

## Fiduciary Liability To A Single Participant Under ERISA

The United States Supreme Court has agreed to hear a case that could have a drastic impact on fiduciaries of qualified retirement plans subject to the Employee Retirement Income Security Act (ERISA). Plaintiff, James Larue, an employee of the management consulting firm of DeWolff, Bobert & Associates, brought suit against his employer seeking lost appreciation in his 401(k) pension account. The plan in which Larue is a participant allows participants to select from a variety of investment options. Larue alleges that he instructed his employer to invest in a certain group of investments in 2001, however, DeWolff failed to implement Larue's desired investment strategy. Larue seeks approximately \$150,000 in damages representing the difference between what the account balance would have been at the time of the suit had the investments been made and what the account balance actually was at the time of the suit.

The question for the Court is whether the relevant provisions of ERISA were intended to provide remedial relief to an individual plan participant or whether there must be broader injury to participants in order to invoke ERISA's remedial provisions. The Court will also address whether the provision were intended to provide what amounts to compensatory damages or whether equitable forms of relief, such as an injunction against the fiduciary or the return of unjust enrichment still in the fiduciaries possession, are the only remedies allowed. The Fourth Circuit Court of Appeals answered both questions in the negative; injury to a single participant is insufficient to invoke the relevant ERISA provisions and only equitable relief is available.

A decision for LaRue in this case would expand the losses from fiduciary error that may be remedied under an ERISA plan further protecting plan participants. However, a decision for DeWolff would provide fiduciaries with added protection from liability and help decrease transactional costs associated with further preventative measures that would likely be implemented in response to a decision in favor of the plaintiff.