
Treble Damages Upheld: Insurance Company's Issuance of Settlement Check to Pro Se Claimant Violates Lien Statute and Constitutes Unfair and Deceptive Trade Practice Per North Carolina Court of Appeals

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(Co-written by Molly M. Martinson)

On August 1, 2017, the North Carolina Court of Appeals issued a ruling in *Nash Hospitals, Inc. v. State Farm Mutual Automobile Insurance Co.*, holding that an insurance company may not issue a settlement check directly to a *pro se* personal injury claimant without first satisfying any valid medical liens held on the funds. This practice is now prohibited even if the check is made payable to both the claimant and the valid lienholders.

In *Nash Hospitals*, the claimant incurred a \$757 bill at Nash Hospitals following a car accident. Nash Hospitals properly perfected a lien on the claimant's settlement funds pursuant to North Carolina's medical lien statutes, N.C. Gen. Stat. §§ 44-49 and 44-50. State Farm subsequently reached a settlement agreement with the *pro se* claimant. State Farm neither paid nor notified Nash Hospitals; instead, it issued a settlement check directly to the *pro se* claimant, made payable to both the claimant and Nash Hospitals.

State Farm urged the Court that the issuance of a multi-party settlement check protects the lienholder's interest because the claimant cannot cash the check without the authorization of the lienholders. Therefore, State Farm argued, the claimant would have to both notify the lienholder and satisfy the lien prior to receiving her portion of the settlement funds. The Court strongly disagreed with State Farm's position, holding that the practice of issuing a multi-party check directly to the *pro se* claimant not only violates the medical lien statutes, but also constitutes an unfair and deceptive trade practice, triggering an award of treble damages to the plaintiff lienholder.

The *Nash Hospitals* case confirms (again) that the responsibility of satisfying a *pro se* claimant's medical lien cannot be shifted to the claimant. If a valid lien exists, then the insurance company must first satisfy the lien before issuing the remaining payment to the *pro se* claimant. State Farm admitted that it had notice of the lien. Prior North Carolina cases suggest this responsibility is only triggered if the insurance company receives notice of the lien before the settlement

funds are issued to the *pro se* claimant. Failure to follow these steps when settling a claim with *pro se* claimant will expose the company to treble damages under North Carolina's Unfair or Deceptive Trade Practices Act.

Practical ramifications

The insurer may be ordered to pay treble damages (i.e., three-times the amount of the lien allowed under the statute) and the court has discretion to award attorney's fees for willful violations or if the insurance company was unwarranted in refusing to resolve the matter after notification from the lienholder.

Bonus tip

In North Carolina, medical liens cannot exceed 50% of the damages recovered. The Nash Hospital opinion confirms that if the lien exceeds 50%, then the claimant is entitled to 50% and the lienholders are entitled to a *pro rata* share of the remaining 50% of the funds.

Contact Information

If you would like to discuss this case further, or need help evaluating the propriety of your company's practices with respect to the handling of *pro se* personal injury claims, please contact Dana Hoffman at (919) 861-5082.

See also:

CLIENT ALERT: Treble Damages Upheld: Insurance Company's Issuance of Settlement Check to Pro Se Claimant Violates Lien Statute and Constitutes Unfair and Deceptive Trade Practice Per North Carolina Court of Appeals

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