

### Tufano v. Riegel Transportation

(United States District Court, Eastern District of New York, Civil No. CV 03-0977 (JO) (E.D. NY 2006))

Here is yet another case in which a former employee did not elect COBRA coverage, suffered a serious medical setback, and later claimed to never receive a COBRA election notice. The key issue was whether the employer could prove it sent the notice. Like many other employers who handle their own COBRA administration, Riegel Transportation (RTI) failed to do so.

When Robert Tufano's employment terminated in June, he claimed no one made him aware of his COBRA rights by mail or otherwise. He needed gall bladder surgery in December and received a pre-authorization letter from RTI's group health plan carrier, GHI. The letter contained the standard disclaimer: "This authorization is NOT a guarantee of coverage." Nevertheless, relying on the letter, Tufano underwent surgery, and GHI at first paid claims, then later canceled coverage retroactively to October 1. GHI offered Tufano COBRA coverage in January, but he failed to elect it. Neither GHI nor RTI could recall sending Tufano a COBRA general notice.

RTI was responsible for sending COBRA election notices. Its mailing process was as follows:

- Inputting personalized information in a form letter
- Printing two copies: one for mailing signed on company letterhead, the other unsigned on plain paper for a COBRA file
- Putting the mailed copy in an envelope, then in a U.S. mailbox

RTI had the unsigned file copy of the COBRA notice for Tufano. The RTI employee responsible for mailing Tufano's notice could not recall sending his notice. Also, another former employee testified that he never received a COBRA notice, apparently due to a change of address of which he never notified RTI.

The court held that RTI did not prove it had sent Tufano the notice. There was no direct evidence it was sent, and RTI lacked any written procedures. The unsigned copy was insufficient proof.

Tufano was awarded the value of his medical claims: \$10,232.90. The parties had stipulated at the start of the trial that this was the extent of Tufano's damages. The outcome could have been much worse. Because of the damages stipulation, the court did not impose a daily penalty on RTI for the failure to provide the election notice and the general notice.

This case should remind employers who administer COBRA of the importance of having written COBRA notice mailing procedures and following them precisely. For irrefutable evidence that a notice was sent, they should consider adopting a proof of mail system because as this case demonstrates, memories can fail and procedures are not always followed.