

COURT RULES HOSPITALS MAY FILE LIENS ON INJURY SETTLEMENTS DUE MEDICAID RECIPIENTS

In ***Gister v. American Family Mutual Insurance Company***, 2012 WI 86 (July 11, 2012), the Wisconsin Supreme Court held that charitable hospitals in Wisconsin may pursue payment for the medical care provided to Medicaid recipients by filing a lien against the settlement between the patient and the insurance company insuring the liability of the tortfeasor responsible for the patient's injuries.

In ***Gister***, the Court was required to harmonize the rights of Wisconsin charitable hospitals under Wisconsin Statute § 779.80 to file liens on the personal injury settlements obtained by an injured patient, with the prohibition under Wisconsin Medicaid law that hospitals cannot knowingly impose direct charges on Medicaid recipients in lieu of billing Medicaid. See Wis. Stat. § 49.49(3m)(a). The Gisters claimed that by filing statutory liens on their personal injury settlements, the hospital's actions were akin to direct billing of the patients in lieu of billing Medicaid. The Gisters filed a lawsuit seeking to invalidate the liens on the grounds they were illegal.

After harmonizing the complex state and federal legal framework of the Medicaid Program with the Wisconsin hospital lien statute, the Wisconsin Supreme Court concluded that the liens filed by the hospital were permissible and did not constitute unlawful direct billing of the Medicaid-eligible patients.

Significantly, in rejecting the Gisters' argument that the liens violated Wisconsin Medicaid laws, the Court also substantially limited the holding of the 1999 decision of the Wisconsin Court of Appeals in ***Dorr v. Sacred Heart Hospital***, 228 Wis. 2d 425, 597 N.W.2d 462 (Ct. App. 1999). The question in ***Dorr*** was whether a hospital could file a lien against a settlement between a patient and a tortfeasor when the patient was protected by statutory and contractual immunity because of the contract that existed between the hospital and the patient's Health Maintenance Organization. The Gisters argued that the court's decision in ***Dorr*** operated to invalidate the hospital's liens in their case because ***Dorr*** held that liens presuppose an underlying debt, and because Wisconsin Medicaid law precludes billing them directly, they owed no debt to the hospital for their medical care to support a lien.

The Wisconsin Supreme Court disagreed with the Gisters, holding that the facts in ***Dorr*** were legally and factually distinguishable because the Gisters were not insured by an HMO. The Court also expressly held that it disapproved of any interpretation of ***Dorr*** beyond its unique facts.

Attorneys Timothy W. Feeley and Sara J. MacCarthy of Hall, Render, Killian, Heath & Lyman, P.C. in Milwaukee litigated the case and were pleased with the Wisconsin Supreme Court's decision. They noted that, in addition to placing the burden for hospital expenses on tortfeasors as opposed to on Medicaid, the case should also prevent future misplaced reliance on ***Dorr*** as a basis for invalidating hospital liens. For further questions, contact Mr. Feeley (tfeeley@hallrender.com) or Ms. MacCarthy (smaccarthy@hallrender.com).