

Wisconsin Court of Appeals Holds that Plaintiff's Counsel not Liable for Hospital Lien

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Practice Area: Insurance Coverage and Risk Management

Watertown Regional Medical Hospital, Inc. v. General Casualty Insurance Company, 2014 WL 1499483 (Wis. Ct. App. April. 17, 2014)

In *Watertown Regional Medical Hospital, Inc. v. General Casualty Ins. Co.*, 2014 WL 1499483 (Wis. Ct. App. April 17, 2014), Watertown Regional Medical Hospital, Inc. ("Watertown Regional") filed a small claims action against General Casualty Insurance Company ("General Casualty") and Hupy and Abraham, S.C. ("Hupy") to recover an unsatisfied hospital lien. The lien arose out of a claim against a General Casualty insured; Hupy represented the injured party. The underlying action settled with General Casualty agreeing to pay \$30,000. Watertown Regional did not provide notice of its lien to Hupy. As a result, Hupy did not satisfy that lien out of the settlement proceeds. The trial court held that General Casualty and Hupy were liable pursuant to Wis. Stat. § 779.80 and, further, that Hupy had to indemnify General Casualty for the unsatisfied lien. The appellate court reversed.

The appellate court framed the issue as whether "an attorney or law firm who receives and then distributes a settlement payment on a personal injury claim is, under the lien statute's language, a 'person making any payment to [the] injured person ... as compensation for the injuries sustained'" in accordance with § 779.80(4). Noting that courts should apply statutory language as it is written, the court concluded that Hupy had not made a "payment ... as compensation." Instead, Hupy merely "passed along" funds paid by General Casualty as compensation to the injured party. The court noted that § 779.80(b)(3)(c) and (d) requires that a hospital provide notice of the lien to the injured person and the "person alleged to be liable" – and that person's insurer – but no similar notice is required to the injured party's attorney.

The appellate court also rejected General Casualty's argument that Hupy had a duty to indemnify General Casualty. First, the court noted that there was no contractual duty because while the settlement agreement at issue obligated the injured party to indemnify General Casualty for any liens, Hupy was not a party to the settlement agreement. At most, Hupy consented to the agreement, as required by Wis. Stat. § 757.38, but the court held that Hupy's consent was simply an acknowledgement of the settlement as the injured party's counsel.

The court also held that indemnity could not be based on Hupy's alleged negligence because Wisconsin law generally provides that Hupy has no liability to third parties in the course of representing its client. Lastly, the court opined that there could not be a claim for equitable estoppel because General Casualty could not contend that when it agreed to pay the settlement amount, it had relied on Hupy's subsequent actions in connection with the settlement documents.

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