

06-856 LARUE V. DEWOLFF, BOBERG & ASSOC., INC.

DECISION BELOW: 450 F3d 570

LOWER COURT CASE NUMBER: 05-1756

QUESTION PRESENTED:

1. Section 502(a)(2) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. 1132(a)(2), provides that a "civil action may be brought * * * by a participant * * * for appropriate relief under section 1109 of this title." 29 U.S.C. 1109 states that "a fiduciary with respect to a plan who breaches any * * * duties imposed upon fiduciaries * * * shall be personally liable to make good to such plan any losses to the plan resulting from each such breach." The First Question Presented is: Does §502(a)(2) of ERISA permit a participant to bring an action to recover losses attributable to his account in a "defined contribution plan" that were caused by fiduciary breach?¹

2. Section 502(a)(3) of ERISA, 29 U.S.C. 1132(a)(3), provides that a "civil action may be brought * * * by a participant * * * to obtain other appropriate equitable relief * * * to redress * * * violations" of the statute. The Second Question Presented is: Does §502(a)(3) permit a participant to bring an action for monetary "make-whole" relief to compensate for losses directly caused by fiduciary breach (known in pre-merger courts of equity as "surcharge")?²

¹Hereinafter, this will be referred to as the "502(a)(2) Question."

²Hereinafter, this will be referred to as the " 502(a)(3) Question."

CERT. GRANTED 6/18/2007