

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

LaRue v. DeWolff, Boberg & Associates, Inc.

458 F.3d 359 (4th Cir. 2006) · No. No. 05-1756 · Decided August 8, 2006

SUMMARY

The United States Court of Appeals for the Fourth Circuit denied rehearing and rehearing en banc in *LaRue v. DeWolff, Boberg & Associates, Inc.*, while granting the Secretary of Labor leave to file an untimely amicus brief. The court rejected the Secretary's broad interpretation of ERISA § 502(a)(2), holding that the provision authorizes recovery for losses to an ERISA plan rather than purely individual losses.

CASE DETAILS

COURT	United States Court of Appeals for the Fourth Circuit
WRITING FOR THE COURT	Per curiam; Judge Wilkinson; Judge Traxler; Judge Williams
JURISDICTION	Federal
DECIDED	August 8, 2006
DOCKET	No. 05-1756
DISPOSITION	other
PROCEDURAL POSTURE	LaRue petitioned for rehearing and rehearing en banc following the panel decision in <i>LaRue v. DeWolff, Boberg & Associates, Inc.</i> , 450 F.3d 570 (4th Cir. 2006). The Secretary of Labor sought leave to file an untimely amicus brief supporting LaRue. The court granted leave to file the amicus brief but denied both petitions for rehearing.
PRECEDENTIAL VALUE	Published Fourth Circuit opinion
PARTIES	James LaRue v. DeWolff, Boberg & Associates, Incorporated, DeWolff, Boberg & Associates, Incorporated Employees' Savings Plan

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QUESTIONS PRESENTED

1. Whether ERISA § 502(a)(2), incorporating § 409, permits an individual beneficiary to recover personal damages for an alleged fiduciary-duty breach that caused an individual loss rather than a loss to the plan as a whole.
2. Whether rehearing or rehearing en banc should be granted in light of the Secretary of Labor's untimely amicus submission and the Secretary's argument concerning the scope of ERISA § 502(a)(2).
3. Whether the Secretary of Labor should be permitted to file an amicus brief out of time in connection with a petition for rehearing.

HOLDINGS

1. ERISA § 502(a)(2), through its incorporation of § 409, authorizes relief for losses to the plan and requires a claim to be brought in a representative capacity on behalf of the plan as a whole; it does not authorize an individual beneficiary's claim for personal damages based solely on an individual loss.
2. The Secretary's interpretation, under which any individual claim legally related to a plan would constitute a plan loss, is inconsistent with the text of ERISA § 502(a)(2), the representative-capacity requirement, and Supreme Court precedent.
3. The petition for rehearing and the petition for rehearing en banc are denied.

KEY QUOTATIONS

"Neither the text of Section 502(a)(2) nor Supreme Court precedent contemplate a remedy for individual, rather than plan, losses." (p. 3)

"The term 'principal brief' would appear to refer to the lead brief filed by a party in anticipation of argument (either before a panel or the en banc court) and not to something such as a reply brief or petition for rehearing." (p. 3)

"The cases cited by the Secretary thus stand only for the limited proposition that liability under § 502(a)(2) is not limited to losses that accrue to all plan participants — it is, however, limited to plan losses." (p. 6)

FACTUAL BACKGROUND

LaRue asserted an individual claim for money damages arising from an alleged breach of fiduciary duty involving his interest in an ERISA plan. He did not allege a loss to the plan as a whole and sought recovery for himself rather than in a representative capacity on behalf of the plan. The Secretary of Labor argued that ERISA § 502(a)(2) should be read broadly enough to encompass such an individual loss.

PROCEDURAL HISTORY

The Fourth Circuit previously issued a panel decision in the case. LaRue sought rehearing and rehearing en banc, and the Secretary of Labor moved out of time for leave to submit an amicus brief. The court accepted the late amicus filing but declined to grant rehearing, while addressing the Secretary's substantive arguments concerning ERISA § 502(a)(2).

DISPOSITION

other

CASES CITED

- LaRue v. DeWolff, Boberg & Associates, Inc., 450 F.3d 570 (4th Cir. 2006)
- Taylor v. Progress Energy, Inc., 415 F.3d 364 (4th Cir. 2005)
- Pilot Life Insurance Co. v. Dedeaux, 481 U.S. 41, 54 (1987)
- Massachusetts Mutual Life Insurance Co. v. Russell, 473 U.S. 134, 140-46 (1985)
- Varity Corp. v. Howe, 516 U.S. 489, 515 (1996)
- Mertens v. Hewitt Associates, 508 U.S. 248 (1993)
- Great-West Life & Annuity Insurance Co. v. Knudson, 534 U.S. 204, 209, 214-15 (2002)
- In re Schering-Plough Corp. ERISA Litigation, 420 F.3d 231, 234-35, 239, 241 (3d Cir. 2005)
- Kuper v. Iovenko, 66 F.3d 1447, 1452-53 (6th Cir. 1995)
- Milofsky v. American Airlines, Inc., 442 F.3d 311, 313 (5th Cir. 2006)
- Steinman v. Hicks, 352 F.3d 1101, 1102 (7th Cir. 2003)
- Strom v. Goldman, Sachs & Co., 202 F.3d 138, 149 (2d Cir. 1999)
- Matassarin v. Lynch, 174 F.3d 549, 566 (5th Cir. 1999)
- Smith v. Sydnor, 184 F.3d 356, 363 (4th Cir. 1999)
- McDonald v. Provident Indemnity Life Insurance Co., 60 F.3d 234, 237 (5th Cir. 1995)
- Parker v. BankAmerica Corp., 50 F.3d 757, 768 (9th Cir. 1995)
- Horan v. Kaiser Steel Retirement Plan, 947 F.2d 1412, 1418 (9th Cir. 1991)
- Tregoning v. American Community Mutual Insurance Co., 12 F.3d 79, 83 (6th Cir. 1993)
- Lee v. Burkhart, 991 F.2d 1004, 1009 (2d Cir. 1993)
- Physicians HealthChoice, Inc. v. Trustees of Automotive Employee Benefit Trust, 988 F.2d 53, 54 (8th Cir. 1993)