

Two Texas Cases That You Need To Know When You Settle Lawsuits Or Claims

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- *McAllen Hospitals v. State Farm Mut. Ins. Co. of Tex.*, 433 S.W.3d 535 (Tex. May 16, 2014).
- *Viewpoint Bank v. Allied Prop. & Cas. Ins. Co.*, 439 S.W.3d 626 (Tex. App. - Dallas 2014, pet. filed).

Type Of Lien In *McAllen Hospitals*: Statutory Hospital Lien

- Provides hospital additional method for securing payment for treatment to accident victims.
- Hospital has lien on cause of action of accident victim (and related settlement or judgment) for cost of treatment if victim admitted within 72 hours of accident.
- Hospital must comply with notice and recording requirements to perfect lien.

Notice and Filing Requirements Ensure that All Parties Know About Lien

To secure the lien, health care provider must:

- 1.** Provide notice to the injured individual that lien was filed within 5 days after receiving notice that lien has been recorded by county; and
- 2.** File written notice of lien with county clerk of county in which services were provided, before money is paid to injured person.

(Tex. Prop. Code Section 55.005)

Facts of *McAllen Hospitals*

- 2 people injured in a car wreck caused by a State Farm insured;
- Each injured person received medical treatment from McAllen Medical Center;
- Hospital perfected a statutory lien for medical bills;
- State Farm, aware of lien, settled with injured persons;
- Releases signed and executed, checks delivered to injured persons payable to injured person and hospital as co-payees;
- Injured persons only endorsed and cashed checks, didn't pay McAllen Medical Center; and
- McAllen Medical Center sued State Farm for amount of liens.

Did Delivery of Settlement Check to Claimant Discharge the Lien?

One of these things must happen to release the lien (Tex. Prop. Code 55.007):

1. The charges of the provider were paid in full before the execution and delivery of the release *(NO)*;
2. The provider is a party to the release *(NO)*; or
3. The charges were paid before the execution and delivery of the release to the extent of any full and true consideration paid to the injured individual by or on behalf of the other parties to the release *(??)*.
 - **State Farm:** By issuing to claimant and hospital as co-payees, made good faith effort to pay “to extent of full and true consideration paid.”
 - **Hospital:**

Analysis under the UCC

- Since State Farm wrote checks to satisfy its underlying obligations, the Supreme Court applied the UCC to resolve the issue.
- Supreme Court overruled, in part, Dallas Court of Appeals holding in *Benchmark Bank v. State Farm*, 893 S.W.2d 649 (Tex. App. – Dallas 1994, no writ).
 - Agreed with *Benchmark* that delivery of check to one co-payee is constructive delivery to the other co-payee.
 - Disagreed with *Benchmark's* holding that obligation is discharged after check is honored and paid even if wrongly paid.

Why Did the Court Disagree with *Benchmark*?

- Under UCC, check is paid to the extent payment is made by a party obliged to pay the check *and to a person entitled to enforce the check.* (UCC 3.602(a))
- When check is issued to two non-alternative co-payees, one co-payee acting alone *is not entitled to enforce the check.* (UCC 3.110(d))
- Check to co-payees is payable to all and may be negotiated, discharged or enforced *only by all of them.*
- Followed Massachusetts Supreme Court reasoning (check jointly payable to insured and vehicle lienholder).

Remedies

- Hospital *could have* sued payor bank, but that did not affect State Farm's obligations under the check.
- Under Section 55.007, when lien is not properly paid out of proceeds of patient's settlement, the release is invalid, cause of action is revived, and hospital retains lien on cause of action.
- ***But***: this does not mean hospital has right to recover from payor (insurer). So...does it?

Supreme Court Punted (Sort of)

- Court held issue of whether hospital could enforce “revived” lien against State Farm was not preserved for appeal, and thus would not decide the issue.
- Court noted that Hospital Lien Statute expressly specifies the remedy for failure to properly satisfy a hospital lien (cause of action is not released) but does not create cause of action against third parties (like an insurer) to enforce the lien.
- Calls into question holding in *Baylor Univ. Med. Center v. Borders*, 581 S.W.2d 731 (Tex. App. – Dallas 1979, writ ref’d n.r.e.) which held statute gives hospital such a claim against third parties.

The Takeaway from *McAllen Hospitals*

- Writing one check jointly to claimant and plaintiff's counsel and entrusting counsel to pay health care liens will not suffice to discharge lien.
- Merely including indemnity language, in which claimant guarantees payment and indemnifies insurer, does not suffice to discharge lien (and won't help if the claimant has spent the money and is judgment-proof).
- Court specifically noted that State Farm delivered the checks without notifying hospital. Would the result change if State Farm had notified the hospital?

Along comes Viewpoint Bank

- Hurricane Ike property damage claim;
- Optimum owned property, Viewpoint Bank held mortgage *and was loss payee under policy*;
- Allied, the insurer, paid the claim by tendering (to Optimum) checks jointly payable to Optimum and Viewpoint.
- Optimum . . .

Viewpoint Sued Allied

- Trial court granted summary judgment in favor of Allied, relying on *Benchmark Bank's* holding that was overruled in *McAllen Hospitals*, and denied Viewpoint's summary judgment motion.
- Dallas court of appeals, citing *McAllen Hospitals*, held summary judgment in favor of Allied was in error. Allied has filed petition for review.
- Court rejected Allied's argument that this rule should be applied only prospectively, but Allied raised this issue again in petition for review.

Viewpoint Claimed it was Entitled to Summary Judgment under UCC

- Viewpoint claimed it should recover against Allied under the UCC as a matter of law.
- Different situation than *McAllen Hospitals* because Viewpoint was a loss payee under the insurance policy, but that is not basis of holding.
- Court held that under UCC, Viewpoint was entitled to enforce check against Allied. Allied's remedy was against bank that improperly deposited/paid the checks. *Allied has filed petition for review.
- Court followed precedent from other states Supreme Court relied on in *McAllen Hospitals*.

Safest Practice after McAllen Hospitals and Viewpoint Bank

- Find out during investigation of claim or suit if there is a hospital or other lien (such as landlord's lien, child support lien) via discovery, property records, UCC-1 filings. Be aware of loss payees under policy.
- Reach agreement prior to settlement as to how much goes to lienholder/loss payee, and make separate checks part of settlement; or
- Condition settlement on lien-holder/loss payee signing release that allows for payment of check to plaintiff's attorney and plaintiff, with indemnity language that plaintiff promises to pay lien-holder/loss payee and will indemnify insurer.

Food for Thought

- Practically speaking, how often will one co-payee cash settlement check and fail to pay other co-payee? Consider cost of changing long-standing practices in paying settlements v. risk. Also – there should still be remedy against the bank.
- What if mortgagee's only interest is in ensuring that property is repaired with proceeds, but expects no payment?
- What happens if insurer settles a property damage claim in suit or after initial claim payment, where bad faith claims are asserted? Is insurer required to put the mortgagee on check?
- What about auto wreck with personal injury and property damage claim where plaintiff wants to characterize settlement as only property damage?

More Food for Thought

- If insurer holds onto the check or waits to ask for a check to be cut given unresolved co-payee situation, does insurer risk violating the Texas Prompt Pay Statute?
- Tex. Ins. Code Section 542.058(a): “if an insurer after receiving all *items...reasonably requested and required under Section 542.055*, delays payment of the claim..., the insurer shall pay damages.”