

## Alabama District Court Rejects Application of *LaRue* in ESOP Participant Suit

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In February of this year, the Supreme Court recognized the right of individual participants in defined contribution plans to sue for fiduciary breaches that impair the value of plan assets in a participant's individual account. *LaRue v. DeWolff, Boberg & Associates, Inc.* 128 S. Ct. 1020 (2008). See Labor and Employment LawFlash, "Supreme Court Expands Liability Exposure of Fiduciaries of Individual Account Plans," February 28, 2008 at [http://www.morganlewis.com/pubs/LEPG\\_LiabilityExposure\\_LF\\_25feb08.pdf](http://www.morganlewis.com/pubs/LEPG_LiabilityExposure_LF_25feb08.pdf). In one of the first cases to consider *LaRue*'s impact on individual ERISA claims, the U.S. District Court for the Middle District of Alabama has rejected a request to reconsider a dismissal of breach of fiduciary duty claims in a case involving an employee stock ownership plan (ESOP).

The plaintiffs are a group of former employees of Central Alabama Home Health Services, Inc. (Central Alabama) who filed suit in 2001, alleging that they were induced to voluntarily terminate their employment with Central Alabama when the company was experiencing a financial downturn. The plaintiffs had been participants in the ESOP, sponsored by Central Alabama, and they alleged that the trustee of the ESOP made false representations to them regarding the value of their ESOP stock. The plaintiffs sought damages under the Employee Retirement Income Security Act (ERISA).

Relying on the Supreme Court's decision in *Massachusetts Mutual Life Insurance Co. v. Russell*, the district court rejected the plaintiffs' claims because they did not bring their claims on behalf of the plan as a whole. Rather, theirs were individualized claims, which were foreclosed by prior court precedent holding that ERISA claims must benefit the plan as a whole, not individual participants. *Cook v. Campbell*, 482 F. Supp. 1341 (M.D. Ala. 2007).

Relying on the Supreme Court's decision in *LaRue*, the Central Alabama plaintiffs petitioned the court for reconsideration of its dismissal of their claims.

In a well-reasoned opinion, the district court held that *LaRue* did not revive the plaintiffs' breach of fiduciary duty claims. Although the plans involved were ESOPs and defined contribution plans, like the 401(k) plan at issue in *LaRue*, the district court noted that 401(k) plans permitted participants to direct the investment of their own contributions, whereas the ESOP did not. The individual relief permitted in *LaRue* was a direct result of the plan's failure to follow *LaRue*'s investment direction. Since the ESOP did not permit participant direction of accounts, the district court was able to distinguish the *LaRue* holding.

Although the plaintiffs claimed that the trustees' breach of fiduciary duty negatively impacted the value of the company stock, and thus negatively impacted all ESOP participants, the district court found that the plaintiffs were still only seeking individualized recoveries and not recovery to the plan as a whole. This fact allowed the district court to further distinguish the *LaRue* decision. LaRue sought recovery to the plan of his individual losses, even though no other participants were affected. Because LaRue sought damages to flow through the plan to himself, the district court in the instant matter reasoned that *LaRue* did nothing to alter the law in *Russell*, which required that recoveries for breach of fiduciary duty be paid to the plan, and not to individual participants.

Finally, in viewing the plaintiffs' claims as claims for benefits, the district court adhered to Chief Justice Roberts's concurring opinion in *LaRue*, requiring exhaustion of administrative remedies under ERISA § 501(a)(1)(B).

The *Cook* decision is important in a post-*LaRue* world because of the careful distinctions that the district court has drawn between 401(k) plans and ESOPs, essentially treating ESOPs more like defined benefit plans subject to the Supreme Court's prior holding in *Russell*, which requires that damages in ERISA cases flow through the plan for the benefit of all plan participants. The decision is also encouraging as it shows that at least one court has not interpreted the *LaRue* decision to be as broad as many have opined that it would be.

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