

Georgia Court of Appeals Announces 'Safe Harbor' for Holt Demands and Unsatisfied Medical Liens

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The Georgia Court of Appeals recently issued an opinion that clarifies the "safe harbor" for insurers faced with a *Holt* demand and an unreasonable claimant who will not agree to pay off medical liens with the insurance proceeds. In *Southern General Ins. Co. v. Wellstar Health Systems, Inc.*, No. A11A2065, 2012 WL 917604 (Ga. App. March 20, 2012), the Court of Appeals held that "it is possible for an insurance company to create a 'safe harbor' from liability under *Holt* and its progeny when (1) the insurer promptly acts to settle a case involving clear liability and special damages in excess of the applicable policy limits, and (2) the sole reason for the parties' inability to reach a settlement is the plaintiff's unreasonable refusal to assure the satisfaction of any outstanding hospital liens." *Southern General* involved an automobile liability policy with a \$25,000 limit. The insured was driving his car and hit a biker, whose leg was fractured. The biker sought medical treatment and incurred medical expenses of approximately \$22,000. The hospital put the insured's carrier on notice of its intent to file a lien for the cost of the treatment against any recovery by the biker. Before the lien was filed, the claimant biker made a policy-limit *Holt* demand on the carrier. In response, the carrier agreed to pay the policy limits but requested that the insured sign a standard release, which included an indemnification provision regarding hospital liens. The claimant rejected the indemnification provision. Concerned about a bad-faith claim, the carrier removed the indemnification provision and paid the limits. When the hospital bill was not paid, the hospital sued the carrier, seeking payment of the hospital bill plus fees under O.C.G.A. 44-14-473. The carrier argued that it was stuck by a conflict between case law (i.e., bad faith claims under *Holt*) and statutory law (i.e., the statute addressing medical liens) that resulted in the carrier being required to make payments in excess of its policy limits. As framed by the Court of Appeals, the question presented in the case is whether the carrier's tender of its limits to the claimant in response to the *Holt* demand is a defense to the hospital's action to enforce its lien. Both the trial court and the Court of Appeals found that it was not. Agreeing with the trial court, the Court of Appeals ruled that a

claimant's unreasonable refusal to assure the carrier that outstanding liens will be satisfied is at the claimant's own peril. The Court held that the carrier could have tendered the limits but requested that the claimant's counsel or a third party hold in escrow that portion of the settlement amount equal to that of the liens to allow the claimant an opportunity to investigate the validity of the liens and to negotiate with the hospital. According to the Court of Appeals, if the insurer makes such an offer, and the claimant refuses to make assurances that the liens would be satisfied, "the insurer is (at that point) under no obligation to tender policy limits directly to the plaintiff... [T]he insurer would be free (at that point) to simply verify the validity of any liens, make payment directly to the hospital, and then disburse any remaining funds to the plaintiff." In doing so, the insurer would create a safe harbor from liability under *Holt* and its progeny. The court summarized: "[W]hen the failure to settle a *Holt*-scenario claim is based solely on the plaintiff's unreasonable refusal to agree to a reasonably and narrowly tailored provision assuring that any hospital liens will be satisfied from the settlement proceeds, that cannot, as a matter of law, constitute a bad faith failure to settle when the insurer is merely attempting to comply with its legal obligations."

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