

NO. 42276-0-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MARIE DOCTER and the law firm of BRIGGS & BRIGGS,

Appellants,

v.

UNITED FINANCIAL CASUALTY COMPANY,

Respondent.

BRIEF OF RESPONDENT

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A. INTRODUCTION

Respondent United Financial Casualty Company (“United”) prevailed in the trial court on a summary judgment motion regarding the reimbursement to United for \$67,500 paid to the John C. Lincoln Hospital (“Lincoln Hospital”) to satisfy a medical bill and lien for James Coleman (“Coleman”).

Appellants Marie Docter and the law firm of Briggs & Briggs (hereinafter “Briggs”) present no basis for this Court to overturn the trial court’s considered decision. The trial court was correct in finding that the Briggs law firm breached the parties’ settlement agreement and breached the implied contractual covenant of good faith and fair dealing.

United settled Coleman’s personal injury claim for \$497,000 and the parties signed a settlement memorandum. The Lincoln Hospital bill was Coleman’s largest medical bill in the amount of \$84,704. Briggs paid the settlement funds directly to Coleman without notice to United that the Lincoln Hospital bill would not be paid.

The Court ruled that Ms. Docter and Briggs were liable based on the parties’ settlement agreement. The trial court entered its decision by two summary judgment orders, dated April 24, 2011 for

liability and May 5, 2011 for damages, and an entered a third Order denying reconsideration on June 3, 2011. In the Order denying reconsideration, the court held that Briggs breached the terms of the settlement agreement and the covenant of good faith and fair dealing by failing to pay or resolve the hospital bill, and by failing to hold the disputed funds in trust or interplead them into the court. The court awarded United \$67,500 in damages.

B. RESTATEMENT OF ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Progressive acknowledges Briggs' assignments of error, but believes that the assignments of error could be more appropriately formulated as follows:

(1) Assignments of Error

1. Did the trial court err when it ruled, as a matter of law, that the Briggs law firm breached the settlement agreement, and breached the implied covenant of good faith and fair dealing, by its Order granting summary judgment on liability dated April 29 2011?

2. Did the trail court err when it ruled, as matter of law, in favor of United by granting summary judgment on damages by the Order dated May 5, 2011?

3. Did the trial court err when it entered the Order of June 3, 2011 denying Briggs motion for reconsideration from the Orders of Summary Judgment dated April 29, 2011 and May 5, 2011?

4. Did the trial court err when it awarded damages in the amount of \$67,500 to reimburse United for what it paid to satisfy the Lincoln Hospital bill and lien in the Order of June 3, 2011 denying Briggs motion for reconsideration?

5. Did the trial court err when it denied Brigg's cross-motion for summary judgment?

(2) Issues Pertaining to Assignments of Error

United acknowledges Briggs' Issues Pertaining to Assignments of Error and designates the following issues:

1. Did the Briggs law firm breach the parties' settlement agreement by failing to pay the Lincoln Hospital Bill as a matter of law? (Assignments of Error 1 – 4)

2. Does the October 14, 2008 letter of United which requires the Briggs law firm to pay all outstanding medical bills constitute part of the parties' settlement agreement and thereby require Briggs to satisfy all medical bills, or notify United prior to disbursement of funds of the bills that would not be paid and protect

United's interests by retaining the disputed funds in a trust account or interplead them with the court? (Assignments of Error 1 – 4)

3. Did Ms. Docter and Briggs breach the implied contractual covenant of good faith and fair dealing by not paying the Lincoln Hospital medical bill or notifying United? (Assignments of Error 1 – 4)

4. Was the award of contractual damages to United in the amount of \$67,500 for the reimbursement of the amount it paid to Hospital the proper amount of damages? (Assignments of Error 1 – 4)

5. Whether as a matter of law, after being notified by letter by Lincoln Hospital that that a lien would be filed, and after the negotiating the amount of the medical bill, did Ms. Docter and Briggs know, or reasonably should have known, that Lincoln Hospital had filed a lien to secure payment of Coleman's medical bills?
(Assignments of Error 1 – 4)

6. Whether as a matter of law the trial court erred in denying Briggs' cross-motion for summary judgment. (Assignment of Error 5)

C. RESTATEMENT OF THE CASE

(1) Introduction

Briggs contests that it owes United \$67,500 for the payment of the Lincoln Hospital medical bill. It is undisputed that Marie Docter (“Dokter”), an attorney with the Briggs law firm, was fully aware of the medical bill for services rendered for Coleman by Lincoln Hospital in Phoenix, Arizona in the amount of \$84,707 at the time of the settlement of Coleman’s personal injury claim. CP 83. This bill constituted more than half of all of Coleman’s medical expenses, thereby representing the single greatest medical charge for which he brought claim. CP50, 127.

