

ATTORNEY RYAN WOODY WINS SUMMARY JUDGMENT IN WRONGFUL DEATH CASE:

Court Finds Estate Misallocated Funds in an Attempt to Avoid Health Plan's Lien

By Ryan L. Woody



They say good things come to those who wait. After two published decisions and several years of litigation, Chief Judge Jack Camp of the Northern District of Georgia ruled in favor of the ERISA plan in *Diamond Crystal Brands, Inc. v. Wallis, et. al.*, 2010 WL 1525536 (Ga. 2010). The case was originally filed in 2007 and includes a long history that began with a Temporary Restraining Order (“TRO”) and featured published decisions on the Court’s entry of a preliminary injunction and on its subsequent order on a motion for reconsideration. The facts are rather straightforward. The case arose after Deborah Hayes went into the hospital for routine back surgery. Tragically, however, she died as a result of the hospital’s negligence. Her employer’s ERISA-covered health Plan paid significant benefits related to the hospital’s attempts to resuscitate and save her life following the medical negligence. After Ms. Hayes’s death, her surviving daughter, Tamara Hayes brought a wrongful death and survival action on behalf of herself and the estate against the physicians. The case resulted in a settlement of \$900,000, of which Tamara Hayes’ attorney allocated the maximum allowable under Georgia law to her wrongful death claim. The little that remained was allocated to the estate’s claim for medical bills. Unfortunately, this is a quite common allocation scenario in wrongful death cases around the country. Predictably, the plaintiffs’ attorney told the Plan that it was not entitled to reimbursement from anything allocated to the wrongful death beneficiary.



It is important to note that the plaintiffs’ settlement occurred secretly despite the Plan administrator’s request to be involved in any settlement negotiations. After finding out about the settlement, the health Plan objected to the proposed allocation and insisted that it had a right to full reimbursement from the total settlement proceeds. The plaintiffs’ attorney refused and offered the Plan only a fraction of the amount allocated to the estate as reduced by his 40% attorneys’ fees and costs. After it was clear that the estate’s attorney had no intention of offering the Plan any of the funds that he

unilaterally allocated to the wrongful death claim the Plan filed suit to prevent dissipation of the funds and seeking reimbursement of its full lien amount. The Court entered an ex-parte TRO on the Plan’s behalf in order to preserve the funds.

The Court then ordered a preliminary injunction hearing be held at which testimony would be heard. At the hearing the plaintiffs’ attorney testified as to how he allocated the maximum amount allowed to the wrongful death claim and that whatever remained was allocated to the estate’s claim. The plaintiffs’ attorney defended his decision arguing that he offered the Plan the opportunity to intervene into the state court action and pay his costs associated with the case, but the Plan refused his offer. He argued that the Plan had the opportunity to intervene but refused and therefore could not now challenge the allocation. In addition, the plaintiffs’ attorney informed the Court that he no longer had the settlement funds because he had returned the check to the insurance company, which, therefore, meant the Court had no subject matter jurisdiction under ERISA.

The Trial Court was not pleased by the plaintiffs’ tactics. The Court ruled that it had jurisdiction over the case despite the fact that the plaintiffs’ attorney returned the settlement check to the insurance company even while under the Court’s TRO. It held that:

The fact that funds are held by a third party, such as Hudson, rather than the beneficiary, does not defeat a claim under Section 502(a)93). Horton, 513 F.3d at 1229 (“[T]he most important consideration is not the identity of the defendant, but rather that the settlement

proceeds are still intact, and thus constitute an identifiable res that can be restored to its rightful recipient.”).

After finding that the Court had jurisdiction because the claim was, in fact, equitable in nature, the Court turned to the merits. The issue was whether the Plan could recover its lien from portions of the settlement that had been unilaterally allocated to Tamara Hayes’ wrongful death claim. The Plan argued that the estate of Deborah Hayes was bound by the Plan and that there had been a misallocation of funds away from the estate’s claim and to the wrongful death claim. Conversely, Tamara Hayes argued that she was not bound by the Plan and that the funds belonged to her individually. However, the Court recognized that Tamara Hayes was not only acting in her individual capacity when she made the settlement allocation, but that she was also acting as the administrator of her mother’s estate. As such, the moment the \$900,000 settlement fund was identified and before the purported allocation, the Plan was entitled to a first lien. The Court wrote:



Moreover, after agreeing to settle the state court action for \$900,000.00, Tamara Hayes in her capacity as Temporary Administrator of the Estate may not avoid the subrogation provision contained in the plan document and the equitable lien it creates by structuring the Settlement Agreement and Release to allocate the maximum amount allowable under the law to her and then seeking to appoint a new Administrator of the Estate to execute the Settlement Agreement and Release on behalf of the Estate. See generally Wright v. Aetna Life Ins. Co., 110 F.3d 762, 765, n.3 (11th Cir. 1997) (“Since Aetna was not a party to the settlement agreement, that agreement’s purported allocation of damages does not govern the district court’s determination. To hold otherwise would allow [the covered individual] and the [tortfeasor] to control Aetna’s reimbursement rights.”)

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Finally, the plan document also prohibits the Estate from doing “anything which may have the effect of prejudicing any of the foregoing rights, including but not limited to...arranging for others to receive proceeds of any judgment, award, settlement, covenant, release or other payment: or releasing any claim in whole or part without reasonable compensation therefore.” (Plan Document at p.44.) Defendant Tamara Hayes, while acting as the Temporary Administrator of the Estate, and in conjunction with the attorneys representing the Estate, structured the settlement with the third party tortfeasor by arranging for her to recover the vast majority of the settlement funds, \$836,536.00 of the total \$900,000.00 settlement. As her attorney acknowledged, he allocated the full amount allowable under Georgia law to her individual claim and then allocated whatever amount was left to the Estate. (Prelim. Inj. Hr’g Tr. 38-40.) The Estate’s actions in structuring the settlement to minimize its reimbursement to the Plan for the medical expenses of Deborah Hayes while maximizing the recovery to Defendant Tamara Hayes violates the express terms of Plan 501.



The Court went on to hold that the Plan was entitled to full reimbursement and rejected the defendant’s argument that the Make-Whole Doctrine applied. This is a major victory for ERISA Plans subrogating in wrongful death cases both in Georgia and throughout the country. The decision recognizes the inherent conflict of interest when a wrongful death beneficiary also represents the estate’s claim for medical bills. It opens up a new avenue for recovery in those cases involving both wrongful death and an estate’s claim for medical bills. By

arguing that there was a prior misallocation, ERISA Plans can avoid the thorny issue of preemption of state wrongful death statutes. Instead, the Plans can simply request that the federal court properly allocate the settlement proceeds subject to the Plan’s lien.

There is one caveat, however. Subrogating ERISA Plans MUST have proper language in order to challenge this allocation. In this case, the Plan had language that prevented misallocations by the estate to other parties. This language made a critical difference in this case and allowed the federal judge to find that a violation had occurred such that the court could properly reallocate the settlement funds.



As a note to our readers, this case has been appealed by the defendants to the 11th Circuit Court of Appeals in Atlanta. Briefing has been scheduled and MWL will update this story once an appellate decision is issued.

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