

# NEW MEXICO INJURY ATTORNEY BLOG

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## **10th Circuit Addresses Medicaid Lien Reduction in Personal Injury Settlements**

The 10th Circuit recently addressed the reduction of state Medicaid liens against personal injury settlements in *Price v. Wolford*. The case involved a medical malpractice action brought on behalf of child that suffered severe brain injuries during delivery. The case settled for \$1.1 million for the birth related injuries. The Oklahoma Health Care Authority (OHCA) asserted a Medicaid lien of \$544,282.26 against the settlement. The district court reduced the Medicaid lien to \$67,666.67 in proportion to value of the settlement in relation to the total value of the claim as well as for non-medical related damages.

Essentially the district court relied upon the plaintiff's valuation of the child's future medical costs at \$12 million. The reduction also relied of *Arkansas Dept. of Health and Human Services v. Ahlborn* where the Supreme Court asserted that Medicaid may recover only against that portion of the settlement reflecting recovery of medical expenses. Compensation for other damages such as lost income, pain and suffering, loss of enjoyment of life and so on are beyond the reach of the lien. Due to the recovery of only a portion of the claimed medical expenses as well as the existence of significant non-medical damages, the district court substantially reduced the OCHA lien.

OHCA appealed on several grounds. The 10th Circuit denied their appeals on all but one issue which was whether the plaintiff had provided sufficient evidence of the value of the claim to justify the lien reduction over the objections of OHCA. The 10th Circuit found that insufficient evidence had been presented to justify the valuation. Thus the case was sent back to district court for the purpose of valuating the child's claim.

Notably, OHCA was present at the settlement conference where the claims were settled. It is not clear why the Medicaid lien was not addressed at that time. Due to the difficulties of dealing with Medicaid and Medicare, and the harsh consequences of failure to properly negotiate liens in advance of settlement, it is equally unclear why these issues were not addressed prior to the settlement conference.

In light of the fact that OHCA was present at the settlement conference, there may have been a dispute as to the value of the lien at that time.

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Perhaps, OHCA was taking an unreasonable position on its lien refusing the legally mandated reduction under *Alhborn* and federal statute. In any event, failure to reach an agreement on the lien at settlement laid the foundation for OHCA's later unreasonable intervention and demand for the full value of its lien.

This case points out the importance of negotiated lien reduction in advance of any settlement. Unfortunately, these liens may dictate the settlement options. In the event that Medicaid takes a unreasonable position as OHCA has done in this case, settlement may not be possible without the intervention of the court. This intervention should be sought in advance of settlement to avoid the unfortunate outcome here.

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