

# Supreme Court Decides ERISA Case 9-0 with Help from Wiley Rein *Amicus* Brief

February 21, 2008

The U.S. Supreme Court held yesterday that an employee can sue his employer for alleged mismanagement of his 401(k) pension plan (*LaRue v. DeWolff*, No. 06-856). The ruling is likely to result in a sharp increase in suits by individual plan participants, especially as stock market volatility produces losses in defined contribution plan benefits.

An *amicus* brief written by Wiley Rein on behalf of the Self Insurance Institute of America (SIIA) urged the Court to overturn a ruling by the appellate court that the Employment Retirement Income Security Act (ERISA) only allowed suit when there was an injury to the plan as a whole, and not to a single plan member.

The SIIA brief argued that the mismanagement of the plaintiff's account *was* an injury to the plan as a whole, and that requiring the employer to restore to the employee's account money lost because of its mismanagement was the kind of equitable remedy contemplated by ERISA. In its ruling the Court noted that the massive shift from "defined benefit" pension plans to "defined contribution" plans made the ability of an employee to protect his individual account essential to carrying out the purpose of ERISA.

Wiley Rein and Insurance partner was counsel of record on the *amicus* brief, assisted by attorneys Lawrence H. Mirel and William S. Consovoy.

This is Wiley Rein's second winning Supreme Court *amicus* brief on behalf of SIIA. In *Sereboff v. Mid Atlantic Medical Services, Inc.*, the Court ruled unanimously that a health plan can seek reimbursement from a covered patient who recovers from a third-party tortfeasor

## Related Professionals

Thomas W. Brunner  
Senior Counsel  
202.719.7225  
tbrunner@wiley.law

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(547 U.S. 356, 126 S. Ct. 1869 (2006)). For more information on the *Sereboff* brief, [click here](#).