Lincoln Hospital directly notified the Briggs firm that a lien would be filed to secure payment of the medical bill by letter dated July 27, 2007. CP 228. The lien was filed by the Hospital on March 20, 2007. CP 145.

Ms. Dokter and Briggs deny any liability for paying this medical bill, the resolution of which was negotiated and a material part of the settlement agreement, by claiming that it was not a “known” lien. CP 96-97. Ms. Dokter contends that Defendants had no duty to pay the Lincoln Hospital bill, although Dokter admits she knew of Lincoln

Hospital's claim, admitted that she received correspondence from Lincoln Hospital stating that a lien would be filed, and even negotiated on the payment of the Lincoln hospital bill with its attorneys prior to receiving the \$497,000 payment from United. *Id.*, CP 81 -86, 223).

(2) Documents Constituting the Parties' Settlement Agreement

United settled the lawsuit filed by Coleman for \$497,000 in mediation on behalf of their Insured, Sweet Meats, Inc. CP 131. At the mediation, the Memorandum of Settlement was signed by Ms. Docter, Coleman, and Donald Edwards ("Edwards") for United on October 6, 2008. *Id.*

This Memorandum of Settlement was drafted by the mediator Larry Levy. *Id.* The operative language for the Memorandum of Settlement is set forth in paragraph 2:

"2. Plaintiff will execute a release of all claims and sign an indemnity and hold harmless agreement as to any and all medical expense, liens and/or subrogated claims; *plaintiff's counsel agrees that all known liens or subrogation claims will be satisfied or otherwise resolved out of settlement proceeds and prior to disbursement to plaintiff.*" (Emphasis supplied)

CP 54.

The Memorandum of Settlement expressly contemplated that additional documents would be drafted, as shown by paragraph 3 which states:

“3. The parties will work together to formalize this agreement with appropriate documentation.”

Id. There was no integration clause in the Memorandum of Settlement, as the agreement contemplated that additional documents would be prepared to accomplish the settlement.

In the Declaration of Donald Edwards he states that it was agreed by all parties that Coleman’s medical bills would be paid from the settlement proceeds, as shown below:

“12. At the mediation with Larry Levy, it was agreed by all parties that James Coleman’s medical bills would be paid from the settlement proceeds to allow a complete release of all claims. It was known to all parties at the mediation that the interest of John Lincoln Hospital represented the most significant amount of medical expense that were being claimed by Mr. Coleman.

13. The agreement that was entered into clearly contemplated that Mr. Coleman’s counsel, Marie Docter and the law firm of Briggs and Briggs, would resolve any claims for all medical services including John Lincoln Hospital

and that United Financial would not be required to make another payment of any kind in this matter, including, but not limited to, John Lincoln billings for medical services.

14. In my letter dated October 10, 2008 (Exhibit "F") to Marie Docter enclosing the settlement sum of \$497,000, I specifically stated that this sum must be applied to all outstanding claims and that was my intent and expectation as the agreement between the parties."

CP 50-51.

The settlement draft was made payable to Coleman and the Law Office of Briggs and Briggs. CP 60. The settlement draft was sent by a letter prepared by Don Edwards on behalf of United dated October 10, 2008. CP 64. The letter had as enclosures the settlement draft, a release document, and a separate hold harmless agreement. *Id.* The letter contained express instructions providing that Briggs would pay all outstanding bills, liens or subrogated interest:

"This is a gross settlement of all special and general damages. *Special damages include, but are not limited to wage loss, outstanding bills, liens or subrogated interest.* Any subrogated interest shall be handled by you, per the Mahler decision. You agree to satisfy and/or handle all of these special damage interests as part of our settlement

agreement.

If you have any questions, or if you believe any of the above information is not in accordance with our agreement, please notify me immediately. *Id.* (Emphasis Supplied)

(CP 64.)

