

High court allows workers to sue over 401(k) losses

By JONATHAN PETERSON
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WASHINGTON — Workers gained a powerful weapon Wednesday by winning the right to sue employers when their retirement plans are mismanaged, raising the possibility of lawsuits over other worker-fund matters as well.

The U.S. Supreme Court ruled unanimously that workers could sue employers to recover losses when their 401(k) accounts were not handled in their best interests.

The decision has ramifications for more than 50 million workers who have more than \$3 trillion invested in 401(k)s and similar retirement plans, which are typically funded by employees themselves.

It also could have a much wider effect, according to legal analysts, business groups and consumer advocates.

“This opens the door” to a variety of worker lawsuits, including challenges to the fees that workers are charged to administer their savings plans, said Ed Ferrigno, vice president of the Profit Sharing/401(k) Council of America.

Some experts cautioned that the ruling also could lead small employers to abandon 401(k) plans, which had increasingly been used to supplant employer-funded pension plans. Companies also may raise administrative fees in the plans to cover the threat of new litigation, they said.

The decision was significant because the Supreme Court reversed lower-court rulings that had held employers not liable for losses suffered by their workers, even if accounts had been mismanaged.

The court decision was based on the complaint of a Texas man who said his instructions to shift money out of stocks and into safer investments were ignored, costing him \$150,000.

“It supports what we have [See Pensions, Page A22]

High court OKs 401(k) lawsuits

[Pensions, from Page A1]

been saying all along," said Jerome Schlichter, a lawyer for employees who claim their retirement accounts have been charged excessive fees by a string of blue-chip companies, including Lockheed Martin Corp. and Bechtel Group.

Mishandling a retirement account causes "real losses," Schlichter said, "and the people who have suffered have a right to be made whole, and this decision reinforces that principle."

But Dallas L. Salisbury, president of the Employee Benefit Research Institute, said the ruling that individuals could sue — even if the account was generally well run — contradicted the understanding of many 401(k) industry experts.

"You could see a decline in the number of 401(k) plans being made available," he said, especially among smaller employers who may already be struggling to offer the plans.

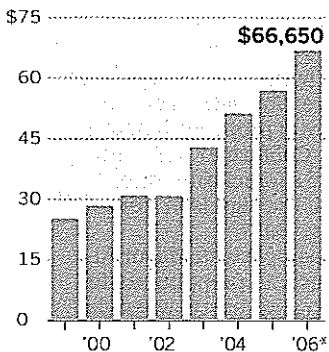
In its decision, the Supreme Court overturned a ruling by the U.S. 4th Circuit Court of Appeals in Richmond, Va. The lower court had rejected the legal challenge of James LaRue, who had sued his employer, a Texas consulting firm. The appeals court ruled that the law did not allow for suits brought by individuals.

Rather, the lower court was following a widespread legal view that such suits could go

A lot at stake

Median 401(k) balance for U.S. workers who have been in the plans since 1999, year-end totals

(Scale in thousands)



*Most recent year for which figures are available

Source: Employee Benefit Research Institute

Los Angeles Times

forward only if an entire plan was harmed rather than an individual account.

In an interview, LaRue said he had asked the administrator of his company-sponsored 401(k) plan to shift money from stock funds into bond funds in September 2000.

The money wasn't moved and LaRue lost \$150,000 as his stock funds plunged in value. He sued his employer for the loss. "It was good news for me, and I'm hoping it's good news for a lot of the 401(k) partici-

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pants," LaRue, now self-employed, said of the court ruling.

The decision, written by Justice John Paul Stevens, was aimed largely at employers, who have important legal or "fiduciary" responsibilities when they sponsor a 401(k) plan.

It potentially also could affect other firms that may play a major role in the operation of a plan and the handling of its assets, such as those that handle trade instructions from a plan administrator.

Stevens took note of profound changes in the pension system since the nation's main pension law, the Employee Retirement Income Security Act of 1974, was adopted.

At that time, most pensions guaranteed benefits for life and workers were faced with few decisions on how to handle the

money. Today, by contrast, 401(k)s and similar programs, known as defined contribution plans, may be significantly affected by investment decisions, movements in financial markets and fees charged by fund managers.

Such fees, often hidden, can significantly limit the growth of a nest egg over time, the Los Angeles Times reported in its 2006 "Retirement at Risk" series.

The "landscape has changed," Stevens wrote in Wednesday's ruling. "Defined contribution plans dominate the retirement plan scene today."

That change has political implications, and Wednesday's decision was noted on Capitol Hill, where lawmakers have proposed greater disclosure of 401(k) fees and of potential conflicts of interest.

"American workers and retirees should have the right to seek justice when their trust is violated by the very companies that manage their hard-earned retirement savings, and thanks to today's decision, they now have that right," said Rep. George Miller (D-Martinez), chairman of the House Education and Labor Committee, in a statement.

Although some viewed the ruling as having potentially far-reaching effects, others pointed to certain limits and uncertainties. For example, the rul-

ing was not expected to give a new remedy to workers who do not like the investment options offered by their employers.

Typically, perceived shortcomings in the investment menu would not violate an employer's legal duty to run plans with care, even if investments turned sour, said Fred Reish, a Los Angeles attorney who specializes in employee benefits law.

"It doesn't even crack the door for that to happen," Reish said.

But the ruling was seen as a potentially significant change in terms of the rights of individual employees and retirees to seek financial redress in cases where fund managers bungled their responsibilities.

"If somebody screws up in the administration of the plan, the workers now have an easier way to have that error corrected in court," said Gregory L. Ash, an attorney in Overland Park, Kan.

Just what sort of behavior will be considered screwing up may be the basis of a wave of court battles in the aftermath of Wednesday's decision.

"My sense is this will end up producing a tremendous amount of litigation," said Mary Ellen Signorille, an attorney with the AARP Foundation.

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