

## 401(k) Participants Can Sue Plan Fiduciaries For Losses To Individual Accounts

The United States Supreme Court recently ruled that under Section 502(a)(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), 401(k) plan participants may sue plan fiduciaries for “fiduciary breaches that impair the value of plan assets in a participant’s individual account.” Justice Stevens, delivering the opinion of the Supreme Court in *LaRue v. DeWolff, Boberg & Associates, Inc.*, distinguished defined contribution plans from defined benefit plans noting, “[f]or defined contribution plans, [but not defined benefit plans], fiduciary misconduct need not threaten the solvency of the entire plan to reduce benefits below the amount that participants would otherwise receive.” In granting individual 401(k) plan participants the right to sue plans for losses caused by fiduciary misconduct, the Supreme Court emphasized the need for defined contribution plan administrators to be vigilant in ensuring the proper administration of their plans.

In *LaRue*, the plaintiff alleged that in 2001 and 2002 he directed the plan administrator to make certain changes to his investment allocations, but that the administrator never carried out those directions, leading to a loss of \$150,000 in the total value of his account. The United States District Court for the District of South Carolina granted defendants’ motion for judgment on the pleadings on the grounds that the relief requested by Mr. LaRue under Section 502(a)(3) of ERISA was legal, not equitable, relief and, therefore, was not available. On appeal, the United States Court of Appeals for the Fourth Circuit affirmed the lower court’s decision on two grounds. First, the Circuit Court found that plaintiff’s claim under Section 502(a)(2) of ERISA was waived because it was raised for the first time on appeal and because, had it not been waived, Section 502(a)(2) provides relief only for entire plans, not for individuals such as Mr. LaRue. Second, the Circuit Court held that Section 502(a)(3) of ERISA provides only for equitable relief and the relief Mr. LaRue requested was not equitable.

The Supreme Court’s decision, reversing both the District and Circuit Courts, is not surprising. Few thought that the logical extension of defendants’ position—that fiduciaries would never have liability for losses from individual accounts—would be accepted by the Supreme Court. From the perspective of plan sponsors, however, the decision is disheartening. In this time of often extreme market volatility, the decision will increase the need for timely and accurate response to participants’ myriad investment decisions, will increase the number of fiduciary breach lawsuits brought and may increase the difficulty of having such lawsuits dismissed early in the proceedings, and will increase the costs of plan administration. In sum, the *LaRue* decision serves as a reminder to plan sponsors and administrators of the importance of accurate, timely, and proper plan administration.

*For more information about issues relating to qualified plans, or other employee benefits matters, please contact any member of the Employee Benefits and Executive Compensation Group:*

Harry Atlas (410) 528-2848  
[hiatlas@venable.com](mailto:hiatlas@venable.com)

Patricia McDermott (202) 344-8061  
[pmcdermott@venable.com](mailto:pmcdermott@venable.com)

Jennifer Berman (410) 244-7756  
[jsberman@venable.com](mailto:jsberman@venable.com)

Kenneth Hoffman (202) 344-4810  
[krhoffman@venable.com](mailto:krhoffman@venable.com)

Meredith Horton (202) 344-8290  
[mphorton@venable.com](mailto:mphorton@venable.com)

Thora Johnson (410) 244-7747  
[tajohnson@venable.com](mailto:tajohnson@venable.com)

Kendra Kosko (202) 344-4466  
[kkosko@venable.com](mailto:kkosko@venable.com)

Jason Levine (202) 344-4629  
[jelevine@venable.com](mailto:jelevine@venable.com)

Andrea O'Brien (301) 217-5655  
[aiobrien@venable.com](mailto:aiobrien@venable.com)

Barbara Schlaff (410) 244-7494  
[beschlaff@venable.com](mailto:beschlaff@venable.com)

Serena Simons (202) 344-4599  
[sgsimons@venable.com](mailto:sgsimons@venable.com)

Lisa Tavares (202) 344-4075  
[latavares@venable.com](mailto:latavares@venable.com)

Martha Jo Wagner (202) 344-4002  
[mjwagner@venable.com](mailto:mjwagner@venable.com)

John Wilhelm (703) 760-1917  
[jawilhelm@venable.com](mailto:jawilhelm@venable.com)

©2008 Venable LLP. [www.venable.com](http://www.venable.com) 1-888-VENABLE. This alert is published by the Employee Benefits and Executive Compensation Practice Group of the law firm Venable LLP. It is not intended to provide legal advice or opinion. Such advice may only be given when related to specific fact situations that Venable has accepted an engagement as counsel to address.