

What's News In Insurance

“A 401(k) Plan Fiduciary’s Nightmare” — U.S. Supreme Court Opens the Litigation Flood Gate with Employee Retirement Benefits Plans

On February 20, 2008, the U.S. Supreme Court handed down a decision that will affect all employers that sponsor a defined contribution plan. The case is *LaRue v. DeWolff, Boberg & Associates, Inc* and in its ruling the **Supreme Court held that an employee can now sue his or her employer by asserting a claim of breach of fiduciary duty under §502(a)(2) of ERISA.**

In *LaRue v. De Wolff*, the Plaintiff was a participant in his employer’s 401(k) plan. The Plan permitted participants to direct the investment of their contributions. Plaintiff alleged that in 2001 and 2002 he directed DeWolff, his employer, to make certain changes to his 401(k) investments but those changes were not executed by his employer. Because those changes were not executed, Plaintiff alleged that he lost approximately \$150,000 worth of interest. He claimed that his employer breached its fiduciary duty under ERISA.

The Court framed the legal question as whether a participant in a defined contribution plan can sue a fiduciary, under §502(a)(2) of ERISA, because that fiduciary’s alleged misconduct impaired the value of the plan assets in the participant’s individual account. Previously, in *Massachusetts Mutual Life Insurance Company v. Russell*, the Court held that §502(a)(2) of ERISA provided a remedy only for entire plans, not for an individual’s account.

Employers need to act immediately as the risk in handling a variety of routine 401(k) administrative actions has now increased exponentially in light of the Court’s ruling. Every employer should examine the processes they have in place for administering individual 401(k) accounts to determine whether those processes can be changed to reduce this increased risk.

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