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LITIGATION ALERT

SUPREME COURT OPENS DOOR TO BREACH OF FIDUCIARY DUTY CLAIMS AGAINST ADMINISTRATORS OF DEFINED CONTRIBUTION PENSION PLANS FOR INDIVIDUAL ACCOUNT LOSSES

The U.S. Supreme Court's recent decision in *LaRue v. DeWolff, Boberg & Associates, Inc*. should raise caution flags for administrators of defined contribution pension plans. The Court found that § 502(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) authorizes a plan participant to sue to recover for an alleged breach of fiduciary duty that impairs the value of plan assets in a participant's *individual account*. The Court's *LaRue* decision is a marked shift from its prior ruling that the ERISA provision concerning breach of fiduciary duties protects *the entire plan*, rather than the rights of an *individual beneficiary*.[1]

The *LaRue* decision could lead to an increase in the number of individual claims brought against administrators of defined contribution pension plans, and may increase the likelihood that failure to perform routine administrative duties will give rise to fiduciary liability. Given the proliferation of these types of benefit plans, the Court's decision may have a considerable impact on the business community. Justice Stevens wrote the Court's majority opinion, while Justice Thomas and Chief Justice Roberts each issued concurring opinions.

In *LaRue*, a participant in a defined contribution pension plan brought suit against his former employer, DeWolff, and the ERISA-regulated pension plan administered by his employer. The plan permitted participants to direct the investment of their contributions in accordance with specified procedures and requirements. LaRue alleged that in 2001 and 2002 he directed DeWolff to make certain changes to the investments in his individual account, but DeWolff never carried out these instructions. The plaintiff claimed that DeWolff's failure to carry out his instructions depleted his individual account balance by approximately $150,000, and amounted to a breach of fiduciary duty under ERISA. The plaintiff's complaint was originally brought under § 502(a)(3) of ERISA, which provides for the recovery of appropriate equitable relief to redress violations of ERISA.

[1] *Massachusetts Mut. Life Ins. Co. v. Russell,* 473 U.S. 134, 146 (1985).

DeWolff filed a motion to dismiss the claim arguing that the complaint was essentially a claim for monetary relief, which is not recoverable under § 502(a)(3). The District Court granted DeWolff's motion, finding that DeWolff did not possess any disputed funds that rightly belonged to the plaintiff; therefore, the plaintiff was seeking monetary damages rather than the equitable relief available under § 502(a)(3).

At the court of appeals, the plaintiff argued for the first time that he had a cognizable claim for relief under § 502(a)(2) and § 502(a)(3) of ERISA.[2] Section 502(a)(2) authorizes suits to enforce the liability creating provisions of ERISA's § 409, which concerns breaches of fiduciary duties that harm ERISA plans. Relying on the Supreme Court's decision in *Massachusetts Mut. Life Ins. Co. v. Russell*,[3] the 4th Circuit rejected the plaintiff's breach of fiduciary duty claim under § 502(a)(2), holding that an individual participant in a disability plan could not bring a claim under § 502(a)(2) of ERISA to recover damages for individual injuries.

The Supreme Court reversed the 4th Circuit, holding that based on the nature of defined contribution plans, damage to LaRue's individual plan account was damage to the plan itself. Thus, the Court found that although a participant's claim for breach of fiduciary duty under § 502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries, it does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account. In reaching this decision, the majority had to address language in its *Russell* decision, which emphasized (and, according to the 4th Circuit, mandated) that § 502(a)(2) protect the entire plan, not an individual's defined benefit. The Court did so by distinguishing defined contribution plans from the defined disability benefit plan at issue in *Russell*. The Court explained that under defined contribution plans whether a fiduciary breach diminishes plan assets payable to all participants or only to particular individuals, it creates the kind of harm that concerned the drafters of ERISA's fiduciary duty provisions. Therefore, the Court explained that its requirement that fiduciary misconduct affect the "entire plan" in *Russell* is not the appropriate analysis in the defined contribution context. The key issue emphasized by the majority was whether the fiduciary breach will "… reduce benefits below the amount that participants would otherwise receive."

Justice Thomas, with whom Justice Scalia joined, concurred in the judgment but based his decision on the "unambiguous text" of the statute. He noted that the plain text of ERISA allows a plan participant to bring a suit to recover any losses to the plan resulting from a breach of fiduciary duty. He reasoned that, "because a defined contribution plan is essentially the sum of its parts, losses attributable to the account of an individual participant are necessarily losses to the plan."

In a separate concurring opinion, Chief Justice Roberts agreed with the majority's reasoning, but questioned whether a claim for plan benefits under § 502(a)(1)(B) might be the appropriate vehicle for relief. However, for various reasons, the chief justice's opinion stopped short of deciding that the availability of relief under a separate ERISA provision precludes a claimant from bringing a breach of fiduciary duty claim under § 502(a)(2). Instead, he noted that the Court's opinion did not address that issue, and he left open the possibility that lower courts could consider the issue if the argument was properly before them.

The *LaRue* opinion is noteworthy because it raises the possibility that individual participants in a defined contribution plan who suffer losses to their individual accounts can bring a suit for breach of fiduciary duties under § 502(a)(2) of ERISA. Not only will this likely increase the number of individual claims brought against pension plan administrators,

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[2] The 4th Circuit rejected the plaintiff's § 502(a)(3) claim, but the Supreme Court did not address the issue because it concluded that the 4th Circuit misapplied § 502(a)(2).

[3] *Russell,* 473 U.S. at 146 (1985).

but it could recast these claims—traditionally brought as benefit claims under § 502(a)(1)(B)—to breach of fiduciary duty claims under § 502(a)(2). The Court's opinion also increases the likelihood that failure to perform routine administrative duties that relate to the proper management, administration and investment of plan assets may give rise to fiduciary liability. Therefore, it is important for a company administering a defined contribution plan to avoid the risk of liability for losses to an individual account by taking the necessary precautions to ensure it meets its fiduciary duty obligations. Moreover, plan administrators may want to consider changes to plan documents, document fiduciary delegations of authority and review the indemnification provisions of the agreements with service providers to minimize the risk of increased exposure from breach of fiduciary duty claims.

CONTACT INFORMATION

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