FEATURE ARTICLE

Ahlborn Relief at Last — *Bolanos v. Superior Court*

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In *Arkansas Dept. of Health and Human Services v. Ahlborn* (2006)126 S. Ct. 1752, the U.S. Supreme Court held that a state Medicaid agency (like Medi-Cal) could not recover more of its lien than the injured plaintiff had actually recovered in her underlying personal injury action. Since Ms. Ahlborn had been 5/6 at fault in the underlying action, based upon a stipulation, Arkansas DHHS was held limited to recovering 1/6 of its lien. The controlling nature of this case was recognized by the California legislature in passing amendments to Welfare & Institutions Code §14124.76 which codifies the holding in *Ahlborn, supra*.

Despite the clearly controlling nature of Welfare & Institutions Code §14124.76 and the Supreme Court holding codified therein, Medi-Cal has refused to accept the law as drafted. Relying upon *Espericueta v. Shewry* (2008) 164 Cal.App. 4th 615 and *McMillian v. Stroud* (2008) 166 Cal.App.4th 692, Medi-Cal has been opposing *Ahlborn* reduction motions both informally and in court. Because the *Ahlborn* decision involved a stipulation between the parties as to the extent of Ms. Ahlborn's comparative negligence, Medi-Cal has refused to so stipulate and, therefore, contends that the case does not apply. The *Espericueta* and *McMillian* decisions relied on by Medi-Cal are not on point because they involve final court orders on minor's compromises that were not based upon the *Ahlborn* decision and also involved conduct by the plaintiff's attorneys in both cases that was questioned by the courts.

In *Bolanos v. Superior Court* (2008) 169 Cal.App.4th 744, the court squarely addressed Welfare & Institutions Code §14124.76 and the *Ahlborn* decision as well as the above cases upon which Medi-Cal has been relying. The *Bolanos* decision is directly on point and requires the trial court faced with an *Ahlborn* motion to make an "allocation" of the plaintiff's damages in an unallocated settlement to determine how much of the Medi-Cal lien was actually recovered. The *Bolanos* court held that Welfare & Institutions Code §14124.76, codifying *Ahlborn*:

> **...requires an allocation in an otherwise unallocated settlement between past medical expenses and other damages, and it also requires that the director's recovery for a Medi-Cal lien is to be limited to that portion of the settlement that reflects past medical payments. . . . While the precise formula used in *Ahlborn* is not mandated, the principles of that decision are mandated as guidelines by subdivision (a) of section 14124.76.**

Bolanos v. Sup. Ct., supra, 169 Cal.App.4th at 761. The *Bolanos* court repeatedly noted that the formula approved by the U.S. Supreme Court in *Ahlborn, supra*, (the settlement amount is divided by total value of injury multiplied by the amount of the Medicaid lien) produces a **reliable approximation** of the correct apportionment. *Id.* at 754, 755, 761. The court then repeatedly emphasized that the trial court has a **mandatory duty** to determine the portion of the Medi-Cal lien that was actually recovered using a rational apportionment, noting: "...a settlement that does not distinguish between past medical expenses and other damages **must be allocated between these two classes of recoveries**." *Id.* at 753. The court further stressed the mandatory nature of the court's duty: "While the parties are responsible for arriving at a rational and tolerably accurate allocation between past medical expenses and other damages in a settlement, in the final analysis **it is the trial court's responsibility** to ensure that this is done." *Id.* at 755 (emphasis added). "The **court must determine the total amount of Bolanos's claim.**" *Id.* at 757 (emphasis added).

The *Bolanos* court devoted an entire section (4) of its opinion entitled "Espericueta *and* McMillian *Do Not Apply to This Case*," explaining why those cases were not on point. *Id*. at 758, emphasis in original. The court explained that the cases were distinguishable because they involved belated attempts to modify final court orders approving settlements without regard to *Ahlborn*. *Id*. at 758. The *Bolanos* court specifically found that *Espericueta* was "predicated on the finality of decisions and not on *Ahlborn*." *Id.* at 758. The court emphasized that there was attorney misconduct involved in *Espericueta*, noting that "a litigant...cannot play fast and loose with the judicial system, turning it on and off at will." *Id.* at 759. The court then noted that *McMillian* decision was quite similar to *Espericueta*. *Id*. at 759. The *Bolanos* court held that both cases relied upon by Medi-Cal stand merely for the finality of judgments, as follows:

> ***McMillian* is identical to *Espericueta* to the extent that both cases involve final decisions approving settlements and belated attempts to undo those decisions. Thus, both *McMillian* and *Espericueta* stand for the proposition that settlements that have received the court's final approval cannot be undone on the mere mention of *Ahlborn*. A contrary rule would produce nothing but chaos.**

Id. at 760.

Because *Bolanos* is so damaging to the position that Medi-Cal has taken in court, Medi-Cal petitioned the Supreme Court for review. On March 11, 2009, the Supreme Court **denied** Medi-Cal's petition. See 2009 Cal. LEXIS 2608. Consequently, the decision in *Bolanos* is final and should be binding *stare decisis* on all trial courts addressing *Ahlborn* reduction motions. Medi-Cal has a number of appeals and motions pending on the Ahlborn issue. It remains to be seen if Medi-Cal will accept *Bolanos* gracefully or continue to disregard the law.