

Client Alert

Supreme Court Expands Right of Individual Participants to Sue ERISA Fiduciaries for Damages

February 29, 2008

In its February 20, 2008 decision in *LaRue v. Dewolff Boberg & Assoc, et al.* 06-856, the Supreme Court expanded both the potential avenues for benefit plan litigation under ERISA and the types of remedies available to plaintiffs. By deciding that participants in account-based plans have the right under ERISA to sue for monetary damages caused by fiduciary breaches with respect to their individual accounts, the Court substantially altered the existing legal landscape in a way that will likely increase the amount of litigation involving plan administration and investment activities.

Crowell & Moring represents the employer in this lawsuit, in which an employee claimed that the employer's plan had mishandled his request to change investment options in his personal 401k plan account. The U.S. District Court and the Fourth Circuit agreed to dismiss this lawsuit based on the widely accepted interpretation of prior Supreme Court precedent that ERISA did not permit individual participants to recover monetary damages for personal losses resulting from fiduciary breaches. The vast majority of courts had ruled that such recoveries could accrue only to the plan, rather than to any individual covered by such plan.

The Supreme Court vacated the Fourth Circuit's decision, with all nine justices concurring in the judgment (albeit in three separate opinions). The majority opinion (written by Justice Stevens and joined by Justices Souter, Ginsburg, Breyer and Alito) noted that although the Fourth Circuit had correctly applied the language of prior Supreme Court precedent, significant changes in the employee benefit plan industry since the 1980s compelled a different result in this case. Most significantly, the Court noted the rise in the importance of individual account based plans and the fact that, in the case of such plans, fiduciary breaches threatening the financial soundness of such plans would also directly impact the benefit security of the individual plan participants. In the Court's view, ERISA's fundamental remedial purposes could now be fulfilled only by permitting individual participants in such plans to sue to recover damages resulting from breaches of fiduciary duty, regardless of whether such damages accrued to the benefit of one or all of the plan's participants.

The Court expressly did not reach the merits of the claim; and we look forward to vindicating our client's position in the lower courts on remand. The Court's decision, represents a considerable shift from its past decisions with far-ranging implications in a number of areas of ERISA litigation. The immediate consequence is to authorize individual plan participants to seek monetary damages as the result of alleged fiduciary breaches arising in connection with plan administration or plan investment activities. The decision will thus subject employers, plan sponsors and others involved in plan administration to liability in circumstances not previously recognized by the courts. Although the impact of the Court's opinion on those cases will depend on particular facts and circumstances involved, we foresee the following types of litigation:

- Employers can expect a variety of claims based on simple mistakes made by those involved in plan administration, at least in cases where any recovery can be funneled through the plan;
- The decision provides an incentive for suits seeking “lost profits” from individual accounts. For example, an individual whose participation in a plan is mistakenly delayed could sue for generous investment returns that he or she might have obtained but for the delay in permitting participation in the plan;
- Distributions upon retirement could also be a fertile area for future litigation under the new standard. Plans are not able to distribute account balances instantaneously upon retirement, and any change in account value between the date of retirement and the date of distribution could now provide the basis for an ERISA lawsuit alleging fiduciary breach;
- Because of a concern expressed by Chief Justice Roberts in his concurrence, the Court’s opinion may obscure the difference between suits for plan benefits and suits for recoveries for fiduciary breaches. ERISA creates a separate regimen for claims for plan benefits, subjecting such claims to internal plan procedures and exhaustion requirements, and providing deference to plan fiduciaries making such benefit decisions. Such protections do not apply in the case of fiduciary breach lawsuits, and this decision may create an incentive for plaintiffs to “end-run” these requirements by recasting benefit plan claims as suits for fiduciary breach.

We will continue to monitor developments in this new area of ERISA litigation.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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