There was no response to this letter by Briggs. The check was cashed and the funds were disbursed. There was no disclosure, at any time, to United by Briggs that they did not intend to pay the Lincoln Hospital bill.

(3) Claim by Lincoln Hospital

After the Briggs law firm failed to pay Lincoln Hospital, claim was made against United for the payment of Coleman's medical bill for \$84,707. Cp. 147. Arizona Revised Statute ¶33-931 provides that the hospital may obtain payment from a liability insurer. Lincoln Hospital sued United on September 10, 2009 in Arizona in Superior Court of Maricopa County #CV2009-028577 through the law firm of Gammage & Burnham, P.C. *Id.* United settled that claim for \$67,500. CP 127.

(4) Briggs Was Aware of the Lincoln Medical Bill and Notified By Letter that a Lien Would Be Filed

On July 27, 2007 Debra Haines of Lincoln Hospital wrote a letter to Jessica Person of the Briggs & Briggs law firm. CP 228. The letter states, in material part:

“I have received your request for billing information in regard to the services provided to your client and have attached as Itemized Statement in response to that request.

In addition to the information attached, you will be receiving a letter of representation and a lien from Gammage & Burnham.

If you require further information or assistance with this account, please contact Crystal Boglio at Gammage & Burnham at 602-256-4488.”

Id.

The Briggs firm then had numerous communications with the Gammage and Burnham, PLLC law firm. Greg Gnepper (“Gnepper”) is an attorney with the Gammage and Burnham and is familiar with the Coleman account with Lincoln Hospital. United submitted the Gnepper Declaration to establish that Ms. Docter and the Briggs Law Firm had knowledge of the medical bill and lien. The Declaration establishes the following:

- On March 30, 2007, Gammage & Burnham publicly recorded for JCL a Notice and Claim of Health Care Provider Lien (the “Lien”) with the Maricopa County Recorder’s Office at document no. 2007-0380165. The amount of the Lien was \$84,704.44. The Lien encumbered proceeds payable to Coleman out of the accident that gave rise to the need for medical services.
- Gammage & Burnham had numerous communications regarding Coleman’s account with the Briggs law firm.
- On June 9, 2008 and again on June 10, 2008, Gammage & Burnham received telephone calls from someone at Briggs and Briggs named “John.” John asked Gammage & Burnham to provide a “current lien amount” for Mr. Coleman.
- In response to this request, the Briggs law firm was informed of the lien amount on June 10, 2008.
- On October 14, 2008, attorney Richard Burnham (“Burnham”) wrote a letter to attorney Ms. Docter. In this letter, Burnham offered on behalf of Lincoln Hospital to accept \$67,500.00 to satisfy the lien and rejected Ms. Docter’s offer of \$25,000.00. Burnham also referred Ms. Docter to the case of *LaBombard v. Samaritan Health System*, 195 Ariz. 543, 991 P.2d 246 (App. 1998), for the proposition that hospitals are not compelled to accept certain reductions on their liens.

CP 74 -76.

(5) Briggs Disbursed the Settlement Funds with Full Knowledge of the Claims of Lincoln Hospital

Ms. Docter admits in her letter dated July 9, 2009 to Burnham that she offered \$25,000 as payment in full of the Lincoln Hospital account. CP 90. She then states that since this offer was not accepted,

no disbursement was made for the Lincoln Hospital bill and that she was closing the file leaving the medical bill unresolved, as shown below:

“In response to your letter of July 6, 2009, my file indicates we offered the hospital \$25,000 as payment in full of Mr. Coleman’s account. That offer was rejected. Mr. Coleman did not accept your offer of \$67,500 to settle his bill with the hospital. Given there was no agreement on an amount, no disbursement was made to the hospital from Mr. Coleman’s settlement.

Our file is now closed on this matter.”

Id.

Ms. Docter knew of the Lincoln Hospital bill and offered \$25,000 as payment of the Lincoln Hospital bill before the settlement funds were disbursed. CP 19, 215. She knew that Lincoln Hospital’s offer was \$67,500. *Id.* The sole justification for why the bill was not paid was her allegation that she “knew” of no lien and her interpretation of the Memorandum of Settlement that she was obligated to pay only “known” liens. CP 96 –97, 214.

