonstrating individual financial loss or the imminent risk thereof?

2. May an ERISA plan participant or beneficiary seek restoration of plan losses caused by fiduciary breach under 29 U.S.C. 1132(a)(2) without demonstrating individual financial loss or the imminent risk thereof?

IN ADDITION TO THE QUESTIONS PRESENTED BY THE PETITION, THE PARTIES ARE DIRECTED TO BRIEF AND ARGUE THE FOLLOWING QUESTION: WHETHER PETITIONERS HAVE DEMONSTRATED ARTICLE III STANDING.

CERT. GRANTED 6/28/2019