

FILED

JUL 21 2006

Phil Lombardi, Clerk
U.S. DISTRICT COURT

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

1. MARILYNN G. VANDEVER and
2. CHARLES VANDEVER,

Plaintiffs,

v.

1. OSAGE NATION ENTERPRISE INC.)
and 2. OSAGE NATION,

Defendants.

Case No.:

06CV 380 TCK-SAJ

ATTORNEY LIEN CLAIMED
FOR THE FIRM
JURY TRIAL DEMANDED

COMPLAINT

COME NOW the Plaintiffs, Marilyn Vandever and Charles Vandever, by and through their attorney of record, David R. Blades of the firm Armstrong & Lowe, P.C., and file their Complaint in the above-styled action. In support of the same, Plaintiffs would respectfully show the Court as follows:

JURISDICTION

This Court has jurisdiction as a result of a federal question, namely, the violation of the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), 29 U.S.C. § 1161, *et seq.* and the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, *et seq.*

STATEMENT OF THE CASE

1. Plaintiffs are residents and citizens of Osage County, State of Oklahoma.
2. That at all relevant times, Defendants, Osage Nation Enterprises Inc., and Osage Nation were employers of the Plaintiff, Marilyn Vandever, with their principal places of business located in Oklahoma.
3. That at all relevant times Plaintiff, Marilyn Vandever, was employed by Defendants, she was entitled to health insurance benefits.

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4. That at all relevant times Charles Vandever was the husband of Marilyn Vandever and a covered individual entitled to health insurance benefits.
5. This action arises under the ERISA codified at 29 U.S.C. § 1001, *et seq.*
6. Plaintiffs were beneficiaries as defined by relevant federal law, specifically COBRA and ERISA, and were entitled to notice of their rights to elect continuation coverage of these health benefits.

FACTS

7. Plaintiff, Marilyn Vandever was employed with Defendants until on or about October 21, 2004.
8. The Defendants instituted a health insurance plan on or about October 1, 2004.
9. During Plaintiff's, Marilyn Vandever, employment, she began to suffer from medical problems, and made a claim with the health insurance plan after the effective date of the beginning of insurance coverage.
10. That the Plaintiff, Marilyn Vandever, accessed the plan to procure health insurance benefits.
11. That the Plaintiff, Marilyn Vandever, was admitted to the hospital for treatment of a serious health condition.
12. That when the Plaintiff, Marilyn Vandever, attempted to make a claim for health benefits, the Defendants informed the health insurance plan that she was not an employee and was therefore not entitled to coverage.

COUNT I

INTERFERENCE WITH PROTECTED RIGHTS IN VIOLATION OF 29 U.S.C. § 1001, *et seq.*

13. Plaintiffs incorporate paragraphs 1-12 above as if fully set herein and further allege as follows:

14. Defendants did discriminate against a participant for exercising her rights as set forth under ERISA.
15. That as a direct and proximate cause of the Defendants' action, the Plaintiff, Marilyn Vandever, has suffered harm.

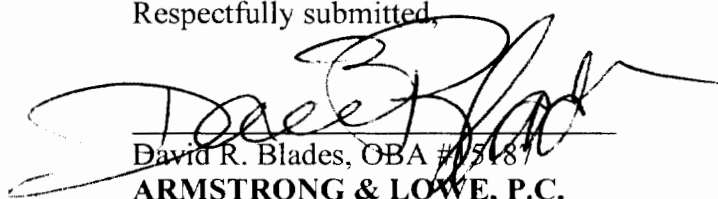
COUNT II

**FAILURE TO PROVIDE COBRA ELECTION NOTICES
IN VIOLATION OF 29 U.S.C. § 1161, et seq.**

16. Plaintiffs incorporate paragraphs 1-15 above as if fully set herein and further allege as follows:
17. Defendants failed to provide Plaintiffs with their respective COBRA election notice in violation of 29 U.S.C. § 1161, *et seq.* within the time frame established by COBRA.
18. Defendants' failure to abide by the express statutorily imposed duty to notify Plaintiffs of their rights under COBRA give rise to the penalty provisions codified in Section 502(c)(1) of ERISA for their failure to provide the requisite COBRA election notices.
19. Defendants are also liable for compensatory damages to compensate Plaintiffs for the prejudice and harm they endured as a result of the Defendants failure to provide COBRA notice in a timely manner.

WHEREFORE, premises considered, Plaintiffs pray for this Court to declare the conduct of Defendant s to be in violation of the Consolidated Omnibus Budget Reconciliation Act, 29 U.S.C. § 1161, *et seq.* and the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* and seek judgment against Defendants for general, consequential, liquidated, and punitive damages. Plaintiffs also pray for prejudgment interest; an assessment of damages to compensate for any tax consequences of this judgment; a reasonable attorney's fee; the costs of this action, to be taxed against Defendants; and an award of all other proper relief deemed just and equitable by the Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David R. Blades", is written over a horizontal line.

David R. Blades, OBA #115181

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