

### Kidder v. H & B Marine

(United States Court of Appeals for the Fifth Circuit, 932 F. 2d 347 (5th Cir. 1991 ))

H & B Construction and H & B Marine merged in 1986. Since 1983, the two companies had the same four principals, who each owned 25 percent. The 1986 merger was largely for tax purposes. It is undisputed that between the two companies there were at least 20 employees, the threshold at which an employer must comply with COBRA.

Oreste Kidder terminated his employment with H & B Construction on February 13, 1987. At the time that he terminated his employment, both Kidder and his wife Thelma were covered under H & B's group health plan. When Kidder left, he was informed by his supervisor, and by the independent insurance agent who sold the Blue Cross plan to H & B, that he was not eligible for continuation coverage. Kidder was offered conversion coverage, which he accepted and paid for.

Kidder filed this lawsuit after facing nearly \$24,000 in claims that were not covered by the conversion policy, but would have been covered by the group health plan. Blue Cross was brought into the lawsuit, as it **knew** that H & B Construction had to comply with COBRA but never advised them regarding compliance. In a U.S. District Court, the judge ruled that H & B did have to comply with COBRA. Even without the actual merger, the common ownership of H & B Marine and H & B Construction would have been enough to mandate compliance with COBRA. The court found H & B Marine to be 75 percent liable and Blue Cross 25 percent liable for the \$23,890.24 in claims.

Blue Cross filed an appeal. The appellate court reversed the district court's ruling and found H & B 100 percent liable. COBRA is a plan administrator law (most employers are the administrators of their plans), not an insurance carrier law. H & B Marine was responsible for proper COBRA compliance, and since it failed to comply, it was required to pay the entire \$23,890.24.