

Implications Of LaRue For 401(k) Plan Participants

Tuesday, Feb 26, 2008 --- In what is being hailed as good news for 401(k) plan participants, the Supreme Court has ruled that individual participants may sue to recover losses in their 401(k) plan accounts. This decision affects more than 50 million workers with trillions of dollars invested in 401(k) plans.

On Feb. 20, 2008, the Supreme Court ruled unanimously that an individual participant in a 401(k) plan may recover damages as a result of a plan administrator's breach of fiduciary duty, even if the breach affects only the individual's 401(k) account rather than the entire plan.

In *LaRue v. DeWolff, Broberg & Associates, Inc.*, James LaRue sued his former employer, the management consulting firm DeWolff, Broberg & Associates, after he lost approximately \$150,000 because his former employer allegedly failed to process his requests to change his 401(k) plan investments.

LaRue apparently sought to shift his 401(k) plan investments into more conservative investment options following the dot.com demise and the market decline following Sep. 11, 2001.

LaRue argued that his former employer, as the plan administrator of the 401(k) plan, breached its fiduciary duty by failing to process his requests to change his 401(k) plan investments, as permitted by the terms of the plan.

Specifically, LaRue brought claims pursuant to Sections 409 and 502(a)(2) of ERISA which allow plan participants to sue plan administrators and other fiduciaries for breaches of fiduciary duty to "make good to such plan any losses to the plan resulting from each such breach."

He also brought a claim under Section 502(a)(3)(B) of ERISA which allows plan participants to sue to obtain "other appropriate equitable relief."

DeWolff argued that LaRue's instructions were not clear enough and argued generally that the law did not permit individual plan participants to sue a retirement plan to recover investment losses that are not suffered by the entire plan.

The District Court dismissed LaRue's claims. LaRue appealed his case to the U.S. Court of Appeals for the Fourth Circuit. Relying upon the prior Supreme Court decision in *Massachusetts Mutual Life Insurance Company v. Russell*, the Fourth Circuit Court of Appeals ruled that Section 502(a)(2) of ERISA is intended to allow participants to recover losses suffered by the entire plan rather than by their individual account balances.

The Fourth Circuit Court of Appeals also rejected LaRue's claim under Section 502(a)(3) of ERISA, finding that equitable relief referred to under ERISA Section 502(a)(3) does not generally include relief in the form of monetary awards, except in limited circumstances.

The Supreme Court rejected the Fourth Circuit Court of Appeals ruling. The Supreme Court distinguished Russell as a case involving a disability benefit plan that provided fixed benefits similar to those provided under traditional defined benefit pension plans.

In reaching its decision, the Supreme Court noted that there has been a dramatic shift from defined benefit pension plans to 401(k) plans since Russell was decided in 1985.

Writing for the Court, Justice Stevens distinguished 401(k) plans from defined benefit plans noting that a breach of fiduciary duty affecting a 401(k) plan could reduce benefits to individual plan participants without risking the overall solvency of the plan.

The Supreme Court decision in LaRue will likely have far-reaching implications for 401(k) plan participants. It will allow them to sue plan administrators and other plan fiduciaries who fail to process investment elections.

To limit potential lawsuits related to failure to process 401(k) plan investment elections, plan sponsors may wish to review their plan procedures and contracts with third-party administrators to ensure that appropriate mechanisms are in place to process investment elections.

--By Marjorie M. Glover, Chadbourne & Parke LLP

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