

Sirkin v. Phillips Colleges, Inc.

(United States District Court for the District of New Jersey, 779 F Supp. 751 (D. N. J. 1991))

On July 22, 1990, Karen Sirkin terminated her employment with Katherine Gibbs School, a subsidiary of Phillips Colleges, Inc. Fox-Everett, a co-defendant in the case, sent her a COBRA notice on August 10. Sirkin elected COBRA on August 22 and paid \$299.43, which entitled her to coverage through August 15. On September 14 Fox-Everett notified Sirkin that she had until October 4 to pay the next required premium to bring her balance up to date. Sirkin did not do so.

On October 4, 1990, Phillips terminated Sirkin's coverage, retroactive to August 16. On October 9 Sirkin was admitted to the Bergen Pines Hospital, where she remained for several months. On November 2, 1990, Jeffrey Albies, a friend of Sirkin's, inquired about her coverage and requested that it be reinstated back to August 16. This started a series of correspondence between Albies's lawyer and Phillips.

On January 16, 1991, Karen Sirkin was declared mentally incompetent. (Sirkin suffered from cerebral atrophy and memory impairment.) Albies was appointed her legal guardian.

On March 7, 1991, Albies tendered a check to Phillips in the amount of \$1,952.02 to bring Sirkin's coverage up to date. Phillips refused to accept the payment, and Albies filed suit on Sirkin's behalf.

The court stated, ***"...where an insured misses a premium deadline under COBRA due to the insured's incapacity to know of or meet her obligation, the deadline for that premium payment is tolled for a reasonable time until the insured or her legally appointed guardian is able to cure the deficiency."***

Therefore, the judge ordered Phillips Colleges, Inc. to accept the premium payment for Sirkin and reinstate her COBRA coverage.