

PENSION NOTES

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Supreme Court Decision Favors Workers

On February 21, 2008 the United States Supreme Court decided unanimously that an employee may sue defined contribution plan [e.g. 401 (k)] trustees to recover losses in their individual accounts that result from a breach of fiduciary duty. This represents a major victory for workers who participate in defined contribution plans.

In 2004 James LaRue sued his former employer DeWolff, Boberg & Associates, because they failed to execute instructions he had given them about his 401 (k) investments. LaRue argued that his employer's failure caused him to lose \$150,000 and that was a breach of their fiduciary duty. The Court of Appeals concluded in support of DeWolff, the

employer, that the Employee Retirement Income Security Act (ERISA) provided remedies only for entire plans not for individuals.

The Supreme Court, however, recognized in its decision that the retirement environment has changed considerably since their ruling in 1985 on which the Court of Appeals based its decision. Defined contribution plans in which both employees and employers invest, now dominate the environment, and individuals suffer the consequences of trustee misconduct.

As the Court said, "For defined contribution plans, however, fiduciary misconduct need not threaten the solvency of the entire plan to reduce

benefits below the amount that participants would otherwise receive... Consequently, our references to the 'entire plan' in *Russell*, which accurately reflect the operation of Section 409 in the defined benefit context, are beside the point in the defined contribution context."

The Pension Rights Center, which filed an *amicus* brief in support of LaRue, was pleased with the decision, saying, that it was "a common-sense decision, one that is consistent with the law, and with the realities - and hazards - of today's retirement savings world." The U. S. Department of Labor and the Solicitor General, who represents the President also argued for James LaRue.

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NEPAP's Perseverance Leads to Success

The Project recently assisted a 64-year-old widow from Cape Cod to receive survivor's benefits she was entitled to as a result of her late husband's employment. She first contacted us in July 2004 because she had received a notice from the Social Security Administration advising her that her late husband was entitled to a deferred vested pension he had earned when employed by the Farrell Division of USM Corporation from 1961 to 1979.

Unfortunately, her husband had died in 1994 at the age of 51 and had never received any of these pension benefits himself. The entity he had worked for had been sold several times since his employment, and our client did not know where to turn.

The case represented substantial legal hurdles. At the time of the husband's employment, ERISA

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Project's Work Adds Up!

- Over 4600 workers and retirees helped
- More than \$32 million in benefits recovered

Introducing ...

Pat Morgan joined the New England Pension Assistance Project, in January of this year, as a volunteer attorney and pension counselor.

For many years, Pat served as the administrator of an environmental, health, and safety training institute for an international consulting firm. For that same firm, she had performed research, writing, editing, and records management, for a wide variety of private and public sector clients.

Pat then attended Boston College Law School, where she became interested in elder law, and

worked as a legal intern for the Elder Law Project at Neighborhood Legal Services in Lynn, Massachusetts.

In her free time, Pat serves as a volunteer friendly visitor to homebound elders for a regional elder services organization, and enjoys hiking, swimming, and reading.

Pat is enthusiastic about working with NEAP and the Gerontology Institute, and she is finding it very fulfilling to help NEAP's clients understand and obtain their pensions, and achieve a secure retirement.



Pension Info on the Web

pensionaction.org

pensionhelp.net

pensionrights.org

socialsecurity.gov

(Perseverance continued from page 1)

allowed pension plans to restrict payment of survivors benefits for pre-retirement deaths to those cases in which the working spouse had lived at least until the plan's earliest retirement age; our client's husband had passed away at age 51 before he would have been entitled to collect any retirement benefit. We therefore had to make a complex argument involving application of the "transitional rules" enacted along with the Retirement Equity Act in 1984 to even establish our client's right to any benefit.

We then needed to locate the entity that held the benefit. Since the pension plan had been terminated as a "standard

termination" through the Pension Benefit Guaranty Corporation, an annuity should have been bought to insure the future payment of benefits. Although we were able to locate the insurance company where annuities had been purchased, none had been purchased in the name of our client's husband. This necessitated our filing of a claim with the Pension Benefit Guaranty Corporation arguing that it must pay the survivor's benefits owed based upon an argument that the PBGC remains liable to an "omitted participant" where there has been an "improper distribution", i.e. failure to purchase an annuity for a vested participant.

