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Supreme Court Decision Changes ERISA Fiduciary Landscape

In an unanimous decision, the United States Supreme Court ruled yesterday that Section 502(a)(2) of the Employee Retirement Income Security Act ("ERISA") provides a remedy to individual 401(k) plan participants who experience investment losses to their accounts due to a breach by plan fiduciaries. *LaRue v. DeWolff Boberg & Assocs. Inc.*, U.S., No. 06-856, 2/20/08. In so holding, the Supreme Court has opened the door to broader claims and remedies for alleged breaches of fiduciary duties relating to defined contribution retirement plans.

Mr. LaRue brought suit against the fiduciaries of his retirement plan, alleging the value of his 401(k) account plunged $150,000 when administrators failed to follow his instructions to invest in more conservative investment options. The issue in the case was whether ERISA permits an individual plan participant to allege a cause of action under ERISA Section 502 because Section 502 specifically refers to recovering money for the *plan* rather than an individual. This raised the question of whether a participant can sue solely for himself. The Court held that ERISA Section 502(a)(2) does permit a participant to bring a lawsuit for appropriate relief under ERISA Section 409, and that section, in turn, imposes personal liability for breaches by any plan fiduciary.

Justice John Paul Stevens, in his opinion for the Court, said that such lawsuits are allowed and that "[f]iduciary misconduct need not threaten the solvency of the entire plan to reduce benefits below the amount that participants would otherwise receive."

The Supreme Court previously had ruled in a defined benefit plan context that ERISA Section 502(a)(2) claims could only be brought on behalf of the plan as a whole. The LaRue opinion distinguishes that prior precedent by holding a "*plan*" in a defined benefit plan arena is different from a "*plan account*" in the 401(k) arena.

LaRue will have far-reaching consequences as it removes the barrier to potential monetary awards to individual plan participants. LaRue shows that administrators and other plan fiduciaries can be held accountable for mistakes, which is likely to result in an increase in individual claims by 401(k) plan participants who have suffered investment losses. While plan fiduciaries have always had the onus to comply with their plan responsibilities, the LaRue holding brings fiduciary compliance to an even greater level of scrutiny now that an individual participant can sue fiduciaries with regard to losses associated with his or her individual account as opposed to losses to the plan as a whole.