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LEGAL ALERT

Legal Alert: Supreme Court Permits Plan Participants to Sue for Fiduciary Breach

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The U.S. Supreme Court issued a decision today (February 20, 2008) that will allow individual participants to sue for fiduciary breaches related to their 401(k) plans. In a unanimous ruling in *LaRue v. DeWolff, Boberg & Associates, Inc.*, No. 06-856, the Supreme Court held that while ERISA §502(a)(2) does not allow a remedy for individual injuries apart from plan injuries, it does permit individuals to recover for harm to their plan assets due to a breach of fiduciary duty.

James LaRue alleged that the value of stock held in his 401(k) plan fell $150,000 after administrators of his retirement plan failed to follow his instruction to switch to safer investments. LaRue claimed he directed DeWolff to change certain investments in his account, but DeWolff failed to carry out these requests. After the value of these stocks decreased, he sued DeWolff for a breach of fiduciary duty under ERISA.

The Fourth Circuit, relying on the Supreme Court's 1985 decision in *Massachusetts Mut. Life Ins. Co. v. Russell,* held that LaRue could not seek individual relief under ERISA § 502(a)(2) because recovery under that provision must inure to the benefit of the plan as a whole and not to an individual plan participant. The Supreme Court granted certiorari on June 18, 2007 and heard oral arguments on November 26, 2007.

The Court today ruled in favor of LaRue. It began by assuming DeWolff breached its fiduciary obligations as defined in §409(a), and this breach had an adverse impact on the plan assets in LaRue's individual account.

The Court then considered whether an individual could bring this type of claim for losses from his individual account. It distinguished the present case from that of *Russell*, where it found that a participant in a disability plan paying a fixed level of benefits was unable to bring a claim under §502(a)(2). In *Russell*, the plaintiff received the benefits to which she was entitled and then sought consequential damages due to a delay in processing her claim. The Court noted that the emphasis in *Russell* was to protect the plan's financial integrity. As it stated, "*Russell*'s emphasis on protecting the 'entire plan' from fiduciary misconduct reflects the former landscape of employee benefits plans. That landscape has changed."

The opinion goes on to note that the prevalent plans today are defined contribution plans, as opposed to the plan examined in *Russell*, which was a disability plan that did not have individual accounts. The Court found that with today's plans "fiduciary misconduct need not threaten the solvency of the entire plan to reduce benefits below the amount that participants would otherwise receive." The Court then concluded that "although §502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries, that provision does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account."

Bottom Line:

LaRue changes the landscape of liability for plan fiduciaries. Whereas under *Russell* these companies could assume they would not be liable to individual participants for possible breaches of fiduciary duty, *LaRue* allows individual participants to sue for harm done to their individual accounts. Now even if the plan as a whole suffered no losses, individual participants may bring suit for damage inflicted to their own accounts due to fiduciary breaches. This decision will have a significant impact on ERISA litigation and will require those connected with such plans to be even more diligent in their monitoring of plan activity.

If you have questions regarding this decision or other issues relating to ERISA, feel free to contact any of the following attorneys in Ford & Harrison's Employee Benefits Practice Group: Michael Coval, mcoval@fordharrison.com, 404-888-3892, Joelle Sharman, jsharman@fordharrison.com, 404-888-3975 , Tiffany Downs, tdowns@fordharrison.com, 404-888-3961, or Jeff Rickman, jrickman@fordharrison.com, 404-888-3925, or the Ford & Harrison attorney with whom you usually work.