

DiSabatino v. DiSabatino Bros.

(United States District Court for the District of Delaware, 894 F. Supp. 810 (D. Del. 1995))

Alfred DiSabatino was one of four brothers who owned Family Companies, which operated three construction companies. Alfred DiSabatino was fired, but Family Companies continued to pay for Alfred's health insurance. Although Alfred believed his health insurance had already been terminated, he presented his insurance card to the hospital approximately one year after being fired when his wife suffered a stroke. The comptroller of Family Companies, Ralph Patrone, was instructed to stop paying for Alfred's insurance and to notify Alfred of this change.

On May 26, 1994, while Alfred was in the offices of Family Companies, he was hand delivered a notice from Patrone. The notice asked Alfred to reimburse Family Companies for coverage provided from July 1993 to May 1994 (\$8,739.62). Alfred filed a complaint with the U.S. District Court on July 20, 1994. On August 29, 1994, Alfred received a more thorough COBRA notice. This second notice stated that his continuation coverage would last for 18 months from the date of that notice. Alfred filed suit, arguing that Family Companies should provide him with permanent health insurance. He also sought the statutory penalty provided by ERISA of \$100 per day for each day of non-compliance.

DISTRICT COURT RULING

Generosity and good intentions do not preclude the necessity of COBRA notifications. The court discussed very briefly the continuation coverage time frame outlined in the second letter sent to Alfred. The court, referring to *Phillips v. Riverside* (also in the **CASE LAW SUMMARIES**), stated that the continuation coverage period begins with the Qualifying Event, not with a proper notice. Therefore, the court found that Alfred's coverage would end 18 months after his termination.

The court awarded Alfred reasonable attorney fees and imposed the ERISA fine in the amount of \$10 per day for 384 days (from 44 days after Alfred's termination to the date of the second letter). Employers must remember to end coverage after a Qualifying Event, according to the terms of the plan. Employers who wish to provide coverage to employees after a Qualifying Event would have the option to do so by paying the COBRA premium for the beneficiary for a fixed amount of time.