PUBLICATION

Retirement Plan Participants Gain Rights to Sue Fiduciaries

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On February 20, 2008, the U. S. Supreme Court opened the door for participants in 401(k) and similar plans to sue responsible fiduciaries who breach their responsibilities. The ability to sue is available at least where the breach relates to the mishandling of plan investments in accordance with participant instructions, and will likely apply in other circumstances.

Under the Employee Retirement Income Security Act (ERISA), Congress intended to provide remedies for plan participants, without subjecting plan fiduciaries to undue burdens and liability. Though ERISA was enacted in 1974, questions have persisted about the scope of participant rights to sue plan fiduciaries.

The individual plaintiff (LaRue) was a participant in a 401(k) plan sponsored by his employer (DeWolff). DeWolff acted as "plan administrator" under the terms of the plan, assuming various fiduciary responsibilities. LaRue instructed Wolff to change the mutual fund in which his account was invested, as was permitted by the plan. LaRue's instructions were not timely carried out, and LaRue claimed that his account was thereby diminished by $150,000. LaRue then sued Wolff, in its capacity as a plan fiduciary, for a breach of fiduciary responsibility.

Historically, federal courts have held that ERISA does not permit a plan participant to sue a fiduciary for individual losses, but instead would be required to sue, if at all, for losses to the plan as a whole. The lower federal courts each held that LaRue lacked standing to make a claim relating only to his individual account, as that was not a loss to the plan as a whole.

The Supreme Court recognized that ERISA does not allow a remedy for an individual injury, but for technical reasons held that it does nevertheless "authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account." Under ERISA, the fiduciary is then personally liable.

The Court did not address whether there had in fact been a fiduciary breach, or what the actual damages might be, referring those issues back to the lower courts to determine.

The scope and import of this decision will likely develop for years. However, it is clear that the Supreme Court has at least opened the door for individual suits by plan participants against plan administrators, trustees, investment managers or others acting in a fiduciary capacity, where some alleged breach of responsibility "impairs" the account balance. This may include lost income opportunities, as well as actual losses incurred by the account. The decision will likely result in greater reluctance to serve in any fiduciary capacity, at least in the absence of adequate protections from the employer against resulting liability. It may also result in a deluge of suits in 401(k) and similar plans. Those suits, as well as increased administration safeguards, may result in greater cost to the fiduciaries who do serve. Of course, third-party fiduciaries will pass those costs on to the employer or to the plan (and thus to the participants). Some employers may simply eliminate their retirement plans as unduly burdensome, or may instead take away the ability of participants to direct investments.