

ALERT

Suit Alleging Failure to Provide Notice of Plan Benefits Triggered ERISA Exclusion

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The United States District Court for the Eastern District of Wisconsin, applying Wisconsin law, held that an Employee Retirement Income Security Act (ERISA) exclusion barred coverage for a former employee's suit alleging violations of ERISA and the Consolidated Omnibus Budget Reconciliation Act (COBRA) arising from the insured's alleged failure to provide timely notice of plan benefits after the employee's termination. *Just v. Accu-Turn, Inc.*, 2012 WL 1067106 (E.D. Wisc. Mar. 28, 2012).

A former employee brought suit against the policyholder, his former employer, for alleged ERISA and COBRA violations after the former employee was denied plan benefits after failing to elect to continue the benefits within a specified period. The former employee also alleged that the policyholder failed to provide him with an initial notice or election notice of COBRA benefits on a timely basis. The insurer intervened in the underlying action and sought a declaration that an ERISA exclusion barred coverage for the former employee's suit. The exclusion provided that "[t]his insurance does not apply to loss for which the insured is liable because of liability imposed on a fiduciary by the Employee Retirement [Income] Security Act (ERISA) of 1974, as now or hereafter amended."

The court held that the exclusion was unambiguous and barred covered for "losses arising from a liability imposed on a fiduciary by ERISA." The court rejected the insured's contention that the allegations in the complaint arose from COBRA rather than ERISA because COBRA amended ERISA and "ERISA provides the statutory framework for a COBRA claim." The court also held that the policyholder, as plan administrator, was a fiduciary under ERISA if, as alleged, it was obligated to provide COBRA notices to the former

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employee and provide plan payments. The court therefore held that the insured had no duty to defend against the former employee's suit. Because the insurer had no duty to defend, the court also held that the insurer did not have a duty to indemnify the policyholder.

The opinion is available [here](#).