

Supreme Court Rules Participants & Beneficiaries Can Sue Fiduciaries Under ERISA § 502(a)(2) To Recover 401(k) & Other Defined Contribution Account Losses

“Entire Plan Rule” Limited To Plans With Fixed Benefit Formula

February 20, 2008

The United States Supreme Court in *Larue v. DeWolff, Boberg & Associates, Inc.*, today ruled that although Section 502(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA) generally does not provide a remedy for individual injuries distinct from plan injuries in plans providing “fixed benefits,” ERISA § 502(a) does allow individual participants to seek to recover individually from fiduciaries for lost value to plan assets in a participant's individual account resulting from a fiduciary breach. The decision permits individual participants and beneficiaries to sue 401(k) and other defined contribution plan fiduciaries under ERISA § 502 to recover for individual account losses resulting from a fiduciary breach. Accordingly, companies sponsoring 401(k) and other defined contribution plans and the officers, directors, employees and service providers involved in the administration or oversight of these plans now are likely to face a greater risk of being sued for breach of fiduciary duty under ERISA by individual participants upset about a decline in the value of their individual plan accounts.

Section 502(a)(2) provides for suits to enforce the provisions of ERISA §409 concerning breaches of fiduciary duties that harm plans. The principal statutory duties imposed by §409 relate to the proper management, administration, and investment of plan assets, with an eye toward ensuring that the benefits authorized by the plan are ultimately paid to plan participants. Even prior to today's decision, companies sponsoring 401(k) and other defined contribution plans and their leaders involved in plan related activities already faced significant liability under ERISA to private plaintiff fiduciary litigation and Labor Department fiduciary enforcement actions. See, e.g., *Stamer, “Enron litigation has implications for plan sponsors and management”, 401K Advisor (December 1, 2006).*

Prior to today's decision in *Larue*, however, defendants in ERISA fiduciary breach actions frequently were able to rely upon the Supreme Court's holding in *Massachusetts Mutual Life Insurance Co. v. Russell*, that ERISA §502(a)(2) only authorizes recovery only by the plan as an entity (the “entire plan rule”) and does not permit individuals to bring suit when they do not seek relief on behalf of the

plan as a shield against suits brought by individual participants seeking damages for losses in the value of their plan accounts.

In the majority opinion written by Justice Stevens joined in by Justices Souter, Ginsburg, Breyer, and Alito, however, the Supreme Court majority ruled today that this entire plan rule does not bar actions by an individual participant seeking relief for losses in the value of their individual defined contribution plan account resulting from a fiduciary breach.

According to the majority opinion written by Justice Stevens, a breach of fiduciary duty action brought by a participant or beneficiary whose defined contribution account lost value as a result of a breach of fiduciary duty is distinguishable from breach of fiduciary duty claims brought by a participant or beneficiary seeking relief for fiduciary breaches arising under plans providing a “fixed benefit” such as the disability benefit plan addressed in *Russell* or other defined benefit plan, where the plaintiff received all of the benefits to which the participant was contractually entitled, but sought consequential damages arising from a delay in the processing of the participant’s claim.

The Majority opinion written by Justice Stevens states that *Russell’s* emphasis on protecting the “entire plan” reflects the fact that the disability plan in *Russell*, as well as the typical pension plan at that time, promised participants a fixed benefit. Misconduct by such a plan’s administrators will not affect an individual’s entitlement to a defined benefit unless it creates or enhances the risk of default by the entire plan.

In contrast, the Supreme Court majority found *Russell’s* “entire plan” references, which accurately reflect ERISA §409’s operation in the defined benefit context, to be “beside the point” in the defined contribution context. In the case of actions seeking recovery for losses to individual defined contribution accounts, the Majority reasoned whether a fiduciary breach diminishes plan assets payable to all participants or only to particular individuals, it creates the kind of harms that concerned §409’s draftsmen. Consequently, the Supreme Court concluded that for defined contribution plans, fiduciary misconduct need not threaten the entire plan’s solvency to reduce benefits below the amount that participants would otherwise receive. Accordingly, the Supreme Court found that *Russell’s* entire plan rule did not bar the participant’s suit to recover individually for losses to this individual defined contribution account allegedly resulting from a fiduciary breach.

