

OREGON LAW UPDATE

Plaintiff's Feet Held to the Fire in a Settlement Agreement Despite Ignorance of a Medicare Lien

From the desk of Jeff Eberhard: Insurers should be aware that courts will hold a plaintiff to a settlement agreement, even when the plaintiff claims ignorance of existing liens against recovery. Moreover, a court upheld a settlement agreement which holds plaintiff liable for all outstanding liens, including Medicare.

Claims Pointer: In this case, the Oregon Court of Appeals held that there was objective evidence that the parties entered into a settlement agreement in which the plaintiff would be held liable for all liens against the defendant, including Medicare liens, in spite of the plaintiff's claims that she was unaware of the lien. In other words, the plaintiff who agrees to a settlement will be held to the agreement even if she is unaware of outstanding liens which were unaccounted for in the settlement.

case in point...

Rhoades v. Beck, in the Oregon Court of Appeals, 260 Or.App. 569 (2014).

Plaintiff, Vernile Rhoades ("Vernile"), appealed a general judgment dismissing her action to recover for injuries sustained in a motor vehicle accident. Prior to trial, the parties entered into an oral settlement agreement, where the defendant, Lorraine Beck ("Beck"), agreed to pay \$15,000 to Vernile, \$5,500 to Vernile's husband and any PIP liens asserted by their automobile insurance carrier and from all other liens to the extent they exist.

This verbal settlement agreement was confirmed in a subsequent letter sent by defense counsel. After reaching the agreement, Vernile received a notice from Medicare, asserting a lien for \$22,970.62 against her recovery. Vernile refused to sign the settlement agreement unless Medicare waived its lien, but Beck argued the agreement was not dependent on actions by Medicare. Beck filed a motion ordering Vernile to sign the settlement agreement and the trial court granted the motion. After Vernile refused to sign the settlement agreement, the trial court dismissed her case and she appealed.

On appeal, Vernile argued that the parties were not aware of the Medicare lien, and reached no agreement as to who would pay for it. Vernile further argued that Medicare liability was a material term which remained uncertain, meaning the parties never formed a binding agreement. Vernile's counsel admitted he was aware Medicare had paid amounts for her medical treatment related to the accident but maintained no lien had been sent prior to settlement negotiations. Beck argued there was no dispute, the parties agreed that Beck would pay \$15,000 to Vernile, \$5,500 to her husband and satisfy Vernile's PIP lien in exchange for a full and

final release of any and all claims against Beck. The fact that Vernile was unaware of the Medicare lien was not a basis upon which to find that the parties did not enter into a binding agreement to settle litigation, Beck argued.

The Oregon Court of Appeals affirmed the trial court and held the objective evidence showed a settlement agreement was reached, despite the alleged ignorance of the Medicare lien.

In reaching that conclusion, the Court explained that Oregon law provides that the existence of the terms of a contract, such as a settlement agreement, are determined by objective evidence of the parties' communications and actions. Vernile's subjective belief that no settlement was reached simply because the parties did not address the Medicare lien did not preclude the trial court's ruling that the objective evidence showed the existence of an agreement. The Court also noted it would not set aside settlement agreement in a personal injury matter merely because in hindsight, it was obtained too soon and for too little.



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