

Compliance Advisory

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U.S. Supreme Court Allows Individual Plan Participants to Sue For Fiduciary Breaches

On February 20, 2008, the U.S. Supreme Court handed down a unanimous decision in *LaRue v. De Wolff, Boberg & Associates, Inc.* This ruling concluded that ERISA allows *individual participants* to sue to recover losses to their accounts due to fiduciary errors. Previously, the law had been interpreted to require that such lawsuits be brought on behalf of the entire plan. This decision means only that LaRue now has a right to sue the plan on his own behalf. It *is not a decision* on the merits of the case, so *the final outcome on this issue is still pending.*

The Situation

James LaRue filed this action in 2004 against his former employer, De Wolff, Boberg & Associates (De Wolff), and De Wolff's 401(k) plan. This plan permits participants to direct the investment of their accounts in accordance with specified procedures and requirements. LaRue alleged that in 2001 and 2002 he directed De Wolff to make certain changes to the investments in his individual account, but De Wolff never carried out these directions. LaRue claimed that this omission "depleted" his interest in the Plan by approximately \$150,000, and amounted to a breach of fiduciary duty under ERISA.

The Decision

While the Court was unanimous in its decision that an individual participant has the right to sue a plan, its reasoning was split. Justice Stevens, writing for a majority of the Court, asserted that in the context of defined contribution plans, ERISA authorizes recovery for fiduciary breaches that affect a single participant's account. However, Justice Thomas separately reasoned that LaRue could bring his claim because his individual account losses also diminished the plan's aggregate assets and ERISA permits a participant to sue to recover such losses on behalf of the plan, even if the recovered asset are not allocated among all plan accounts.

Chief Justice Roberts questioned which provision of ERISA should govern LaRue's claim. Rather than being a claim for breach of fiduciary duty, Justice Roberts suggested that the claim was actually a claim for benefits. This interpretation would allow LaRue to recover benefits due him under the terms of the plan. Justice Roberts warned that the choice of selecting the right remedial provision to proceed under is significant.

Next Steps

Whether LaRue can prove those allegations and whether DeWolff has valid defenses were not the matters before the Supreme Court. For example, the Court was not charged with deciding whether LaRue made the alleged investment directions in accordance with the requirements specified by the Plan, whether he was required to exhaust remedies set forth in the Plan before seeking relief in federal court, or whether he asserted his rights in a timely fashion.

If and when this case goes to trial, the plan administrator is expected to argue that Mr. LaRue did not give his alleged investment directions in accordance with the requirements of the plan, that he failed to exhaust the plan's administrative remedies for this type of problem, and that he failed to assert his rights in a timely fashion. Mr. LaRue could still lose on the merits of the case. He must prove that the plan sponsor was lax in carrying out its fiduciary responsibilities.

Plan Sponsors and Prudential

This decision reinforces the need for plan administrators to clearly define, follow, and track administrative policies for soliciting, receiving, and recording participant decisions. Prudential Retirement supports plan administrators in documenting, recording and tracking those decisions to mitigate such fiduciary risk. Some examples of this support are transaction confirmations sent to participants on activities they have initiated and quarterly financial statements sent to participants showing the prior quarter's account activity. Overall, we do not believe this decision will result in a dramatic increase in the risk of 401(k) plan participants bringing lawsuits on their own behalf against their plans.

Compliance Advisory by Prudential Retirement

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