

CASE LAW

COBRA Penalties And Enforcement

Swint, et al. v. Protective Life, et al.

(United States District Court for the Southern District of Alabama, 779 F. Supp. 532 (S. D. Ala. 1991))

On September 18, 1987, 45 days after his 19th birthday, Roy Ivie was catastrophically injured in an automobile accident. William E. Swint, Roy's stepfather, was covering Ivie under his group health policy through his employer, Ward International Trucks. Ward's plan, through Protective Life Insurance Company, agreed to cover an unmarried child between the ages of 19 and 24 years if the child attended school full-time or depended on the employee for more than one-half of his or her support.

On September 21 Swint reported to work and informed his employer of his stepson's condition. Representatives of Ward International Trucks discussed both Ivie's condition and his school status with Swint on several occasions. During one such occasion, the employer asked Swint if Ivie was "still in school." Swint told the employer that Roy had not graduated the previous June with his high school class and was enrolled in a course to earn his diploma. The employer determined that Ivie was a "full-time" student, and Ward's agent/broker advised Ward not to send a COBRA notice. Ward was informed that Ivie's coverage was extended under the terms of the plan.

In early January, after the claims for Ivie began to rise toward the \$80,000 mark, a routine review began. A claims review examiner requested written verification of Ivie's student status. It was then that Protective Life learned of the independent study correspondence class in which Ivie was enrolled. Protective Life sometime thereafter determined that Ivie was not eligible for coverage and sent Swint a letter demanding a refund of the over \$80,000 in claims already paid. A carrier representative later testified that the letter made no mention of the availability of COBRA because **the election period** had expired.

Swint filed suit under ERISA, claiming that both Ward and Protective Life breached their fiduciary duties by not investigating Ivie's eligibility for coverage after being informed of the accident. **NOTE:** ERISA's lengthy discussion of fiduciary duties includes mention of the obligation of plan administrators **to make the plan beneficiaries' welfare their primary responsibility.**

Swint's attorney also argued that the employer and carrier further breached their fiduciary duties by not notifying the family of Ivie's right to continuation coverage under COBRA. The plaintiffs asserted that Protective Life did not make an adequate inquiry into Ivie's eligibility and therefore could not deny coverage.

On November 8, 1991, the court agreed with Swint's arguments and ordered Protective Life to pay over \$80,000 in claims. On February 27, 1992, by separate order, the judge awarded over \$192,000 in damages to be paid jointly by the employer (Ward International Trucks) and carrier (Protective Life). Interest and attorney fees were also awarded.