



# Opening the Floodgates of Litigation: The United States Supreme Court Rules That Individuals May Sue Their Employers For Mishandling 401K Retirement Plans

Client Advisories

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The United States Supreme Court has recently handed individuals yet another way to sue their employers, namely, that individual 401K participants may now sue for mishandling of 401K retirement plans. This decision reversed a body of case law that required damage to the entire plan before allowing a suit to proceed against a fiduciary for a breach of fiduciary duty. This case is a wake-up call to employers who are not actively monitoring or properly managing their 401K plans.

In *LaRue v. DeWolff, Boberg & Associates, Inc.*, the Supreme Court ruled in favor of an employee, James LaRue, who claimed that his employer, DeWolff, failed to follow his investment directions, which in turn cost Mr. LaRue approximately \$150,000. Specifically, Mr. LaRue alleged that DeWolff failed to respond to two requests to make investment changes in his account. Mr. LaRue claimed that DeWolff's mishandling of his 401K funds amounted to a breach of fiduciary duty under the Employee Retirement Income Security Act of 1974 (ERISA).

The Supreme Court upheld Mr. LaRue's right to sue DeWolff and remanded the case to the lower courts for further proceedings. Stating that "the landscape (of qualified plans) has changed" and that the fiduciary obligations imposed under ERISA relate to the proper management, administration and investment of fund assets, the Supreme Court held that the misconduct alleged by DeWolff "falls squarely within the duties imposed by ERISA" and that it does not matter whether the assets involved account for "1 percent or 99 percent of the total assets in the Plan." The Court also noted that even though Mr. LaRue was no longer employed by DeWolff, that such an action can be pursued "by a former employee with a colorable claim for benefits."

It is clear that employees will broadly interpret this decision and bring claims for breach of fiduciary duty under a wide array of circumstances against plan administrators, investment advisors, plan sponsors, and any other party who can be deemed to be a fiduciary under ERISA.

The LaRue decision, opening the floodgates for litigation against Plan fiduciaries, can be alleviated, if not eliminated, with proper legal and financial guidance and compliance with the requirements of ERISA Section 404(c).

If you have any questions about this decision, or about 401K plan administration, please contact: Gerald Rigby, Esquire, in our Philadelphia office at (215) 279-9684.

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