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# Circuit Court Rules Insurance Agents Are Not "Employees" Under ERISA

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The identity crisis appears to be over for one insurer using independent contractors. In *Jammal v. American Family Insurance Co.*, the Sixth Circuit reversed the district court and held that a putative class of insurance agents for American Family Insurance Co. were properly classified as independent contractors under ERISA and, therefore, not entitled to ERISA benefits. The ruling helped to quell insurance industry uproar resulting from the district court's decision in 2017, much to the dismay of the several thousand current and former American Family agents who had argued the insurer misclassified them as independent contractors to avoid paying them ERISA-required benefits.

The Sixth Circuit's decision turned on its analysis of the Darden factors for determining who qualifies as an employee under ERISA, as set forth in the Supreme Court's *Nationwide Mutual Insurance Co. v. Darden* opinion, and the court's review of those factors as conclusions of law rather than fact. The court found that the district court incorrectly applied the standards relating to:

1. the skill required of an agent; and
2. the hiring and paying of assistants.

According to the court, the correct application of the *Darden* standards weighed in favor of independent-contractor status. The Sixth Circuit also found that the district court failed to give sufficient weight to the parties' written agreement, which expressly stated the parties' intent to establish an independent-contractor relationship, and the factors relating to the "financial structure of the company-agent relationship," including the source of the instrumentalities and tools, method of payment, provision of employee benefits, and agents' tax treatment. The Sixth Circuit explained that, had the district court "properly weighed those factors in accordance with their significance, it would have determined that the entire mix of *Darden* factors favored independent-contractor status."

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