



The Resource

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Failure to Withhold Settlement Funds Subject to a Medical Lien can Expose an Insurer to Treble Damages

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A court's decision to impose liability for committing an unfair or deceptive trade practice in a particular case may have wide-ranging implications—even when the amount in dispute in the case itself is relatively minor.

Such is the case in *Nash Hospitals, Inc. v. State Farm Mutual Automobile Insurance, Co.* In *Nash*, the North Carolina Court of Appeals affirmed a judgment that State Farm committed an unfair and deceptive trade practice in its handling of the disbursement of settlement proceeds subject to a medical lien. Although the matter arose over a \$757 hospital bill, how the case is resolved could have broader implications with how insurers handle personal injury settlements.

State Farm settles without notifying the hospital

Jessica Whitaker was involved in an automobile accident caused by another driver. She incurred medical expenses with Nash Hospitals and two other healthcare providers following the accident.

State Farm insured the driver responsible for Ms. Whitaker's accident. State Farm negotiated a settlement with Ms. Whitaker to pay a substantial portion of her medical expenses. Ms. Whitaker did not involve counsel in her negotiations with State Farm.

State Farm sent a check to Ms. Whitaker for the negotiated settlement amount. The check was jointly payable to Ms. Whitaker, Nash Hospitals, and the other medical providers. Ms. Whitaker was unable to negotiate the check herself because it was a joint check.

Pursuant to N.C. Gen. Stat. Sec. 44-50, Nash Hospitals possessed a lien on the settlement proceeds pro rata with the other lienholders. Under the statute, the lienholders' recovery was capped at 50% of the total settlement.

Nash Hospitals notified State Farm of its lien prior to the settlement. State Farm did not notify Nash Hospitals, however, that it had reached a settlement with Ms. Whitaker.

Nash Hospitals subsequently contacted State Farm to inquire about the status of the claim. Only then did State Farm disclose that it had reached a settlement with Ms. Whitaker and issued the joint check to her. State Farm took the position that the issuance of the joint check sufficiently protected the hospital's lien. State Farm told the hospital to contact Ms. Whitaker directly to resolve the issue.

After finding out about the settlement, Nash Hospitals advised State Farm that State Farm's failure to retain funds sufficient to satisfy its lien violated the lien statute. Nash Hospitals also pointed out that, by issuing a joint check to Ms. Whitaker that she was unable to cash, Ms. Whitaker would be forced to obtain an attorney and incur additional unnecessary expenses in order to work out how the settlements were to be divided between her and her medical providers.

Nash Hospitals sues for its shares of the settlement proceeds

State Farm did not respond to the letter. Nash Hospitals then sued State Farm for violating the medical lien statute. Nash Hospital's complaint also included an unfair and deceptive trade practices claim.

The trial court granted summary judgment to Nash Hospitals, finding that State Farm violated both the lien statute and N.C. Gen. Stat. § 75-1.1.

State Farm appealed and the North Carolina Court of Appeals affirmed as to State Farm's liability under both statutes. The appeals court remanded the case, however, to have the trial court recalculate the damages originally awarded.

The Court of Appeals determined that State Farm had a statutory duty to retain sufficient funds from the settlement to satisfy the lien claims and to distribute proceeds to the lienholders before disbursing to Ms. Whitaker.

With respect to the 75-1.1 claim, State Farm first challenged the hospital's standing to bring the claim. State Farm argued that Nash Hospital lacked privity with the insurer. The appeals court rejected that argument. The court reasoned that the hospital was a third-party beneficiary of the insurance contract and was in privity with State Farm upon notifying State Farm of its asserted lien.

The court also found that State Farm's failure to notify Nash Hospital of the settlement with Ms. Whitaker, and its direction that Nash Hospitals seek recovery from Ms. Whitaker herself, was both an unfair and a deceptive act.

The court was careful, however, to indicate that State Farm's violation of the North Carolina medical lien statutes did not make State Farm *per se* liable under 75-1.1. Rather, liability stemmed from State Farm's underlying conduct and "its failure to cure the violation absent litigation."

The Court of Appeals directed the trial court to enter summary judgment to Nash Hospitals for a mere \$971.07. Upon remand, it is possible that Nash Hospitals will also seek an attorney fee per N.C. Gen Stat. § 75-16.1.

Although it appears that State Farm will not incur a significant cash outlay in this matter, the case is likely to have broader implications to how the company handles claims settlement in order to avoid treble damages awards in the future. State Farm's counsel indicated at argument that the insurer routinely issued joint checks and had "the . . . parties agree . . . who's going to get what."

Presumably because of the importance of this case to the insurer's general practices, State Farm has sought discretionary review of the decision by the North Carolina Supreme Court (the Supreme Court has not yet decided whether to take up the case). Assuming the Court of Appeals' decision stands, State

Farm, and possibly other insurers, may need to end the practice of issuing joint checks. Those insurers apparently will also bear greater responsibility for determining how personal injury settlement proceeds should be disbursed.

About the Author

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