Employee Benefits Alert

February 2008

401(k) PLANS - SUPREME COURT DECISION

On February 20, 2008 the Supreme Court decided the case of LaRue v. DeWolff, Boberg & Associates, Inc., No. 06-856, Slip Op. at 1 (U.S. Feb. 20, 2008). The issue is whether Section 502(a) of ERISA permits an individual participant of a defined contribution plan to sue a fiduciary for diminution of his account as a result of the fiduciary's breach of its duties. (In this particular case, the diminution was caused by the failure to follow the investment instructions of the participant.) It would seem to a reasonable person that the answer should be yes, but because of the peculiar wording of Section 502(a) and the way it has been interpreted, the courts below had denied relief.

The Supreme Court unanimously held that the participant could sue to make his account whole. As a testament to the confusion the statutory language has caused, there were 3 separate views on how this result should be reached. The majority held that an individual participant could sue for relief under Section 502(a)(2) despite having to tweak the holding in the landmark Russell case that, in 1985, said only a plan could get relief under Sections 502(a)(2) and 409, and not an individual. (The tweaking was to distinguish between defined contribution and defined benefit type programs.) Each of the two concurrences espoused a theory that would not require any tweaking of the Russell holding.

Bottom line: A pragmatic decision that reaches a result most of us would have assumed. The opposite decision would have been better for fiduciaries, but would have resulted in there being no practical remedy for these types of fiduciary breaches.

QUESTIONS OR ASSISTANCE?

If you have any questions about this Employee Benefits alert, please contact Ira Goldman at (860) 251-5820 or Kelly Smith Hathorn at (860) 251-5868.

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