

LAWYER WHO DISBURSED INSURANCE SETTLEMENT PROCEEDS TO CLIENT IS NOT LIABLE TO CHARITABLE HOSPITAL FOR IMPAIRING ITS HOSPITAL LIEN

In *Watertown Regional Medical Center, Inc. v. General Casualty Insurance Company*, 2013AP2324 and 2013AP2511 (April 17, 2014) (recommended for publication), the Wisconsin Court of Appeals confronted the issue of who is liable for the impairment of a hospital lien when personal injury settlement proceeds are disbursed to the injured patient without first having been used to satisfy the hospital's lien. Specifically, the Court was called upon to determine whether an attorney who receives and then disburses settlement proceeds on a personal injury claim is a "person making any payment to [the] injured person . . . as compensation for the injuries sustained," such that the attorney would be statutorily liable to the hospital under Wisconsin's Hospital Lien Law (Wis. Stat. § 779.80). The Court held that the lawyer was not subject to liability under the statute because he was merely a conduit and not the source of the compensation. The insurer that tendered the settlement payment was, however, such a "person," and, therefore, the Court held, was subject to liability for bypassing the lien and not adhering to the Wisconsin law.

Under Wisconsin law, charitable hospitals have a lien for the costs of the medical care rendered to patients injured due to the negligence of another. As long as hospitals comply with the mandates governing the filing and the service of the Notice of Hospital Lien, they perfect their interests and are priority lienholders at the time of judgment or settlement between the negligent party and his or her insurer. As priority lienholders, the hospitals should receive payment directly from the liability insurers before any funds are disbursed to the injured patients. Problems arise, however, as they did in this case, when insurance companies entrust the settlement proceeds to the personal injury lawyers without contractual directives as to their distribution and confirmation of the hospital liens' satisfaction. Absent both, insurers, such as the insurance carrier here, run the risk of incurring liability for the unpaid liens and the expense of enforcing any indemnification agreements with the injured patients and their lawyers.

The underlying facts of *Watertown Regional Medical Center* were neither complex nor disputed. The patient was injured in a car accident, and after receiving treatment at the Medical Center for his injuries, he sued the negligent driver and his liability insurer. The Medical Center had perfected its interest in the patient's personal injury action by timely serving the patient, the negligent driver and the driver's insurer with its hospital lien. The personal injury action settled at mediation, and the liability insurer tendered the settlement check to the injured patient's lawyer, made payable to the lawyer's trust account. The lawyer then distributed the money to other creditors and the patient but never satisfied the hospital's lien or paid its bill. The Medical Center sued both the liability insurer and the patient's lawyer for impairing its lien, maintaining both were liable under the statute for disbursing proceeds subject to the lien. The insurer for the negligent party also cross-claimed against the patient's lawyer for indemnification. The circuit court entered judgment on the hospital's claim against the lawyer and the insurer but determined that the patient's lawyer must indemnify the insurer, and granted judgment to the insurer accordingly.

In consolidated appeals, the appellate court considered the language of the hospital lien statute that states the "person making any payment to [the] injured person . . . as compensation for the injuries sustained" is liable to the hospital if the lien is bypassed and payment is tendered directly to the injured person. The Court concluded that under the statute's language, the lawyer representing an injured patient is not a person making payment because the lawyer is merely "an intermediary that passes along a payment." The liability insurance carrier that sent the settlement payment to the lawyer as compensation for the patient's injuries, however, is such a "person" under the statute and, therefore, remained liable to the hospital for the amount of such lien. The appellate court also reversed the judgment in favor of the insurer on its indemnification claim against the patient's lawyer, concluding that under the terms of the negotiated settlement agreement, no basis existed to conclude that the lawyer was obligated to pay the hospital lien or to indemnify the insurer for its impairment. As such, the insurer remained liable for the lien and the costs of its enforcement.

The decision, while favorable to Wisconsin hospitals, serves as a sharp reminder to insurance carriers that to avoid liability under Wisconsin's Hospital Lien Law, they must satisfy hospital liens or be subject to their enforcement and the attendant costs.

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