



LaRue and Its Implications

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Introduction

- Welcome!
- Your Panel:
 - Thomas P. Gies
 - William J. Flanagan
 - Karen Handorf
 - Jane Foster
- Housekeeping

LaRue v. DBA- Background

- The Complaint:
 - Alleged failure to follow investment instructions
 - Pled a violation of ERISA § 502(a)(3)
 - Sought lost profits in the form of ‘make whole’ relief
- Motion for Judgment on the Pleadings
 - Application of *Mertens* and lower court authority

Procedural History

- Motion for judgment on pleadings granted
- Fourth Circuit appeal- § 502(a)(2) claim emerges
- Fourth Circuit affirms decision for DBA
- DOL amicus brief
- Decision affirmed on rehearing
- Supreme Court granted *certiorari*

The High Court's Decision

- Three separate opinions
- Holding: Participant in an individual account plan may bring a personal § 502(a)(2) claim
- Did not reach § 502(a)(3) question

After LaRue: § 502(a)(2)

- A new category of claims
- Expanded remedies available in cases of administrative errors and other honest mistakes
- How to measure damages

The § 502(a)(1)(B) Questions

- Chief Justice Roberts' Concurrence
- Exhaustion required?
- Potential conflict with other ERISA civil enforcement provisions
- Standard of Review
- Implications of *Met Life v. Green*
- Other issues

Other Litigation Issues

- Who is a fiduciary:
 - Service providers
 - The ministerial exception
- Standing – former employees
- Jury trials?
- Impact on class certification issues
- Where does the plan get the money?

Implications for § 502(a)(3) Litigation

- “Appropriate equitable relief” after LaRue
- Impact on *Varity*
- Supreme Court looks forward:
 - *Goeres v. Charles Schwab and Co. Inc.*
 - *Amschwand v. Spherion Corp.*

Implications On Other ERISA Plans

- Other individual account plans
- Welfare plans
 - Self-funded
 - Insured arrangements

Conclusion

- Concluding Comments
- Questions