(6) Entry of the Orders of Summary Judgment and Order Denying Reconsideration

The trial court entered its order in favor of United finding that it was entitled to summary judgment as a matter of law. This was done by the two Orders of Summary Judgment dated April 24, 2011 for liability and May 5, 2011 for damages. The Order Denying Defendant Docter/Briggs & Briggs' Motion for Reconsideration was denied on June 3, 2011. CP 467-468.

The Court in its Order denying reconsideration for liability stated:

“This Court affirms its ruling that Defendant breached the covenant of good faith and fair dealing as well as the terms of the settlement agreement with plaintiff in failing to resolve payment of the hospital bill owed to John C. Lincoln Hospital before disbursing funds to Defendant Coleman or otherwise hold the funds in trust or implead them into court until the dispute regarding the hospital bill was resolved.”

CP 467-468. The Court denied the motion for reconsideration for damages, stating:

“This Court affirms its award of \$67,500 in damages, which equates to the amount paid by plaintiff to settle and compromise the claims of John C. Lincoln. Application of a common fund discount would not

be warranted where a common fund for payment of the third-party bill was not preserved. Application of any other potential defenses of the defendant(s) regarding the hospital bill would require this court to engage in speculation and/or are not supported by the record before the court. The court notes that the sum paid by plaintiff to resolve the claim of John C. Lincoln Hospital represents a 20% discount from the amount originally charged by the hospital.”

CP 468.

The Order denying reconsideration was then timely appealed to the Washington State Court of Appeals. CP 470.

D. SUMMARY OF ARGUMENT

This case involves a dispute over the payment of a medical bill to Lincoln Hospital out of the proceeds of a personal injury settlement for James Coleman. The trial court correctly decided by summary judgment that Briggs breached the terms of the settlement agreement and the implied covenant of good faith and fair dealing.

At issue in this appeal is whether Ms. Docter and Briggs could unilaterally decide not to pay the Lincoln Hospital Bill, and not notify United of the fact that the Hospital bill would not be paid out of the settlement proceeds, or take any action to protect United. Briggs could

have placed the disputed funds in a trust account, or interplead them into the court.

The trial court correctly reasoned that Briggs failed to protect the interests of United by disbursing the disputed funds to Coleman, thereby breaching the terms of the settlement agreement and the implied covenant of good faith and fair dealing. The trial court correctly found that there was no issue of material fact in awarding summary judgment to United.

Briggs and Ms. Docter did not act in good faith and plainly breached the implied covenant of good faith and fair dealing. The lien could easily have been discovered and, in any event, the Briggs firm failed to follow the express condition of United's letter enclosing the settlement draft that all outstanding medical bills would be paid or otherwise satisfied. The award of \$67,500 in damages contractually reimbursed United for what it had paid to satisfy the Lincoln Hospital bill.

The trial court's Summary Judgment Order in favor of United should be affirmed.

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E. ARGUMENT

(1) Standard of Review

This Court reviews a summary judgment order de novo. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). Summary judgment is properly granted where the pleadings and affidavits show there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

(2) The Trial Court Correctly Determined that Ms. Docter and Briggs Breached the Parties' Settlement Agreement

The trial court correctly decided by summary judgment that Briggs breached the terms of the settlement agreement and the implied covenant of good faith and fair dealing.. CP 467-468. The award of \$67,500 in damages contractually reimbursed United for what it had paid to satisfy the Lincoln Hospital bill. CP 468.

Briggs in their brief admits that as of October 20, 2008 (shortly before disbursement of the funds to Coleman), Ms. Docter was aware of the Lincoln Hospital bill, and that “Mr. Coleman had not authorized her to pay those bills from the settlement proceeds.” (Appellant’s Brief, pg. 6) Mr. Coleman felt that the treatment he received from the hospital was less than what he expected. According to Mr. Coleman, his broken leg was not properly aligned by the hospital and a result, he

has a permanent protrusion in his thigh. (Appellant's Brief, pg. 9) (CP 279). Mr. Coleman authorized Ms. Docter to offer \$25,000 in satisfaction of the lien. *Id.*

Ms. Docter and Briggs breached the following language of the Memorandum of Settlement set forth below:

“2. Plaintiff will execute a release of all claims and sign an indemnity and hold harmless agreement as to any and all medical expense, liens and/or subrogated claims; *plaintiff's counsel agrees that all known liens or subrogation claims will be satisfied or otherwise resolved out of settlement proceeds and prior to disbursement to plaintiff.*” (Emphasis supplied)

CP 54.

