

Wiley Rein Files Supreme Court *Amicus* Brief on Behalf of the Self-Insurance Institute of America

August 8, 2007

Washington, DC - Wiley Rein has filed an *amicus curiae* brief with the Supreme Court of the United States in *LaRue v. DeWolff, Boberg, & Associates, Inc.* The brief was filed on behalf of the Self-Insurance Institute of America (SIIA), a non-profit organization of nearly 1000 members that serve tens of millions of health plan beneficiaries. SIIA is dedicated to the advancement and protection of the self-insurance industry, and provides practical information and recommendations to the public and the government on a range of subjects relevant to the effective functioning of the self-insurance system, including provisions of the Employee Retirement Income Security Act of 1974 (ERISA) that concern the rights of self-insured health plans and plan participants.

Mr. LaRue sought to recover \$150,000 after the ERISA plan fiduciary for his 401(k) retirement account allegedly failed to invest plan assets as instructed by Mr. LaRue in breach of the terms of the plan. The lower court rejected Mr. LaRue's claim as a matter of law even though Section 502(a) of ERISA expressly requires plan fiduciaries to "make good" on "losses to the plan" that result from breach of the "duties imposed" on them under ERISA, and Section 502(a)(3) allows plan participants to recover "appropriate equitable relief" to "enforce any provision of...the terms of the plan."

Wiley Rein's *amicus* brief argued that the successful functioning of the self-insurance industry in general-and self-funded plans in particular-depends on the integrity of plan assets. The brief explained that SIIA's members have a compelling interest in ensuring plan solvency and preserving the right to recover assets from plan fiduciaries, as well as plan participants that convert or dissipate funds that rightfully

Practice Areas

- Health Care
- Insurance
- Insurance Appellate
- Issues and Appeals
- Litigation

belong to the plan. The brief further addressed the practical implications of the issues presented in the context of the broader purposes of ERISA.

The Wiley Rein brief was submitted by partners Lawrence H. Mirel, Thomas W. Brunner and John E. Barry and associate William S. Consovoy.