

## Legal Alert: Supreme Court Allows ERISA Relief for Individual Plan Accounts

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The U.S. Supreme Court ruled yesterday in *LaRue v. DeWolff*, No. 06-856, that individual participants in defined contribution plans can sue under ERISA for losses to their individual accounts caused by an alleged fiduciary breach. The provision in question, ERISA § 409(a), refers to recovering losses for the “plan” rather than for an individual, raising the question of whether a participant can sue for losses suffered in a particular individual account rather than the plan as a whole. The Court held that while § 502(a)(2) (which allows claims to enforce § 409(a)) “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.”

LaRue, a participant in a defined contribution pension plan established by his former employer, alleged that the plan administrator’s failure to follow his investment directions constituted a breach of fiduciary duty under ERISA and reduced his interest in the plan by approximately \$150,000. LaRue argued that he had a claim for relief under §§ 502(a)(2) and 502(a)(3) of ERISA. Section 502(a)(2) provides for suits to enforce the liability-creating provisions of § 409(a), concerning breaches of fiduciary duties that harm plans, while § 502(a)(3) authorizes “appropriate equitable relief” in certain instances. Although the Court’s grant of certiorari encompassed the question of § 502(a)(3) relief, the Court found it unnecessary to address that issue and instead focused on the relief available to LaRue under § 502(a)(2). (Click [here](#) for our prior alert on the grant of certiorari.)

The Supreme Court’s decision (click [here](#) for the opinion) overturns a ruling by the U.S. Court of Appeals for the Fourth Circuit, which, relying on language in *Massachusetts Mutual Life Ins. Co. v. Russell*, 473 U.S. 134 (1985), held that ERISA § 502(a)(2) provides remedies only for entire plans, not for individuals with respect to their individual accounts. Writing for the Court, Justice Stevens reconciled the two rulings by focusing on the difference between defined benefit plans and defined contribution plans, noting that when *Russell* was decided, the defined benefit plan was the norm of American pension practice. “The ‘entire plan’ language in *Russell* speaks to the impact of § 409 on plans that pay defined benefits. Misconduct by the administrators of a defined benefit plan will not affect an individual’s entitlement to a defined benefit unless it creates or enhances the risk of default by the entire plan.”

Justice Stevens reasoned that defined contribution plans are different because a fiduciary breach could reduce benefits below what would otherwise be received in a defined contribution plan without threatening the solvency of the entire plan. “Consequently, our references to the ‘entire plan’ in *Russell*, which accurately reflect the operation of § 409 in the defined benefit context, are beside the point in the defined contribution context.”

In a footnote, the Court noted that respondents had filed a motion to dismiss the case as moot, contending that petitioner was no longer a participant because he had withdrawn all of his funds from the plan. The Court commented: “While his withdrawal of funds from the Plan may have relevance to the proceedings on remand, we denied their motion because the case is not moot. A plan ‘participant,’ as defined by § 3(7) of ERISA, 29 U. S. C. § 1002(7), may include a former employee with a colorable claim for benefits. See, e.g., *Harzewski v. Guidant Corp.*, 489 F.3d 799 (CA7 2007).” In a separate footnote, the Court also commented that claims for “lost profits” in the plan were cognizable under § 502(a)(2).

The Court’s judgment was unanimous, although two concurring opinions were filed. Justice Thomas, joined by Justice Scalia, was of the view that the Court’s result followed from the text of ERISA, without any need for recourse to other bases for statutory interpretation. Chief Justice Roberts, joined by Justice Kennedy, would add that the Court’s judgment leaves open the question of whether LaRue’s claim properly lies only under § 502(a)(1)(b), implicating exhaustion of administrative remedies among other requirements, and not under § 502(a)(2).



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