After more than three years of untangling these various obstacles and advancing the client's claim, we finally succeeded in obtaining a monthly survivor's benefit of \$80 per month along with a retroactive payment of almost \$5,000. Our client lives on a modest income (under \$20,000 annually) and this hard-fought benefit makes a significant contribution to her financial security. Given the extraordinary complexity of the issues her case presented and the small monetary amount at stake, it is highly unlikely that she would have obtained assistance with this problem from the private bar. She would most likely never have received the survivor's benefit she deserved.

The Future of Retirement Income Security

Over the past 25 years long-term financial security for older Americans has diminished considerably. Today, fifty percent of working Americans do not have any access to employer-sponsored retirement plans. Those that do increasingly must contribute to and share the cost of their retirement plans. Thousands more experience problems accessing retirement benefits that they have earned. Several coalitions have formed to address these threats to the financial security of retirees. Prominent among them is the Divided We Fail campaign.

Divided We Fail has a two-prong platform: access to health care and long-term financial security. Supporters of the financial security platform believe:

- Our children and grandchildren should have an adequate quality of life when they retire. Social Security must be strengthened without burdening future generations.
- Workers should be provided with financial incentives to save, should have access to effective retirement plans, and should be able to keep working and contributing to society

regardless of age.

- Americans of all ages should have access to the tools to help manage their finances, and save for the future and better, easy to understand information to help them increase their financial literacy and manage their money wisely.

If long-term financial security and access to health care are important to you, go to The Divided We Fail website: dividedwefail.org. The site gives you a way to become involved. It tells you where presidential candidates and members of Congress stand on the issues. It shows you media coverage of the Divided We Fail campaign and more. Help secure your financial future and those of generations to come.

Divided We Fail is principally sponsored by the AARP, the Service Employees International Union (SEIU), the Business Roundtable and the National Federation of Independent Businesses (NFIB). Hundreds of other organizations from across the country support the campaign.

Pension Action Center's New Poster

**Pension and 401 (k)
problems puzzling you?**

Pension Action Center can help you

*Know your rights
Secure your future
Understand your pension plan*

**Toll Free: 1-888-425-6067
www.pensionaction.org**

Service is provided free of charge



In an effort to raise awareness about the free services offered, the Pension Action Center distributed over 1500 copies of its new poster. Posters were sent to legal service offices, senior agencies, public libraries, and other community organizations.

Anyone interested in receiving the Pension Action Center poster should contact Grace Healey at 617-287-7311 or grace.healey@umb.edu.

Pension Help America Launched

The Pension Rights Center launched Pension Help America (www.pensionhelp.net) this winter. The web site gives pension information on almost any of the 750,000 private pension plans, federal, state and local government plans and railroad retirement benefits. The site also helps you to find lost pensions, pension counseling programs and provides updates on all things pension.

Developed with funding from the Administration on Aging, The Atlantic Philanthropies, the Public Welfare Foundation and The Retirement Research Foundation, the site will be updated often, so visit it frequently.



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Healthy, Wealthy and Wise

On April 28th, approximately 100 community outreach workers, case managers, advocates, and agency personnel, and service providers from all over Vermont gathered in Montpelier for the “Healthy, Wealthy and Wise” conference on women’s health care issues, financial security and employment rights. Jeanne Medeiros, the Project’s Legal Coordinator, was one of the featured panelists, and discussed the Project’s work, as well as impact of women’s family care-giving patterns on retirement security, pension rights of divorced spouses, and lost pensions. The conference was a collaborative effort of the U.S. Department of Labor’s Employee Benefits Security Administration and Women’s Bureau, the U.S. Office on Women’s Health, the UMB Gerontology Institute, and a number of Vermont agencies and organizations, including the Department of Labor, Department of Health, State Treasure, and Commission on Women.

PENSION ACTION CENTER

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PENSION NOTES

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