



LEHR MIDDLEBROOKS
& VREELAND, P.C.

LABOR & EMPLOYMENT LAW

EMPLOYMENT BENEFITS ADVISORY

Supreme Court Allows Individual 401(k) Participant to Sue for Breach of Fiduciary Duty

Last week the U.S. Supreme Court handed down a ruling in *LaRue v. DeWolff*, where it held that a participant in a 401(k) defined contribution plan can assert a breach of fiduciary duty claim under 29 U.S.C. § 1132(a)(2), ERISA § 502(a)(2), for a loss limited to that participant's individual account.

The plaintiff, LaRue, alleged that his former employer and plan sponsor, DeWolff, failed to follow his investment directions, resulting in a reduction of his interest in the plan by about \$150,000. LaRue argued this action constituted a breach of fiduciary duty under ERISA. LaRue's suit omitted any allegations that the employer's conduct resulted in a loss to any other plan participant. Based on the Supreme Court's 1985 decision in *Massachusetts Mutual Life Insurance Company v. Russell*, the appellate court rejected LaRue's case and held that §1132(a)(2) provided for recovery that would benefit a pension plan as a whole and not allow for recovery for an individual participant.

The Supreme Court ruled in favor of LaRue. The Court said that because defined contribution plans "dominate the retirement plan scene today," "fiduciary misconduct need not threaten the solvency of the entire plan to reduce benefits below the amount that participants would otherwise receive." Instead, the Court said that even a reduction of an individual's account resulting from a fiduciary breach "creates the kind of harms that concerned the draftsmen of § 409."

In other words, the Court held that "although § 502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries, that provision does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account" (emphasis added). In an exceedingly rare showing of consensus, all nine justices concurred in the judgment. Still, the Court's decision is a dramatic change in the law, and it may open the door to numerous claims and lawsuits involving losses that are relatively small but expensive and time-consuming to defend. Notably, the Court left several aspects of the potential claim for the lower courts to develop, including whether the claim will be subject to administrative exhaustion requirements, so this could be quite an active area as the claim's parameters are established.

For a copy of the opinion or if you questions about employee benefits issues, please call Michael Thompson or Matthew Stiles at (205) 326-3002.