



Benefits & Compensation Law Alert

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Julie K. Athey, Editor

Supreme Court Allows Individual Damages Claims for Breach of Fiduciary Duty

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The U.S. Supreme Court has ruled that a participant in a 401(k) defined contribution plan can assert a breach of fiduciary duty claim under the Employee Retirement Income Security Act (ERISA) for a loss limited to that participant's individual account. This is a significant change because, under several lower court decisions, it was widely believed that monetary relief was not available for individuals claiming a fiduciary breach, but only for fiduciary breaches that harmed the plan "as a whole." Let's take a look at this important new decision and its possible ramifications for employers that sponsor a 401(k) plan.

The Court's Decision

James LaRue sued DeWolff Boberg & Associates (his former employer and the plan's sponsor) under ERISA for losses he sustained to his 401(k) plan. LaRue alleged that DeWolff failed to comply with his repeated instructions to change his investment allocations from mutual funds to cash. The result, he claimed, was that his plan assets were depleted by \$150,000. He sued for breach of fiduciary duty in an attempt to recover his losses. LaRue did not allege that the failure to follow his investment directions resulted in a loss to any of the plan's other participants.

Relying on the Supreme Court's 1985 decision in *Massachusetts Mutual Life Insurance Company v. Russell*, lower courts had held that ERISA provided for monetary relief if it

would benefit a plan *as a whole*, but not for recovery for one individual participant. In *Russell*, the participant had received her benefits, but wanted "consequential" damages for a delay in processing her claim for benefits. Consequential damages are not generally allowed in a claim for benefits. The Court in that case held that ERISA did not provide a fiduciary claim for an individual participant. It reasoned that ERISA's fiduciary duty provision "characterizes the relevant fiduciary relationship as one 'with respect to a plan,' and repeatedly identifies the 'plan' as the victim of any fiduciary breach and the recipient of any relief."

Under lower court decisions, monetary relief was available only for fiduciary breaches that harmed the plan "as a whole."

In *LaRue*, the alleged error by the plan administrator affected only one participant, but it affected that participant's account in the plan. Consequently, the entire plan had less money, because that one participant's account had less money (or so LaRue claimed). The Supreme Court determined that was sufficient reason to allow him to proceed with his lawsuit for breach of fiduciary duty.

The Court framed the question before it as whether the enforcement mechanism for ERISA's fiduciary duty provisions authorized the employee to sue for misconduct that impaired the value of plan assets in his individual account, but not in other participants' accounts. The Court noted that the plan in *Russell* did not contain individual accounts for each participant. The Court distinguished *Russell* on this basis, reasoning:

For defined contribution plans, however, fiduciary misconduct need not threaten the solvency of the

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entire plan to reduce benefits below the amount that participants would otherwise receive. Whether a fiduciary breach diminishes plan assets payable to all participants and beneficiaries, or only to persons tied to particular individual accounts, it creates the kind of harms that concerned the draftsmen of § 409 [ERISA's fiduciary provision]. Consequently, our references to the "entire plan" in *Russell*, which accurately reflect the operation of § 409 in the defined benefit context, are beside the point in the defined contribution context.

The Court then held that although ERISA 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.

It should be noted that *LaRue* still may have a long road ahead to winning a judgment. The Supreme Court's decision merely allows the lawsuit to proceed. *LaRue* still needs to prove that there was a breach of fiduciary duty, something that is not certain even if there was an error in plan administration.

Ramifications for Employers

This decision could open the door to a wide range of individual lawsuits. Because the administration of individual account plans is often complex, it is fairly common for mistakes to occur in processing individual investment instructions, distributions, benefit statements, loans, QDROs, and so on. Suits arising from such mistakes are likely to be more expensive and harder to defend now than before.

On the other hand, in a concurring opinion, Chief Justice Roberts said that the *LaRue* decision does not foreclose the

possibility of courts requiring employees to pursue these types of claims with the plan administrator before being allowed to sue. The plan administrator in *LaRue* apparently failed to make that argument, so it was not specifically decided by the Court.

So the decision leaves open the issue of whether a plan participant would have to file a claim with the plan administrator — referred to as "exhausting his administrative remedies" — before suing. Courts generally give deference to the decisions of plan administrators, making it harder for the employee to win if they do ultimately sue. Allowing employees to sue without exhausting their administrative remedies first changes the nature of the litigation in many respects:

This decision could open the door to a wide range of individual lawsuits.

- It allows more lawsuits to go forward and makes it easier for employees to prove their cases. Because fiduciary duties are "among the highest known to law," a breach of fiduciary duty claim is generally harder to defend than a benefits claim.
- As the law in this area evolves, it may make it possible for employees to demand jury trials, something they have not been able to do.
- Without a mandatory administrative process, it is more likely that courts will allow expensive discovery in these cases, and that may ultimately encourage employees to bring weaker cases with the thought of getting a settlement.

Bottom Line

In short, the full effect of *LaRue* may not be known for many years. However, one thing is certain: In the short run, plan participants will have an easier time bringing lawsuits and plan sponsors will have a harder time defending them. ♦

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