

October 12, 2009



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In this week's SWALU, we review an Eleventh Circuit Court of Appeals decision concerning whether international law precludes the application of the *forum non conveniens* doctrine. We also review two decisions from the Alabama Court of Civil Appeals. The first deals with the reasonableness of hospital charges charged to uninsured patients which exceed those charged to patients insured by commercial health-insurance carriers and government payors. The second concerns workers compensation scheduled disability benefits to the dependent survivor of an employee, when the employee dies while a workers compensation case is in the appeals process.

Pierre-Louis v. NEWVAC Corporation, No.07-15828, 2009 WL 3210644 (11th Cir. Oct. 8, 2009) (Montreal Convention international treaty was not a bar to the application of the *forum non conveniens* doctrine where plaintiffs who filed wrongful death actions in a Florida district court were survivors of passengers killed in an airline crash in Venezuela and were residents of Martinique.) Plaintiffs who were survivors of passengers killed in the crash of an airline in the mountains of Venezuela brought wrongful death actions in the United States District Court for the Southern District of Florida. All the plaintiffs were residents of Martinique, a Department of the Republic of France.

The defendants included two Florida corporations and a Colombian corporation operating the chartered plane that crashed. One of the Florida corporate defendants moved to dismiss the suit on the basis of *forum non conveniens*. The district court granted the motion, finding that Martinique was the more convenient forum for resolution of the plaintiff survivors' claims.

The doctrine of *forum non conveniens* permits a court with venue to decline to exercise its jurisdiction when the parties' and court's own convenience, as well as the relevant public and private interests, indicate that the action should be tried in a different forum. Here, venue was proper in the Florida district court because of the Florida defendants involved in the case; however, the district court had granted the motion because the plaintiffs as well as a travel agency which was involved in the case were located in Martinique.

The plaintiffs appealed this decision, arguing that the doctrine of *forum non conveniens* should not apply because the Montreal Convention, an international treaty which regulates the liability of carriers to passengers on international flights, precludes the application of the *forum non conveniens* doctrine.

The 11th Circuit held that the Montreal Convention was not a bar to the application of the *forum non conveniens* doctrine. It reasoned that simply because the treaty does not specifically affirm the availability of *forum non conveniens* does not mean that the doctrine should not be permitted in cases arising under it.

University of South Alabama Hospitals v. Blackmon, CV-08-900168 (Ala. Civ. App. Oct. 9, 2009)(challenge to charges assessed uninsured patient by South Alabama Hospitals unsuccessful). Plaintiff hospital appealed from a trial court's judgment that only 62% of the amount it had charged to the defendants for medical services was reasonable and that the hospital's lien against the defendants should be reduced accordingly.

To show that its charges were reasonable, the hospital produced its "Charge Master," a confidential list of the charges for each item and service the hospital provides. It also submitted evidence that its "cost-to-charge" ratio was 227% while the average ratio for Alabama hospitals is more than 300% and that the national average is 245%. Finally, the hospital showed that the charges listed in its Charge Master had been audited and found to be reasonable.

To rebut the hospital's assertion that its charges were reasonable, the defendants gave evidence that the hospital accepted less than the full amount charged to patients who were insured by commercial health-insurance carriers (e.g. Blue Cross/Blue Shield) and government payors such as Medicare and Medicaid.

The Alabama Court of Civil Appeals held that the trial court lacked any basis to reduce the charges made the basis of the hospital's lien against the defendants and pointed out that patients not covered by insurance are not allowed to use preferred rates as proof that the charges billed to them were unreasonable.

General Electric Company v. Baggett, CV-03-764 (Ala. Civ. App. Oct. 9, 2009)(scheduled disability benefits survive disabled employees death pending appeal). The plaintiff was the surviving dependent spouse of a General Electric employee. The employee had sought workers' compensation benefits for injuries to his leg. Following a trial, the trial court entered a judgment that the worker was permanently and totally disabled as a result of his work-related leg injury.

General Electric appealed this judgment to the Alabama Court of Civil Appeals, and while the appeal was pending, the employee died for reasons unrelated to his leg injury. The Court of Civil Appeals reversed the trial court's judgment, concluding that the man's injury should have been treated as a scheduled injury and that the trial court had erred in awarding permanent-total-disability benefits.

On remand, the trial court awarded the plaintiff compensation benefits pursuant to Section 25-5-57(a)(3), which pertains to scheduled injuries. Because the statute requires the employee's injuries to have been ascertained by the court prior to the employee's death, and because the Court of Civil Appeals had reversed the trial court's first judgment concerning the extent of the employee's injuries, General Electric argued that the "ascertained" requirement ceased to be met and that the plaintiff was not entitled to damages.

The Court of Civil Appeals ruled that if a trial court has entered a judgment determining the degree of disability before an employee's death, the employee's subsequent death from causes unrelated to the disability does not preclude the employee's surviving spouse or dependent children from recovering benefits that would have been due to the employee after an appeal. It pointed out that, on remand, the trial court merely awarded to the plaintiff benefits that the employee would have been due under the statute had he survived the appeals process.

The court acknowledged that the purpose behind the "ascertained" requirement is to minimize problems proving, after an employee's death, the extent of disability. However, it also noted that in this particular case there had been an extensive record concerning the extent of the employee's injury before his death. Therefore, the court determined that there was no problem of proof.



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