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Georgia Federal Court Finds No Bad Faith in Dilemma-Laden Holt Demand

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In *Kemper v. Equity Insurance* (No .1:15-cv-02961-MLB, N.D.Ga. July 8, 2019), recently appointed federal judge Michael Brown rejected plaintiff Amy Kemper's attempt to assert a bad faith claim against Equity Insurance Company. In a somewhat specific factual situation, Judge Brown granted summary judgment to Equity.

In this case, in March 2012, Ms. Kemper was struck by Christopher Brown (who was drunk at the time of the accident) and airlifted from the scene of the accident. Mr. Brown had a minimum-limits $25,000 bodily injury policy with Equity. In April 2012, Equity received a claim form that included a $24,456.92 air ambulance bill, as well as other medical bills for Ms. Kemper's post-accident care. Equity's third-party administrator determined that the bills exceeded the policy limit and sent Mr. Brown a letter acknowledging the loss. With assistance from attorney Michael Werner, Kemper sent Equity a policy limit demand in exchange for a limited liability release. Typical of Holt demands, the letter had a number of "can't dos", including one that said "PLEASE DO Not contact me, or my Friends as this DEmand is very simple." [sic]

Knowing that Kemper's bills were extensive and fearing that Kemper's medical providers would assert liens, Equity sent Kemper a $25,000 check, a limited release, and a Medicare form for Kemper to execute. In the cover letter, it requested that Kemper hold the funds in escrow "in regards to any and all liens pending," purportedly to protect itself under the 2012 Georgia Court of Appeals holding in *Southern General Insurance Co. v. Wellstar Health System, Inc.* which requires an insurance company to protect properly asserted medical liens. Kemper's attorney deemed this to be a counteroffer and returned the check. Kemper later sued Brown in the Superior Court of Heard County. The trial court granted Brown's motion to enforce his purported settlement agreement, but the Court of Appeals reversed, finding that Equity had indeed made a counteroffer. The case was remanded, and Ms. Kemper obtained a $10 million consent judgment against Brown, and he assigned to Kemper his bad faith failure to settle claim against Equity. Kemper then sued Equity, and Equity moved the case to federal court.

In granting Equity's summary judgment motion, Judge Brown acknowledged the dilemma Equity faced with Kemper's liens, citing OCGA § 44-14-470(b) and *Kennestone Hosp., Inc. v. Travelers Home and Marine Ins. Co.* Judge Brown also noted the specific language in the demand letter that prohibited Equity from contacting Kemper, which was "particularly important" because a lien holder would have had to give Kemper actual notice of its potential claim, which barred Equity "from an easy solution to [its] dilemma" as to verifying whether any liens existed. In the end, Judge Brown found that Equity was entitled to the "safe harbor" protections afforded an insurance company under Wellstar because Equity acted promptly to settle Kemper's case by tendering its limits with "a reasonably and narrowly tailored provision assuring that the plaintiff will satisfy any hospital liens from the proceeds of such settlement payment." And, the record showed that Kemper was unlikely to use the funds to satisfy the liens, as she "needed the money to live."

As noted above, while Kemper is somewhat fact-intensive regarding the hospital lien statute, the holding is yet another decision from the federal courts in Georgia that chips away at the harshness of several Georgia Court of Appeals cases involving Holt demands that are difficult to comply with. While Georgia courts continue to make Holt demands challenging for insurers, should bad faith litigation ensue, Kemper should hopefully make evaluation of Holt demands less onerous for insurers.