

## **Sixth Circuit Holds Employer Has No Duty to Notify of Conversion Options**

LIFE, ANNUITY, AND RETIREMENT SOLUTIONS | LIFE, ANNUITY, AND RETIREMENT LITIGATION | LABOR & EMPLOYMENT | DECEMBER 18, 2018

The Sixth Circuit recently held that an employer had no duty to notify employees of conversion options in group life insurance policies. In *Vest v. Resolute FP US Inc.*, the widow of a former employee alleged that Resolute breached its fiduciary duty under ERISA when it failed to notify her husband of his right to “port or convert” his optional group life policy into an individual life insurance policy once he ceased employment. In disagreeing with the plaintiff, the Sixth Circuit relied on three factors previously enumerated in *Sprague v. General Motors Corp.* to determine when a fiduciary may breach its duty to disclose.

In *Sprague*, the court held a fiduciary may breach its disclosure duty when (1) in response to a specific question by a participant, the plan provider gives a misleading or inaccurate answer; (2) a plan provider on its own initiative provides misleading or inaccurate information about the future of the plan; or (3) ERISA or its implementing regulations require the employer to forecast the future and the employer fails to do so.

Here, the court held that the test is not whether the plan provider should know that the former employee might be interested in converting his group life insurance – because he did not ask the question, the plan provider was not obligated to provide an answer. Further, the majority stated that the plaintiff failed to allege a misrepresentation regarding conversion rights. Finally, the court held that neither ERISA nor its implementing regulations required Resolute to provide any more information about conversion options than what was found in the summary plan description.

In a dissenting opinion, one judge observed that Resolute’s notice of employee benefit summary, which was sent without solicitation, failed to state that he needed to convert his optional group life insurance policy in order to retain coverage. The dissent opined that Resolute had a duty to provide full and complete information when providing information on its own initiative and, by not including information regarding conversion, had breached this duty.