Briggs argues that the Lincoln Hospital bill did not constitute a “subrogated interest” as used in the Memorandum of Settlement. Lincoln Hospital is seeking reimbursement for services that it provided from the settlement fund. In general terms, the doctrine of subrogation is “an equitable doctrine the essential purpose of which is to provide for a proper allocation of payment responsibility. It seeks to impose ultimate responsibility for a wrong or loss on the party who, in equity and good conscience, ought to bear it.” *Mahler v. Szucs*, 135 Wn. 2d 398, 411, 957 P.2d 632, amended 966 P.2d 305 (1998).

In addition, Ms. Docter and Briggs breached the terms of the letter of Don Edwards dated October 10, 2008:

“This is a gross settlement of all special and general damages. Special damages include, but are not limited to wage loss, outstanding bills, liens or subrogated interest. Any subrogated interest shall be handled by you, per the Mahler decision. You agree to satisfy and/or handle all of these special damage interests as part of our settlement agreement.”

CP 64.

The letter prepared by Don Edwards of United dated October 10, 2008 contains the express requirement that the medical bills are to be paid before the settlement funds are disbursed to Coleman. *Id.* This letter was expressly contemplated as being the type of document that the parties would cooperate with other on pursuant to paragraph 3 of the Memorandum of Settlement.

The Memorandum of Settlement prepared by mediator Larry Levy was a summary agreement and is not an integrated agreement. CP 54. There was no integration clause in the Memorandum of Settlement. The Memorandum of Settlement was not the final

agreement of the parties and specifically contemplated that additional documents would be drafted, as shown by paragraph 3, which states:

“The parties will work together to formalize this agreement with appropriate documentation.”

Id.

In *Denny's Rests. v. Sec. Union Title Ins. Co.*, 71 Wn.App. 194, 202, 859 P.2d 619 (1993), the court explained how extrinsic evidence may be used to establish additional, consistent terms to a partially integrated agreement. *Id.* If the written contract is not the complete expression of the parties' agreed-upon terms, additional terms may be proved if they do not contradict the written terms. *Id.*

The terms of the Memorandum of Settlement only require the payment of “known” liens. CP 54. However, Edwards' letter provides that all medical bills are to be paid as part of the agreement as an express condition of negotiating the settlement draft. In addition, the letter unambiguously states:

“If you have any questions, or if you believe any of the above information is not in accordance with our agreement, please notify me immediately.”

CP 64.

This language requiring the payment of medical bills, or to provide notice that the bills would not be paid before disbursing the funds, is an additional consistent term for the parties' settlement agreement. The Edwards letter is an important part of the parties' settlement agreement and reflects the longstanding custom and practice of insurers to rely on the plaintiff attorneys to pay the medical bills in personal injury lawsuits.

The acts of Docter and Briggs constitute a breach of both the Memorandum of Settlement along with the terms of Letter of Donald Edwards enclosing the settlement draft, together which constitute the parties' settlement agreement.

(3) The Trial Court was Correct in Finding Breach of the Implied Covenant of Good Faith and Fair Dealing

As a matter of fundamental fair dealing and good faith, Ms. Docter and Briggs were under an obligation to immediately let United know if there were any disagreements – rather than unilaterally taking money where, as here, Ms. Docter and Briggs were unequivocally informed of Untied Financial's tender of funds based on this agreement. If Ms. Docter and Briggs did not believe this was the agreement – they clearly had a duty to speak, rather than simply take the money.

Each and every contract contains an implied covenant of good faith and fair dealing. *State v. Trask*, 91 Wn. App. 253, 272-73, 957 P.2d 781 (1998), review denied, 137 Wn.2d 1020, 980 P.2d 1282 (1999). Ms. Docter testifies in her deposition that Coleman had a “potential” malpractice claim against Lincoln Hospital. The dispute of Coleman with Lincoln Hospital was not known to United. Briggs should have taken the following steps to protect United:

- Retain sufficient funds in the Briggs trust account to pay for the Lincoln Hospital bill, or;
- Interplead the disputed amount of the Lincoln Bill into the court.

The trial court correctly decided as a matter of law that Ms. Docter and Briggs breached the implied covenant of good faith and fair dealing. CP 467-468.

