

ATTORNEY'S ALLOCATION OF TORT SETTLEMENT VIOLATES TERMS OF PLAN: JUDGE RECONSIDERS DECISION, RULES IN FAVOR OF ERISA PLAN



Diamond Crystal Brands, Inc. v. Wallace, 531 F.Supp.2d 1366 (N.D. Ga. 2008)

By Ryan L. Woody

MWL attorney, Ryan Woody, arguing on behalf of the Diamond Crystal Brands, Inc.'s self-funded ERISA Plan, recently won a significant victory for ERISA practitioners in Georgia. The case arose due to negligent medical care which resulted in the death of Deborah Hayes. Prior to her death, her employer, Diamond Crystal provided \$261,863.58 in medical benefits related to the medical malpractice. Following her death, the Estate of Deborah Hayes and her daughter Tamara Hayes retained Attorney Mike Regas to pursue a wrongful claim against the hospital. The plaintiffs pursued their claim in Georgia state court and ultimately settled both claims for \$900,000, of which Attorney Regas allocated \$837,000 to Tamara Hayes and \$63,000 to the Estate of Deborah Hayes. After the settlement, Diamond Crystal sought reimbursement in the amount of \$261,863.58 which it had paid in medical bills. The plaintiffs refused to reimburse the Plan, arguing that the Plan could not seek reimbursement from the \$837,000 allocated to Tamara Hayes. The Plan filed suit in federal district court seeking an injunction over the disputed funds.



After initially granting an ex-parte Temporary Restraining Order in favor of the Plan, the court held a preliminary injunction hearing. At the hearing, counsel for the Estate confirmed that he allocated the maximum amount allowed under Georgia law to Deborah's daughter Tamara and the remainder was awarded to the Estate. This is significant, because under Georgia's wrongful death statute, the claim for medical bills belongs to the Estate. As such, the attorney felt that the Plan could only subrogate or pursue reimbursement for monies allocated to the Estate. To the contrary, MWL argued (1) the initial allocation by the attorney violated the terms of the Plan by allowing monies to be allocated away from the Estate and toward Tamara Hayes, and (2) despite the allocation, the Plan could still seek reimbursement from Tamara Hayes because the portion of Georgia's wrongful death



statute that conflicted with the Plan's reimbursement provision, was preempted by ERISA. Following the preliminary injunction hearing, the court requested additional briefing on the ERISA preemption question. Another preliminary issue that should be mentioned was the fact that the settlement proceeds had been returned to the hospital's insurer after the Plan filed suit and after the court issued a temporary restraining order. As such, the defendants argued that the court lacked jurisdiction because the funds were not in their possession.



On January 22, 2008, the court issued its decision on the Plan's motion for a preliminary injunction. First, it found that it was not deprived of jurisdiction despite the fact that the funds had been returned to the insurer. It wrote:

Prior to the preliminary injunction hearing, Tanner Medical issued a settlement check to Defendants, which was received by Defendant Houck, Ilardi & Regal [sic] as trustee of the settlement funds while the temporary restraining order was in place. The fact that Defendant Houck, Ilardi & Regas returned that settlement check to Tanner Medical in order to have it issue two separate settlement checks does not render the fund unidentifiable or outside the possession and control of Defendants for purposes of §1132(a)(3). The injunction would also be effective against Tanner Medical as "persons who are in active concert or participation" with Defendants. Diamond Crystal Brands, Inc. v. Wallace, 531 F.Supp.2d 1366, 1371-72 (N.D. Ga. 2008).

Second, the court held that the Plan was entitled to a preliminary injunction over the \$63,000 that was allocated to the Estate, but not over the portion allocated to Tamara Hayes. It reasoned:



The wrongful death claim in this case belongs to Tamara Hayes, not the Estate of Deborah Hayes. See Mclnnis, 21 F.3d at 590; Thomas, 210 F.Supp.2d at 1300-01. And like the wrongful death claim in Liberty, Plan 501 never had a right to reimbursement under the Plan to any of the settlement proceeds recovered on behalf of Tamara Hayes’s wrongful death claim. Liberty, 984 F.2d at 1388-89. Accordingly, Georgia’s wrongful death statute does not sufficiently “relate to” the Plan within the meaning of ERISA, and the Georgia statute is not preempted by ERISA. Id. at 1373.

The court explained that it believed the Plan could have intervened into the state court tort suit or filed for an injunction prohibiting the Estate from allocating settlement proceeds in the first place and felt as if its hands were tied to revisit the allocation issue. However, MWL disagreed with the court’s rationale that it could not revisit the allocation issue. In fact, just shortly after the court decision, the 11th Circuit did just that in *Admin Comm. for the Wal-Mart Stores, Inc. Assocs.’ Health & Welfare Plan v. Horton*, 513 F.3d 1223, 1225 (11th Cir. 2008) (re-allocating proceeds of a minor settlement). Accordingly, Diamond Crystal moved for reconsideration of the court’s decision.

In a rare move, the court granted Diamond Crystal’s motion for reconsideration. *Diamond Crystal Brands, Inc. v. Wallace*, 531 F.Supp.2d 1366, 2008 WL 2608158 (N.D. Ga., May 15, 2008). Acknowledging its ability to revisit the issue of allocation based on the *Horton* decision, the court held:

The language of the Plan requires that the Estate reimburse the Plan out of any settlement or tort judgement [sic] to the full extent of the benefits paid by the Plan. The Estate agrees to hold the funds received by it or its legal representative in trust for the Plan and to grant a first lien on such proceeds. The Plan language also prohibits the Estate from doing “anything which may have the effect of prejudicing any of the foregoing rights, including but not limited ... arranging for others to receive proceeds of the judgment, award, settlement, covenant, release or other payment; or releasing any claim in whole or part without reasonable compensation therefore.” Here, the Estate’s attorney structured the settlement with the third party tortfeasor in a manner that prejudiced the rights of the Plan by arranging for Tamara Hayes to recover the vast majority of the settlement funds - \$836,536.00 of the total \$900,000.00 settlement. The Estate’s actions in structuring the settlement to minimize its reimbursement to the Plan for the medical expenses of Deborah Hayes violates the terms of Plan 501. Id. at p.3.

This decision is a significant victory, because it means that federal courts have the power to revisit improper settlement allocations after the fact. In particular, eager attorneys will not be allowed to permit the proceeds of a wrongful death claim to be allocated to the beneficiaries at the expense of the Estate. The case continues and may be appealed by the defendants. Many thanks go out to Ann Cook, who’s testimony at the preliminary injunction hearing was invaluable.



Should you have any questions about this case or wish to obtain a copy of the decisions, please feel free to contact Attorney Ryan Woody at 262-673-7850 or at rwoody@mwl-law.com.