

Underwood (Raymond and Linda) v. Fluor Daniel, Inc.

(United States Court of Appeals for the Fourth Circuit, 1997 U.S. App. LEXIS 1410 (4th Cir. 1997))

A former employee and spouse appealed a district court decision after it ruled that Fluor Daniel, Inc. was not liable for over \$400,000 in medical claims for the spouse. At the time of Raymond Underwood's termination from Fluor Daniel, Inc., he was handed a COBRA notice. He took the notice home, never showing it to his wife, and put it in his safe. Raymond was scheduled to begin a new job within the COBRA 60-day election period. The insurance offered by Raymond's new employer would not cover any medical expenses related to Linda's preexisting intestinal condition, so they decided to elect COBRA for Linda only. Linda contacted Fluor Daniel's benefits department and was told by an unnamed employee to remit \$679.36. This amount was exactly twice the monthly rate for joint coverage (as listed on the notice handed to Raymond upon his termination). Linda mailed a check for the quoted amount, dated August 10, 1992, to Fluor Daniel. On the check's memorandum line, she wrote, "July and Aug. 1992." The Underwoods did not remit any premium payments extending them past the August 31, 1992, expiration of coverage, although Linda continued to require medical assistance for her condition. Linda's situation worsened, requiring her to enter the hospital on January 2, 1993. After the hospital told Raymond there was a problem certifying Linda's admission, he contacted Fluor Daniel, who informed him that the Underwoods' insurance had been canceled as of August 31, 1992, for non-payment of premiums. Raymond was able to get his wife's admission certified by the Fluor's pre-certification agent, and Linda received the surgery she needed on January 11. Fluor, however, did not acknowledge the Underwoods' attempts to retroactively pay premiums, and it refused to pay the approximately \$400,000 in medical expenses stemming from Linda's hospitalization and surgery.

APPELLATE COURT RULING

The appellate court affirmed the reasoning of the district court that, although Linda was not properly notified of her COBRA rights, from the evidence provided from Linda's actions, the information contained within a written notice sent to her would not have increased her knowledge of COBRA. Linda's coverage lapsed solely because she and/or her husband neglected to pay the required insurance premiums, holding Fluor harmless for any actions it took when cancelling the Underwoods' coverage. The appellate court went one step further and explained the fact that Linda knew her rights related to COBRA were purely "happenstance," and that did not absolve Fluor from its obligation to notify her of them.

The appellate court criticized Fluor for improper notification procedures of a Qualified Beneficiary and a poorly written election form. Seeing that there clearly were not existing circumstances in this case to excuse the administrator's failure to notify, the appellate court imposed the maximum penalty of \$100 per day. *"Fluor Corporation and its several subsidiaries employ a multitude of people. Fluor's failure to comply with COBRA's notice to beneficiaries provision from the amendments' enactment in 1986 until at least 1993, has potentially caused substantial harm. In addition, because the purpose is not to compensate participants for injuries, but to punish for non-compliance with ERISA, the amount of the penalty must be sufficient to deter the administrator from future misconduct."* According to COBRA, Fluor Daniel was required to have informed its Plan Administrator of Raymond's termination within 30 days of the occurrence. Fluor Corporation then had 14 days in which to provide Linda with notice of her rights. Since Raymond was terminated on June 29, 1992, Fluor's failure to comply with the applicable notice provision rendered it in violation of the law as of August 13, 1992. In order to determine what the penalty would actually be, the court looked to the South Carolina law, which stated that private parties must commence an action for statutory penalties or forfeitures within one year of the triggering event. By using the statutory penalty in this case, the penalty was assessed at \$100 a day for 365 days, equaling \$36,500.