(4) The Trial Court was Correct in Awarding United \$67,500 in Damages

The trial court affirmed the award of \$67,500 in damages, which is the amount United paid to settle and comprise the claim of Lincoln Hospital. CP 468. The trial court was correct in using this damage figure as it the proper measure of damages based on the Memorandum

of Settlement. This breach of contract award of damages is the exact amount that United paid Lincoln Hospital.

The court specifically denied Briggs' argument for a common fund discount where a common fund was not preserved for the payment of a third party bill. *Id.* The court did not find that Briggs had presented evidence of other potential defenses to the amount of damages awarded. The court noted that the sum of \$67,500 is 20% discount from the amount originally charged by the hospital. *Id.*

(5) The Trial Court Correctly Determined that there was No Issue of Fact as Briggs and Ms. Docter Using Reasonable Diligence Should Have Known About the Lien

Ms. Docter either knew or should have known using reasonable inquiry that there was a lien filed by Lincoln Hospital. Ms. Docter was directly notified by the July 27, 2007 letter from Lincoln Hospital that stated that she would be receiving "a letter of representation and a lien from Gammage & Burnham." CP 228. Ms. Docter and Briggs could have checked with the public records filings in Arizona to determine whether a lien was filed.

There is no issue of fact regarding whether this lien was "known". The lien was filed for public record in Arizona and Briggs could easily have ascertained that a lien was filed. The filing of a public

lien of record constitutes a “known” lien. The filing of the lien in the Maricopa County Arizona records provided “notice to the world” that the lien was filed.

The lien was recorded and under ARS 33-932(1) which provides that “... the recording shall be notice to all persons, firms or corporations liable for damages, whether or not they are named the claim or lien.” The lien was of record and United was justified in paying the Lincoln Hospital.

Ms. Docter and Briggs assert various technical arguments to claim they did not know that a “lien” was filed. They argue that the lien was invalid, and next argue that they did not know the lien was filed. They had received the letter from Lincoln Hospital informing them that a lien would be filed. Accordingly, they were on notice that a lien would be filed and should have inquired. “Notice means “knowledge of facts which would lead an honest and prudent person to make inquiry. Black’s Law Dictionary 957 (5th ed. 1979).

Whether or not arguments could have been raised to dispute the validity of the lien was not the question presented in the trial court.¹

¹ Briggs argues that the address of Coleman was different at the time. However, in their brief ARS 33-932(1) is cited which states that the lien shall set forth the name and

Briggs did not attempt to obtain an order that the lien was invalid in this proceeding or attempt to contest the lien in another lawsuit. The issue before the trial court was whether Briggs was entitled to be reimbursed for having to resolve the claim of Lincoln Hospital under the terms of the parties' settlement agreement.

Attorneys are deemed to have notice of recorded liens medical liens in Arizona. See Arizona Ethics Opinion 98-06: *Liens; Creditors of Clients; Client Funds and Property; Settlements* 06/1999 where it is stated:

“Health care providers are entitled to statutory liens under A.R.S. §§ 33-931--936 (1990). *Once such a statutory lien has been recorded with the County Recorder, the attorney would be deemed to have notice of the lien, and the lien would represent a "matured legal or equitable claim" under ER 1.15.*

Because the recording of a lien represents a medical provider's claim for medical services which is written, 'verified,' and usually filed under oath by the medical provider, it represents a 'matured' claim under ER 1.15. See A.R.S. §§ 33-932, 931 (1990). To be sure, the attorney may fully contest the medical provider's claim by interpleader, negotiation or arbitration; but in those cases the attorney must hold the disputed funds in trust and notify the medical provider regarding the funds or property received by the attorney. ER 1.15(b).

address of the patient as they appear on the records of the health care provider. (Appellants Brief, pg. 10.)

‘Indeed, our prior opinions make clear that upon learning of any third party's claim, if the attorney has any "good faith doubt" as to who is entitled to receive the disputed funds, the attorney must investigate, notify the third party, hold only the disputed funds and resolve the dispute by negotiation, arbitration or interpleader if necessary.’” (Emphasis supplied)

CP 225.

