

# U.S. Supreme Court Opened the Flood Gate Today. Be Prepared.

FEBRUARY 21, 2008

We only provide alerts to you when there is a development in ERISA that is striking and significant. The decision today in *LaRue v. DeWolff, Boberg & Associates, Inc.* is just such a development. The Supreme Court has now authorized individual claims for fiduciary breach in defined contribution plans, when alleged fiduciary breaches may impair the value of a participant's account. This means that a participant who believes that an investment instruction was not followed, for example, has a direct cause of action against the fiduciaries for money damages under ERISA.

Until now, most Courts have upheld the dictate from the Supreme Court in *Massachusetts Mutual Life Ins. Co. v. Russell* that precluded such actions, unless such an action was made on behalf of the entire plan, not for an individual. *LaRue* has altered this holding. Referring to the *Russell* emphasis on protecting an entire Plan, Justice Stevens suggests: "That landscape has changed."

Naturally, separate concurring opinions by Justices Roberts/Kennedy and Scalia/Thomas have placed some uncertainty into the mix. Roberts opines that such individual relief may be better placed within the context of a claim for benefits, rather than as a claim for breach of fiduciary duty. A claim for benefits would be subject to the plan's claims process. Scalia concurs, but bases his rationale on the language of the statute, not any change in the landscape.

Ultimately, this means a greater threat to defined contribution plans from Plaintiffs seeking redress. In anticipation of this decision and based on other activity in this arena, The Benesch Benefits Team has developed the Benesch Investment Advisory 360 ("BIA360")™. This IA360 involves a review and analysis of investment policies, practices, decision-making and an administrative operation review module, to assess processes for investments by plan third party administrators.

If you have any questions on this or any related matters, please call Jeffrey D. Zimon, Chair - Employee Benefits and Compensation Department, Co-Chair ERISA Litigation Group, [jzimon@bfca.com](mailto:jzimon@bfca.com) (216-363-4657) or Anna Raske, Esq. Co-Chair ERISA Litigation Group [araske@bfca.com](mailto:araske@bfca.com) (216-363-4552).