The opportunity allowed under *Larue* for individual participants and beneficiaries to seek to recover individually, rather than on behalf of the plan as a whole, when their individual plan accounts lose value due to a fiduciary breach increases the likelihood that individual participants and beneficiaries will sue defined contribution plan fiduciaries for breach of fiduciary duty just as Labor Department fiduciary regulations for defined contribution standards are evolving and substantial market volatility creates a heightened risk of losses in account values. As a result, today’s decision reinforces the need for defined contribution plan fiduciaries to exercise care to act, and be prepared to defend the adequacy of their fiduciary actions under ERISA.

You can find additional resources and information about ERISA fiduciary responsibility exposures and developments by logging in to the resources available on CynthiaStamer.com.

If you have questions about the implications of the Supreme Court’s decision in *Larue*, your status or responsibilities as an employee benefit plan fiduciary, steps you can take to manage fiduciary risks, or other fiduciary responsibility or employee benefit matters, please contact Cynthia Marcotte Stamer using the information below.

About Cynthia Marcotte Stamer

Vice Chair of the ABA Real Property, Probate & Trust Section Employee Benefits & Compensation Group and Board Certified In Labor and Employment Law by the Texas Board of Legal Specialization, Cynthia Marcotte Stamer has more than 20 years experience helping employers and business leaders, health plan fiduciaries and administrators, insurers and others design, implement, administer and defend health and other employee benefit and compensation, insurance and other human resources practices, policies and strategies. Ms. Stamer is recognized for her work helping clients design, administer and defend legally compliant employee benefit and human resources programs, practices and products for employer, employee benefit, and insurance and financial services industry clients.

Recognized in the International Who's Who of Professionals and bearing the Martindale Hubble AV-Rating, Ms. Stamer is a highly regarded legal advisor and consultant, author and speaker, who regularly conducts management and other training on a wide range of employee benefit, human resources and internal controls, and other related risk management matters. Ms Stamer is the author of 100s of publications on a host of human resources and related issues. Her writings have appeared in a variety of other publications, including works published by the American Bar Association, Aspen Publishers, the Bureau of National Affairs, SHRM, World At Work, Government Institutes, Inc. and many others. For a listing of some of these publications and programs, see cynthiastamer.com. Her insights on human resources risk management matters also have been quoted in The Wall Street Journal, various publications of The Bureau of National Affairs and Aspen Publishing, the Dallas Morning News, Spencer Publications, Health Leaders, Business Insurance, the Dallas and Houston Business Journals and a host of other publications. She also serves in leadership positions in numerous human resources, corporate compliance, and other professional and civic organizations. For instance, she presently is Chair of the American Bar Association (ABA) Health Law Section Managed Care & Insurance Interest Group, and Vice Chair of both the ABA Real Property, Probate & Trust Section Employee Benefits & Compensation Group and the ABA TIPS Worker's Compensation Committee, Continuing Education Liaison for the ABA Joint Committee on Employee Benefits, a member of the IRS TEGE Council, a member of the Editorial Advisory Board and contributing author of various publications, and as faculty member and planning committee member for numerous human resources related programs. She also has previously served as Region IV Chair and a National Consultants Forum Board Member for the Society of Human Resources Management, Chair of the Dallas Bar Association Employee Benefits and Executive Compensation Section, and as a State Executive Board Member and Dallas Chapter Chair of the Texas Association of Business. For more details about Ms. Stamer's experience and other credentials, contact Ms. Stamer, information about workshops and other training, selected publications and other human resources related information, see CynthiaStamer.com or contact Ms. Stamer via telephone at 972.419.7188 or via e-mail at cstamer@solutionslawyer.net.

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