SHDR
STANLEY, HUNT, DUPREE & RHINE, INC.
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SUPREME COURT RULES PARTICIPANT CAN SUE FOR LOSSES TO ACCOUNT BALANCE

In *LaRue v. DeWolff, Boberg & Associates, Inc.* ("LaRue") the United States Supreme Court ruled that a participant in a defined contribution plan can sue for losses in their individual account due to fiduciary breach. This ruling overturned a lower court decision, that the right to sue under the applicable section of ERISA was available only as a claim on behalf of the entire plan. In LaRue, the Court established its view that a defined contribution plan should be viewed as the sum of its parts; those parts being the individual account balances of the participants.

LaRue claims that his account balance should be worth approximately $150,000 due to opportunity lost when the fiduciary (DeWolff, Boberg & Associates, Inc.) failed to follow his investment directions. While the right to proceed with the suit has been awarded by the Court, it should be noted that LaRue will still need to prove his case at trial court. An open issue that will be left for the lower courts to decide is whether participants seeking remedy for fiduciary breach as in the LaRue case should be redirected to exhaust the administrative remedies under the plan before proceeding to the federal courts. Exhaustion of administrative remedies would include making a formal claim under the plan's claims procedure and, where the claim is denied by the plan administrator, going though the claims review process included in the procedure. Generally, only after following these processes may the participant proceed with litigation.

Will LaRue "open the floodgates" for similar participant claims for fiduciary breach? Only time will yield a definitive answer. In reality, such claims are not a new concept at the lower court level. Certainly, the LaRue decision provides a contemporary view of the high Court's general opinion on the issue. However, the fact that the question of administrative remedy was left open may give employers and other fiduciaries some defense against this type of suit where the participant bypasses this plan provision.