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And The Defense Wins

In *Vartkessian v. Stanford Hospital and Clinics*, U.S. District Court, Northern District of California, November 3, 2009, Case 09-02319-JW, the plaintiff widow brought action against Stanford Hospital and Clinics, alleging violations of section 502(a)(3) of the Employee Retirement Income Security Act of 1974 (ERISA). Successfully representing the hospital and clinics were DRI Board of Directors member [Michael T. Lucey](#) and DRI member [Tad A. Devlin](#), partners at **Gordon & Rees LLP** in San Francisco. The plaintiff alleged that the defendant failed to notify the plaintiff of an insurance company's approval of her request for an increase in death benefits and failed to deduct higher premium payments for plaintiff's policy. The plaintiff's husband passed away and the plaintiff received death benefits of \$10,000 under the defendant employer's benefits plan that was in effect prior to the alleged failure to notify the plaintiff of the approval of a higher death benefit amount from the benefits provider.

The plaintiff initiated her action in state court, and the action was removed to federal court where Gordon & Rees's first motion to dismiss based on ERISA preemption was granted. However, the Northern District Court permitted the plaintiff to amend her complaint to state a claim under ERISA. The plaintiff attempted to do so, but Gordon & Rees strategically moved to dismiss on the grounds that the plaintiff's lawsuit was fatally defective because the relief sought was impermissible under ERISA. The plaintiff attempted to sidestep the ERISA statutory scheme, but the Gordon & Rees ERISA team convinced the court that the plaintiff's attempt to circumvent the ERISA statute was improper and that the plaintiff could not cure her action by further amendment. Further, in an attempt to save the lawsuit, plaintiff's counsel argued the doctrine of contractual reformation should have applied to enable her to obtain the higher death benefit amount. However, the Gordon & Rees ERISA team successfully argued there was no contract to reform between the parties (The plaintiff was and still is an employee for Stanford Hospital and the parties have an employer/employee relationship only, not an insurer/insured relationship) and actually the plaintiff was seeking to "form" a contract between the parties by judicial decree, which is improper. The court agreed and granted the motion to dismiss, with prejudice and entered judgment for Stanford Hospital and Clinics, dismissing the lawsuit.