Authority for holding an attorney liable for failure to satisfy medical bills when disbursing funds includes *Kaiser Foundation Health Plan v. Aguiluz*, 47 Cal. App. 4th 302, 54 Cal. Rptr. 2d 665 (1996), review denied by 1996 Cal. LEXIS 6215 (1996), overruled on other grounds in *Snukal v. Flightways Manufacturing, Inc.*, 23 Cal. 4th 754, 3 P.3d 286, (2000). See also *Matter of Hodge*, 676 A.2d 1362 (R.I. 1996) (decided using the attorney ethical rules).

The Court in *Kaiser, supra*, held an attorney liable for ignoring a contractual obligation to a health care provider when disbursing settlement proceeds:

“Is an attorney, with notice of a client's contractual obligation to indemnify his health care provider from the proceeds of settlement or judgment, liable to the provider if he disburses such funds to the client?”

We hold that, under the rule of *Miller v. Rau*, the attorney in this case is liable for settlement proceeds disbursed to his client in knowing disregard of the health care provider's lien." *Id.* at 303-304.

The facts in *Kaiser* are similar in many respects to the present case. Ms. Docter knew about the medical bill and negotiated for a reduction in the amount due. She knew about the contractual obligation to pay the medical bills but failed to take any acts to protect United's interest. The *Kaiser* court in finding the attorney liable, stated:

"In this case, counsel knew about the reimbursement agreement his client had signed, and he negotiated with Kaiser in an attempt to settle its claim for a lesser amount. He nonetheless disbursed the entire amount of the settlement without any attempt to protect Kaiser's interest. On these facts, Kaiser was entitled to recover from him under *Miller*." *Id.* at 307.

Briggs had the opportunity to contest the lien and instead they choose to ignore United and "close the file." CP 90. The trial court was correct in finding that there was no issue of fact present.

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(6) The Trial Court was Correct in denying Briggs' Cross Motion for Summary Judgment.

For the foregoing reasons, the trial court was correct in denying Briggs cross-motion for summary judgment.

G. CONCLUSION

The Lincoln Hospital bill was a substantial bill involving the immediate medical care for Coleman. Briggs relied on the Lincoln bill in the mediation as part of Coleman's damages and this bill alone was more than one-half of all of Coleman's medical expenses.

Ms. Docter and Briggs breached the agreement and plainly acted at their peril in disbursing these funds with full knowledge of the outstanding Lincoln Hospital medical bill and lien, and are liable to United. Furthermore, Ms. Docter and Briggs failed to even exhibit a minimum of good faith and fair dealing in:

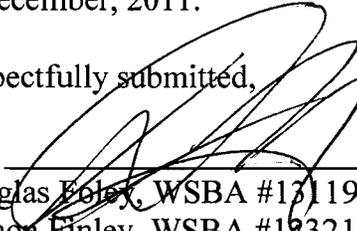
- failing to inform or communicate to Mr. Edwards that they were refusing to resolve the Lincoln Hospital charges before disbursing the funds;
- failing to call the Hospital, or simply even ask the Hospital's attorneys, whether a lien had been filed even while they were negotiating with the Hospital at the time the United money was in their trust account and where, as here, the Hospital informed them that a lien would be provided;

- failing to interplead funds and seek the Court's assistance in resolving this dispute before discharging funds from their trust account in plain violation and derogation of United interests.

It is respectfully submitted that the trial court's order be affirmed granting United summary judgment and denying Briggs' cross motion for summary judgment.

DATED this 6th day of December, 2011.

Respectfully submitted,

By: 

Douglas Foley, WSBA #13119

Vernon Finley, WSBA #12321

Douglas Foley and Associates, PLLC

13115 NE 4th Street, Suite 260

Vancouver, WA 98684

(360) 883-0636

Attorneys for Respondents United
Financial Casualty Company

APPENDIX

APPENDIX 1



HONORABLE ELIZABETH BARNIN



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF PIERCE

UNITED FINANCIAL CASUALTY COMPANY Plaintiff, v. JAMES T. COLEMAN and MARIE DOCTER and the law firm of BRIGGS & BRIGGS, Defendants.

No. 10-2-05273-4
ORDER GRANTING
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT
ON LIABILITY

This matter having come before the Court on Plaintiff United Financial Casualty Company's Motion for Summary Judgment and the Court having considered the following pleadings:

1. Plaintiff's Motion for Summary Judgment;
2. Declaration of Douglas F. Foley; and
3. Declaration of Donald Edwards in Support of Motion for Summary Judgment

And the Court having considered the arguments of counsel and being fully advised of the premises, it is hereby

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ORDERED that the Plaintiff United Financial Casualty Company's
Motion for Summary Judgment against Defendants Marie Docter and
Briggs & Briggs is hereby granted on Liability, *concurrent with order on damages*
DATED this 29th day of April, 2011.

