Plan Fiduciary May Be Liable to Individual Participant

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Employers that administer 401(k) plans may be held liable to individual participants for fiduciary violations. The Supreme Court in *LaRue v DeWolff* held that ERISA permits a participant in a "defined contribution plan," such as a 401(k) plan, to bring an action against plan fiduciaries to recover losses on the participant's account caused by a fiduciary breach.

In *LaRue*, an employer that sponsored a 401(k) plan allegedly failed to execute investment changes as directed by a participant. The participant alleged that the mistake resulted in an estimated loss of $150,000 to the participant's 401(k) account. The Circuit court held that ERISA provides remedies only for entire plans, not for individuals, and denied the participant's claim. The Supreme Court reversed, distinguishing "defined benefit plans" from "defined contribution plans." Acknowledging the preponderance of "defined contribution plans," for the first time the Court concluded that the "entire plan" rule should not be applied to "defined contribution plans" because fiduciary misconduct in a defined contribution plan does not always affect the entire plan, unlike the impact of similar misconduct in a defined benefit plan. Accordingly, the Court held that a fiduciary of a defined contribution plan may be held liable to individual participants for losses resulting from fiduciary violations.