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HEALTH INSURANCE SUBROGATION - THE MADE WHOLE DOCTRINE IS INAPPLICABLE TO CONTRACTUAL SUBROGATION RIGHTS

On May 28, 2010, in *Texas Health Insurance Risk Pool v. Sharon B. Sigmundik, et al.*, 2010 Tex. Lexis 405, the Texas Supreme Court issued an important decision involving contractual health insurance subrogation rights. The Court held that survivors of a deceased health insurance beneficiary may not avoid a health insurance carrier's contractual subrogation rights by intentionally allocating benefits so that the estate of the deceased beneficiary made no recovery, thus precluding the health insurance carrier from recovering the benefits it paid for medical care and treatment.

FACTS OF THE CASE

Thomas Sigmundik was injured in an oil field explosion and spent 52 days in the hospital before dying as a result of his extensive injuries. His health insurance carrier, the Texas Health Insurance Risk Pool, paid medical expenses arising from Sigmundik's treatment in the amount of \$336,874.71. After Sigmundik's death, his wife filed a negligence action on behalf of herself, her two minor sons, and Sigmundik's estate. The Risk Pool intervened, arguing that it was "subrogated to the rights of Mr. Sigmundik and his estate" based on the following express provision in Sigmundik's health-insurance policy:

We will be subrogated to all rights of recovery which any person may have against another person for all benefits paid by the Pool which were incurred by the Insured Person as a result of the negligence or misconduct of another party. Our right to repayment shall be a lien against any recovery by the Insured Person whether it be by judgment, settlement, or otherwise.

The negligence suit settled for \$800,000.00. The settlement agreement was signed by Mrs. Sharon Sigmundik on behalf of all settling Plaintiffs, which included the Estate of Thomas Sigmundik. The settlement agreement did not specify how the funds would be allocated.

The trial court held a bench trial to allocate the settlement proceeds and awarded the entire \$800,000.00 to the Sigmundik family, finding the family had not been "made whole" by the settlement. No portion of the settlement proceeds were awarded to the Estate of Thomas Sigmundik. The trial court concluded that equitable principals apply to the Risk Pool's subrogation claim and that where "a subrogation claim works an injustice, it should not be allowed." The trial court's findings cited the Supreme Court's decision in *Ortiz vs. Great Southern Fire and Casualty Insurance Co.*, 597 S.W.2d 342, 343-44 (Tex. 1980), which held that an insurer may be denied equitable subrogation where the injured parties are not fully compensated.

TYPES OF SUBROGATION

There are three types of subrogation: equitable, contractual, and statutory. The “made whole” doctrine provides that an insurer may be denied equitable subrogation when a party is not fully compensated.

EXCEPTION TO THE MADE WHOLE DOCTRINE

In *Fortis Benefits v. Cantu*, 243 S.W.3d 642 (Tex. 2007), the Court held that the “made whole” doctrine does not apply where, as in this case, the parties’ agreed contract provides a clear and specific right of subrogation. *Id.* at 651. In *Fortis Benefits* the Supreme Court found that equitable doctrines conform to contractual and statutory mandates, not vice versa. Moreover, the Court concluded in *Fortis Benefits* that “contract-based subrogation rights should be governed by the parties’ express agreement and not invalidated by equitable considerations that might control by default in the absence of an agreement.”

HOLDING

In *Sigmundik*, the trial court attempted to circumvent Texas Insurance Risk Pool’s contractual subrogation rights through a creative allocation of the settlement proceeds. The Risk Pool’s contractual lien against any recovery would mean nothing if it’s insured, the Estate of Thomas Sigmundik, received no part of the settlement. The Texas Supreme Court held that contract rights arise from contract language, and derive their validity from the parties’ agreement, not from principals of equity. Accordingly, the “made whole” doctrine was found to have no application in this case. The Court remanded the case to the trial court to determine what portion of the settlement funds should be allocated to the Estate of Thomas Sigmundik.

LESSONS LEARNED

This case illustrates the importance of resolving the interests of lien holders as a part of a settlement agreement. Failing to do so can delay the conclusion of a settlement agreement, and potentially expose the parties to the settlement agreement to liability arising from the claims of a lien holder or party holding subrogation rights.

The Court’s ruling in this case demonstrates that:

- (1) In cases involving a health insurance carrier holding a contractual subrogation interest, settlement proceeds should not be allocated to avoid a health insurance carrier’s subrogation rights;
- (2) A trial court abuses its discretion when it invokes the equitable “made whole” doctrine to circumvent a parties’ contractual right to subrogation; and
- (3) A trial court may not cut a party out of a settlement where the settlement agreement purports to resolve that parties’ claim, and the party participated in the proceedings and requested an allocation.



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