



Advisor Alert

GROUNDBREAKING SUPREME COURT LAWSUIT

- IMPACTS QUALIFIED PLANS

March 2008

For Immediate Release

Supreme Court rules on the side of a plan participant in what will undoubtedly be a ground breaking lawsuit impacting ERISA qualified plans. Last week the United States Supreme Court ruled that a plan participant could bring a breach of fiduciary duty action under ERISA against plan fiduciaries for investment losses who negligently failed to implement the investment strategy of a plan participant in his retirement account. This court case is very important because it potentially opens the door for other individuals to file similar lawsuits against 401(k) and/or 403(b) plan fiduciaries over individual losses that may occur in their retirement accounts when their investment instructions are ignored and/or not implemented in a timely manner.

Previous case law only allowed participants to sue fiduciaries over losses on behalf of the entire retirement plan. But previous case law was based on traditional pension plans, in which assets are invested collectively. Employers have argued that participants couldn't file the same kind of suit over losses in a 401(k) and/or 403(b) plan because they didn't represent losses to the entire plan.

In the *LaRue v. DeWolff, Boberg & Associates, Inc.*, No. 06-856 (2008) decision, the court disagreed with the employer and previous pension laws. The court sided with the plan participant by stating that pension law "does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account and that a loss to an individual's account is effectively a loss to the entire plan."

The *LaRue* case decision comes at a particularly bad time when most participant accounts are suffering losses as a result of the trembling equity markets as a result of subprime, and the prevailing speculation that the US is heading towards a recession. We believe now is a prudent time for plan sponsors and fiduciaries to take the appropriate actions to review and evaluate their retirement plan policies and procedures, service provider agreements, plan documentation including participant communications and enrollment kits, service provider fees and expenses, investment performance, and other operational procedures with service providers to ensure the timely processing of participant directed transactions. Also, you may want to consider a review of your current fiduciary liability insurance to determine if the policy covers claims and cost associated with negligence and breach of duty in the administration of the plan. In addition, it is an important time to review plan service provider agreements to determine the extent that the plan's service provider holds the plan sponsor harmless for losses (including legal fees) that occur as a result of their administrative negligence.

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