

CASE LAW

National Companies Health Plan v. St. Joseph's Hospital

(United States Court of Appeals for the Eleventh Circuit, LEXIS 7811)

At the time of Robert Hersh's termination of employment from National Distributing, he and his family were covered under National's group health plan. They were also covered under the plan at St. Joseph's Hospital, where Mrs. Hersh was employed. Claims were coordinated between the two plans.

Mrs. Hersh was pregnant at the time of Robert's termination. With a complicated birth expected, Mr. Hersh sought to maintain coverage under both health plans. When National offered COBRA to the Hershes, they elected and began paying premiums. When Mrs. Hersh gave birth to premature twins, **several hundred thousand dollars in claims resulted**. National attempted to cancel the COBRA coverage based on the Hershes' other coverage with St. Joseph's Hospital. The Hershes filed suit, claiming they relied on National's assurance to them that they would be allowed to continue coverage under COBRA.

Not only did the court order National to provide COBRA coverage, it ordered the company to provide COBRA for 36 months. Though the statute would have only required 18 months, the COBRA notice that was provided to the Hershes listed the maximum coverage period as 36 months. The court stated the Hershes relied upon this incorrect wording, as well as National's representation to them that it (National) would provide the coverage. Using principles of equitable estoppel, the court found that the Hershes relied upon National's assurance to their detriment and thus were entitled to the coverage.

Of additional importance was the court's citing of **outdated information in National's COBRA notice**. The COBRA statute had been amended, prior to the Hershes' Qualifying Event, regarding when COBRA coverage may be terminated prior to the end of the maximum coverage period. National's notice did not contain the new wording. The court stated the importance of immediately updating all notice and plan information upon a change in the COBRA law. Further, the court stated that the employer was **required to know all ERISA requirements** and *"to determine employee's rights to continuation coverage and notify them of these rights."*

In all, the award to the Hershes amounted to nearly **\$1 million. Approximately \$200,000 of the award was for damages, and another \$60,000 for the Hershes' attorney fees**. When citing the reason for awarding damages and attorney fees, the court stated that plan sponsors (usually employers) need to be aware there is more to lose in these lawsuits than the cost of claims.