By *Elizabeth P. Martin*
HONORABLE ELIZABETH MARTIN
Pierce County Superior Court

PRESENTED BY:

[Signature]

/s/ DOUGLAS F. FOLEY
Douglas F. Foley, WSB #13119
Of Attorneys for Plaintiff United Financial Casualty Company

473/3949

*SC 3300 #16162
approved as to form*



APPENDIX 2



10-2-05273-4 36351001 ORGSJ 05-06-11



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IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

UNITED FINANCIAL CASUALTY

Cause No: 10-2-05273-4

COMPANY,

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
ON DAMAGES**

Plaintiff(s)

vs.

JAMES T COLEMAN,

Defendant(s)

This matter having come before the Court on Plaintiff United Financial Casualty Company's Motion for Summary Judgment and the Court having considered the pleadings and the arguments of counsel and the Court having previously granted summary judgment in favor of United Financial Casualty Company on liability and being fully advised, it is hereby

ORDERED that the Plaintiff United Financial Casualty Company's Motion for Summary Judgment against Defendants Marie Docter and Briggs & Briggs regarding damages in the amount of \$67,500 is GRANTED.

DATED this 5th day of May, 2011.

Elizabeth Martin
JUDGE ELIZABETH MARTIN

APPENDIX 3



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

UNITED FINANCIAL CASUALTY COMPANY,

Cause No 10-2-05273-4

Plaintiff(s)

ORDER DENYING DEFENDANT DOCTER/ BRIGGS & BRIGGS' MOTION FOR RECONSIDERATION

vs

(OR)

JAMES T COLEMAN,

Defendant(s)

This matter having come before the court on Defendant Docter/Briggs & Briggs' Motions for Reconsideration as to this Court's Orders Granting Plaintiffs' Motion for Summary Judgment, both on liability and damages, and the court having determined that the motions for reconsideration would proceed without oral argument, and having reviewed the following pleadings submitted by the parties

- 1 Defendants Docter/Briggs & Briggs Motion for Reconsideration,
- 2 Defendants Docter/Briggs & Briggs Motion for Reconsideration re Damages,
- 3 Brief in Support of Defendants' Motions for Reconsideration
- 4 Plaintiff United Financial Casualty Company's Response to Defendants' Motion for Reconsideration,
- 5 Plaintiff United Financial Casualty Company's Response to Defendants' Motion for Reconsideration Re Damages

And having otherwise reviewed the pleadings on file herein, specifically including all pleadings originally submitted in connection with the various motions for summary judgment and considering the standards set forth in CR 59, therefore,

IT IS HEREBY ORDERED that Briggs & Briggs Motion for Reconsideration (Liability) is DENIED This Court affirms its ruling that Defendant breached the covenant of good faith and fair dealing as well as the terms of its settlement agreement with plaintiff in failing to resolve payment of the hospital bill owed to

1 John C Lincoln Hospital before disbursing funds to Defendant Coleman or otherwise hold the funds in
2 trust or implead them into the court until the dispute regarding the hospital bill was resolved

3 IT IS FURTHER ORDERED that Briggs & Briggs Motion for Reconsideration re Damages is
4 DENIED This Court affirms its award of \$67,500 in damages, which equates to the amount paid by
5 plaintiff to settle and compromise the claims of John C Lincoln Hospital Application of a common fund
6 discount would not be warranted where a common fund for payment of the third-party bill was not
7 preserved Application of any other potential defenses of the defendant(s) regarding the hospital bill
8 would require this court to engage in speculation and/or are not supported by the record before the court
9 The court notes that the sum paid by plaintiff to resolve the claim of John C Lincoln Hospital represents a
10 20% discount from the amount originally charged by the hospital

11 DATED this 3rd day of June, 2011

12 *Elizabeth Martin*
13 JUDGE ELIZABETH MARTIN
14 DEPT. 18
15 IN OPEN COURT
16 JUN 03 2011
17 Pierce County Clerk
18 By *[Signature]*
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