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Supreme Court Allows Recovery for Individual Claims in Defined Contribution Plans

[22270]

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TO: BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 7-08 RE: SUPREME COURT ALLOWS RECOVERY FOR INDIVIDUAL CLAIMS IN DEFINED CONTRIBUTION PLANS

The Supreme Court ruled in LaRue v. DeWolff, Boberg & Associates, Inc., [1] that ERISA § 502(a)(2) authorizes recovery for a fiduciary breach that impairs the value of a single participant's account in a defined contribution plan.

The plaintiff in the case claimed that he instructed the fiduciaries of his participant-directed 401(k) plan to make changes to his account's investments, but the fiduciaries never carried out the instructions. Accordingly, he alleged, his account balance was significantly lower than it would have been had the instructions been carried out.

Originally, the plaintiff sought relief solely under ERISA § 502(a)(3) which allows participants to obtain "other appropriate equitable relief." When his case was dismissed by the district court, he argued for the first time on appeal to the Court of Appeals that he could proceed under ERISA § 502(a)(2), which allows participants to seek "appropriate relief" under ERISA § 409. Section 409 requires a fiduciary who breaches his duties, among other things, to make good to the plan for any losses resulting from the breach. The Court of Appeals held that the plaintiff could not obtain relief under 502(a)(2) because the alleged loss was not suffered by the entire plan but solely by his account. [2]

The Supreme Court unanimously reversed the Fourth Circuit. It stated that prior Supreme Court cases addressing the relief available under ERISA § 502(a)(2), including Massachusetts Mutual Life Ins. Co. v. Russell, [3] which require recovery under 502(a)(2) to "inure to the benefit plan as a whole, not to a particular person with rights under the plan" was inapplicable in the defined contribution context. The Court held that when a fiduciary breach diminishes plan assets payable only to limited individual accounts, 502(a)(2) authorizes recovery in a suit brought by a participant on behalf of the plan.

In a concurring opinion, Chief Justice Roberts, joined by Justice Kennedy, suggested that recovery might be available under ERISA § 502(a)(1)(B), which allows participants to recover benefits due under the terms of the plan. [4] (The plaintiff in this case did not rely on 502(a)(1)(B).) If relief is available under 502(a)(1)(B), Roberts states, it is not clear that relief would also be available under 502(a)(2). Roberts concludes that there is nothing in the majority opinion precluding lower courts from considering whether the plaintiff can proceed only under 502(a)(1)(B). [5]

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endnotes

[1] A copy of the opinion is available here: http://www.supremecourtus.gov/opinions/07pdf/06-856.pdf.

[2] The Fourth Circuit also held that the plaintiff could not proceed under ERISA § 502(a)(3). The Supreme Court did not address the 502(a)(3) issue because its ruling required remand on the 502(a)(2) issue.

[3] 473 U.S. 134 (1985).

[4] Justice Thomas also filed a concurring opinion joined by Justice Scalia to disagree with a suggestion in the majority opinion that the decision was driven in part by proliferation of defined contribution plans after Russell was decided, rather than the plain text of ERISA.

[5] According to Roberts, one consequence of this distinction is that if the claim must proceed under ERISA § 502(a)(1)(B), then the participant may be required to exhaust administrative remedies before filing suit.