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Settlin' with Memphis, Do I Really Have to Pay the Med?

By: Carolyn Harder and Breana Mackey

When thinking about Memphis, Tennessee, Blues, Beale Street, and BBQ immediately come to mind. Hospital Liens asserted by Tennessee medical facilities, on the other hand, do not.

Tennessee and Arkansas laws permit a treating hospital to assert a lien for costs of medical care for any claim the person may have against a negligent third party. (separately, a "Hospital Lien Act" or the "HLA". See Ark. Code Ann. §18-46-101 et. seq; Tenn. Code Ann. §29-22-101 et. seq.)

However, unlike Arkansas's HLA, Tennessee's HLA allows the hospital lien-holders to maintain a direct cause of action against settling parties who fail to notify and/or include the Tennessee hospital in the settlement— even if no lien was filed in Arkansas. Lack of notice to Tennessee lien holders is known in Tennessee as "impairing" the lien which may result in consequences for the impairing party, such as consequential damages and attorneys' fees.

Also unlike Arkansas, Tennessee's law permits recovery against wrongful death settlement proceeds.

To Pay The Med...

State Farm Mutual Auto Insurance Company v. Shelby County Health Care Corporation, 2011 U.S. Dist. LEXIS 130632 (E.D. Ark. 2011).

The District Court for the Eastern District of Arkansas addressed whether an insurer, State Farm, impaired The Med's liens when it settled with two Arkansans who were treated by The Med., when The Med was not notified of the settlement.

The Med filed a hospital lien for each Arkansan in Tennessee. The Med mailed the liens to the injured persons. State Farm admitted that prior to settling the claims, it was provided with copies of the Arkansans' medical bills. Even with the bills, State Farm negotiated a settlement, and issued settlement checks to the Arkansans. After learning of the settlements, The Med amended both liens in Tennessee to identify State Farm as a party liable for medical costs.

State Farm sought a declaration from the Court it was not liable to The Med because it was not given notice of The Med's liens and because the liens were not filed in accordance with Arkansas' HLA. The Med argued State Farm impaired its liens in violation of Tennessee's HLA because The Med was not notified of the settlement between State Farm and the injured parties.

First, the Court, applying Arkansas's choice-of-law principles for tort actions, held Tennessee Law should apply because Tennessee had the most significant relationship to the parties and the issues, even though the accidents occurred in Arkansas.

The Court, then applying Tennessee's HLA, held The Med's liens were valid and properly perfected even though they were not filed in Arkansas (as required by Arkansas' Act) because the liens were properly filed and notice properly given in accordance with Tennessee's HLA. The Court also found State Farm had constructive notice of the liens when they were filed with the court in Tennessee.

The Court ultimately determined State Farm had "impaired" The Med's lien in violation of Tennessee's HLA. The Med was awarded one-third of the

settlement paid to each party by State Farm, plus consequential damages and discretionary costs.

Or, Not To Pay The Med...

Shelby County Health Care Corp. v. Southern Farm Bureau Cas. Ins. Co., 798 F.3d 686, 687, 2015 U.S. App. LEXIS 14262, *2 (8th Cir. Ark. 2015).

Arkansan, Mr. Smiley, died while being treated for accident-related injuries at The Med. Approximately one month after Smiley's death, The Med filed a lien in Tennessee.

Farm Bureau, the negligent party's insurer, settled the Estate's potential **personal injury** claims. An Arkansas Probate Court authorized the Estate to accept the settlement after noting that no medical liens had been filed in the Arkansas county where Smiley resided before his death, and the "purported medical lien filed in the State of Tennessee by [The Med] ... is not enforceable and is void in Arkansas." The settlement proceeded without payment of The Med's lien.

The Med discovered the settlement and filed suit against Farm Bureau and the administrator of the Estate, alleging the defendants improperly settled without payment of The Med's lien.

Here, the District Court granted summary judgment to the Defendants. The reasoning of the court was: 1) Arkansas law applied; and 2) The Med never obtained a judgment to be enforced in Arkansas or filed a lien in Arkansas. Appeal to the 8th Circuit ensued.

The 8th Circuit vacated the District Court's order for summary judgment and remanded the case. The Court held the District Court mistakenly construed The Med's Complaint as asserting a claim to enforce a hospital lien rather than as "an action at law for damages on account of ... impairment" of that lien. The Court went on to explain that in "[i]gnoring this critical distinction, the district court failed to identify the elements of a hospital lien impairment action ..." and "viewed as a claim for damages for lien impairment, significant issues remain unaddressed...."

Shelby County Health Care Corp. v. Southern Farm Bureau Cas. Ins. Co., 2015 U.S. Dist. LEXIS 141731, *1 (E.D. Ark. Oct. 19, 2015).

In a decision published in mid-October, 2015, the District Court responded to the 8th Circuit's ruling. On remand, the District Court refused to consider The Med's argument that the settlement involved **all claims** – not just wrongful death claims – resulting in an impairment of its lien because The Med did not raise this argument during the probate proceedings.

The Med then argued that it was not a party to or informed of the probate proceedings. The Court explained the high frequency with which The Med treats Arkansas patients shows The Med should have intervened. Also, since the probate court found the lien was not valid in Arkansas, no action for impairment could be sustained.

As for the choice of law, the Court held the the *lex loci delicti* rule and the *Leflar Factors* mandate Arkansas law applies to show Arkansas maintains a compelling interest in the resolution of its cases and protecting wrongful death proceeds. To maintain a valid cause of action for impairment, The Med was required to either convert the lien to a judgment to be filed in Arkansas, or it was required to perfect its lien pursuant to Arkansas law. Here, The Med did neither.

The Court also stated The Med's reliance on the 2011 opinion was misplaced because the 2011 opinion "involved personal injury survival claims, not wrongful death". As to the this point, the Court noted the difference in Arkansas' law exempting wrongful death settlement proceeds from hospital liens and Tennessee's law permitting liens to attach to such recovery.

It is too soon to tell whether The Med will file another appeal.

That is the Question – Without a Firm Answer

The Rules from the Arkansas District Courts:

(1) If the case involves an Arkansan who was treated at The Med and survived, then Tennessee's law trumps Arkansas law and The Med's lien must be paid even if it was not filed in accordance with Arkansas's HLA.

(2) If the injured Arkansan treated by The Med died as a result of his/her injuries thereby giving rise to a wrongful death action, then Arkansas law trumps Tennessee Law and The Med's lien is not valid unless it is filed in accordance with Arkansas' HLA and even then The Med's lien probably does not have to be

paid out of the proceeds for a wrongful death settlement.

Alas, if we were to simply accept these rules, we must ignore the glaring issues with the opinions setting forth the rules. Namely, we must ignore the fact that in analyzing Arkansas' choice of law rules for torts both courts reached completely different results although even though both involved the same relevant facts for analysis purposes.

Thus, the best solution is to proceed with caution or your settlement may be tainted by The Tennessee Med-Lien Blues.

The thanks of the AADC go out to Breana Mackey and Carolyn Harder of The Barber Law Firm for drafting this article.



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