

**14-723 MONTANILE V. BOARD OF TRUSTEES OF NEIHBP**

DECISION BELOW: 593 Fed.Appx. 903

LOWER COURT CASE NUMBER: 14-11678

QUESTION PRESENTED:

This petition presents a single question about the meaning of an important remedial provision of the Employee Retirement and Income Security Act of 1974 ("ERISA"). Eight of the thirteen circuits have squarely and openly disagreed over the question presented. The result is a widely acknowledged 6-2 circuit split. In a recent invitation brief, the United States acknowledged the (then) 5-2 circuit split and endorsed the *minority* position. Brief for the United States as Amicus Curiae, *Thurber v. Aetna Life Ins. Co.*, 134 S.Ct. 2723 (May 6, 2014) (No. 13-130). The government recommended denial, however, solely on vehicle grounds. *Id.* at 15-20. The petition was denied.

The question presented by this petition is:

Does a lawsuit by an ERISA fiduciary against a participant to recover an alleged overpayment by the plan seek "equitable relief" within the meaning of ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), if the fiduciary has not identified a particular fund that is in the participant's possession and control at the time the fiduciary asserts its claim?

CERT. GRANTED 3/30/2015