

The Biggest Benefits Rulings Of 2020: Midyear Report

By **Emily Brill**

Law360 (June 30, 2020, 8:08 PM EDT) -- The U.S. Supreme Court took up a bumper crop of ERISA cases this term, handing down both a major loss and a substantial win to employees looking to sue their employers over retirement plan mismanagement, as well as punting on two other benefits suits.

Here, Law360 discusses these decisions and two district court rulings that address the extent to which the Employee Retirement Income Security Act preempts state and local benefits laws.

Big Win, Big Loss

Despite a reputation for disliking benefits litigation, the high court has heard arguments in five such cases in the first half of 2020 and will hear at least one more before the year is out.

Of the four decisions the justices have released, two stand out as particularly significant: A **February win** for an Intel Corp. employee and a **June loss** for U.S. Bank retirees.

The unanimous Intel ruling gave most people six years to file ERISA class actions. Meanwhile, the 5-4 U.S. Bank ruling forbade retirees from suing over pension plan mismanagement unless their monthly checks were cut or are likely to be cut.

Both rulings concerned standing to sue under ERISA. While the Intel decision preserves workers' right to sue, the U.S. Bank ruling chips away at it — yet to what extent, attorneys are unsure.

"It's going to be really interesting to see how this plays out," said J. Christian Nemeth, a partner at McDermott Will & Emery LLP who represents companies. "I know that case is in the pension context, and certainly the plaintiffs' bar is going to argue it doesn't translate into other spaces within ERISA, [but it could]."

Plaintiffs' attorneys predicted that defense attorneys will begin citing the U.S. Bank ruling in most of their motions to dismiss, claiming workers can't sue under ERISA unless they've sustained direct financial harm from a benefit plan manager's decision.

That prediction has already started to come true, even in the context of health benefits litigation. Zuckerman Spaeder LLP partners D. Brian Hufford and Jason Cowart, who represent workers in cases against ERISA-compliant health plans, say they've seen **Thole v. U.S. Bank** cited in several motions to dismiss lodged against their clients. They don't believe the ruling is applicable, but they weren't surprised to see defense attorneys try it, Hufford said.

"I'm sure that Thole will be cited by defense attorneys in all ERISA cases, like 401(k) plan cases," said Karen Handorf, a partner at Cohen Milstein Sellers & Toll LLP who represents workers. "I just really don't know what the complete impact will be. But not good for plaintiffs, I think."

The Punts


Meanwhile, the justices had the opportunity to resolve two more retirement cases this spring, but on both, they punted to the lower courts.

One case concerned whether the Puerto Rico Catholic Church must pay \$4.7 million to cover teacher pensions it revoked in 2016. The other case asked whether corporate executives must act to protect workers' retirement savings when they know the company's stock price is about to fall.


The latter case stands to affect corporations that put their own stock in the company retirement plan, particularly businesses that maintain "employee stock ownership plans," which consist only of company stock.

In January, the high court **sent the stock case back** to the Second Circuit, ruling that lawyers spent most of **oral arguments** debating legal questions that hadn't been scrutinized by the lower courts.

Then in February, the justices **sent the Catholic Church case back** to Puerto Rico's Supreme Court, ruling on one question — whether the territory's courts correctly authorized sheriffs to seize church assets to pay the pension debt — but sidestepping others.

The **Roman Catholic Archdiocese of San Juan Puerto Rico v. Yali Acevedo Feliciano**  case illustrates the importance of finding sustainable funding models for pensions, said Israel Goldowitz, a partner at The Wagner Law Firm and former chief counsel at the Pension Benefit Guaranty Corp., the federal government's pension insurance program.

"Congress can do that for multiemployer plans. State legislatures and city councils can do it for governmental plans. Church-sponsored schools and hospitals will need to find their own solutions," Goldowitz said. "Acevedo Feliciano illustrates how elusive the solutions may be."

ERISA attorneys say they'll be keeping a close eye on the other case, **Jander v. IBM** , as it heads back to a New York federal judge. The high court gave the Second Circuit the opportunity to take the first crack at answering the legal questions it dodged, but the appellate court **turned it down** on June 22.

"The Second Circuit's recent reinstatement of its earlier decision confirmed that none of the issues at the crux of the case will be considered at this point," said Kimberly Jones, partner at Faegre Drinker Biddle & Reath LLP. "These issues will likely be raised in future cases, especially if district courts within the Second Circuit follow the Jander decision as a basis for allowing stock drop cases to proceed."

Preempted?

Most of 2020's exciting benefits rulings have come from the Supreme Court, but the district courts are as busy with ERISA litigation as ever. Two federal judges on the West Coast handed down rulings this year about an issue the high court is **poised to consider in October**: ERISA preemption.

Congress included language in ERISA noting that the law should "supersede any and all state laws ... [that] relate to any employee benefit plan." Known as the preemption provision, this section of ERISA has been all over the courts recently as business groups try to use it as a deregulation tool, arguing states and localities must limit their level of benefits oversight.

This March, a **California federal judge ruled** that an anti-government-spending group couldn't use ERISA's preemption provision to invalidate a state program intended to help small business employees save for retirement.

Two months later, a **Washington federal judge held** that a business lobby can't use the provision to strike down a Seattle law requiring big hotels to pay for workers' health care.

Both groups have appealed. Nevertheless, workers' advocates say they're cheered by the decisions, which drive home the point that ERISA doesn't rob states of all ability to regulate health care and retirement.

"The problem with ERISA is if you read it too broadly, you really rob the states of any ability to regulate the things they traditionally regulate," Handorf said. "When ERISA doesn't step in and regulate in those areas, then there's just this vacuum."

--Editing by Philip Shea.