

NOT DESIGNATED FOR PUBLICATION

**MARTHA MILLER AND
PEIER MACK**

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NO. 2001-CA-2287

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COURT OF APPEAL

VERSUS

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FOURTH CIRCUIT

**JOHNA S. STANN,
PERMANENT GENERAL
ASSURANCE CORPORATION
AND STATE FARM MUTUAL
AUTOMOBILE INSURANCE
COMPANY**

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STATE OF LOUISIANA

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APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 89-704, DIVISION "C"
Honorable Wayne Cresap, Judge

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Judge Miriam G. Waltzer

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(Court composed of Chief Judge William H. Byrnes III, Judge Miriam G. Waltzer, Judge Michael E. Kirby)

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REVERSED IN PART, REMANDED.

The Medical Center of Louisiana at New Orleans and Charity Hospital (“Charity Hospital”) appeal a 4 September 2001 trial court judgment allocating settlement funds of \$20,000.00 received as a result of the plaintiff’s lawsuit. We reverse.

The plaintiff, Martha Miller, was injured in an automobile accident on 4 July 1999. She received medical care at Charity Hospital, Chalmette Medical Center and Tulane Trauma Clinic and accumulated the following outstanding medical bills:

Charity Hospital	\$49,234.91
Chalmette Medical Center	\$6,217.50
Tulane Trauma Clinic	\$4,749.00

On 31 January 2000, Ms. Miller filed a lawsuit against the adverse driver in the accident, his insurer, and her uninsured motorist insurer. The parties ultimately settled the lawsuit for \$20,000.00, representing the policy limits for the adverse driver’s insurance policy and Ms. Miller’s policy. Meanwhile, the three health care providers filed claims asserting a privilege for payment of medical bills pursuant to La.R.S. 9:4752 et seq. Charity Hospital filed its claim on 21 February 2000. Tulane Trauma Center filed its claim on 13 April 2000, and Chalmette Medical Center filed its claim on 1 December 2000.

Because Ms. Miller’s medical bills greatly exceeded the settlement amount, on 13

September 2000, Ms. Miller filed a motion to distribute settlement proceeds. In her motion, Ms. Miller suggested distribution of the proceeds of one third to her attorney, one third to her, and one third to be split between the health care providers. On 28 March 2001, the settlement proceeds were ordered deposited into the court's registry. On 21 May 2001, Ms. Miller filed a "Motion to Set for Trial Allocation of Funds," setting forth outstanding medical bills totaling \$60,201.41, as well as attorney's fees of \$8,000.00 and costs of \$769.27, amounts she alleged were owed under a contingency fee contract.

After trial on 8 August 2001, the trial court rendered judgment on 4 September 2001, ordering that the settlement proceeds of \$20,000.00 be allocated as follows:

The sum of . . . [\$6,667.00] is allocated to the law firm of Caluda & Rebennack in payment of its attorneys fees (33-1/3%) allowed in this matter. The sum of . . . [\$1,315.00] is additionally allocated to the law firm of Caluda & Rebennack in payment of its outstanding costs incurred in this matter.

The remaining amount of . . . [\$12,018.00] is allocated as follows: The sum of . . . [\$6,000.00] is allocated to Chalmette Medical Center, Inc. in full payment of its outstanding medical bills of \$6,217.50. The sum of . . . [\$3,500.00] is allocated to Charity Hospital and Medical Center of Louisiana at New Orleans in full payment of its outstanding medical bills of \$49,234.91. The sum of . . . [\$2,500.00] is allocated to Tulane Trauma Center in full payment of its outstanding medical bills of \$4,749.00. The remaining . . . [\$18.00] shall be paid to the Clerk of Court for filing of this judgment.

According to Charity Hospital's calculations, 50% of the funds available to the three health care providers, or \$6,000.00, was given to Chalmette Medical Center to satisfy a \$6,217.50 debt; 29% of the available funds, or \$3,500.00, was given to Charity Hospital to satisfy a \$49,234.91 debt; and 21% of the available funds, or \$2,500.00, was given to Tulane Trauma Center to satisfy a \$4,749.00 debt. Thus, according to Charity Hospital, Chalmette Medical Center recovered 97% of the amount it was owed, Charity Hospital recovered 7% of what it was owed, and Tulane Trauma Center recovered 53%

of what it was owed.

Charity Hospital appeals the judgment, arguing that the trial court's allocation of funds failed to recognize the privilege afforded all health care providers and the right of subrogation it possessed as a state supported hospital. Ms. Miller answered the appeal, arguing that the trial court erred in failing to assign any percentage of the funds to her.

Charity Hospital claims that it has a valid and perfected privilege pursuant to La.R.S. 9:4752, which provides:

A health care provider, hospital, or ambulance service that furnishes services or supplies to any injured person shall have a privilege for the reasonable charges or fees of such health care provider, hospital, or ambulance service on the net amount payable to the injured person, his heirs, or legal representatives, out of the total amount of any recovery or sum had, collected, or to be collected, whether by judgment or by settlement or compromise, from another person on account of such injuries, and on the net amount payable by any insurance company under any contract providing for indemnity or compensation to the injured person. The privilege of an attorney shall have precedence over the privilege created under this Section.

This privilege becomes effective if written notice according to the provisions of La.R.S. 9:4753 is given to the injured person, his attorney, and others prior to payment of the settlement. Mena v. Muhleisen Properties, 94-799 (La.App. 5 Cir. 2/15/95) 652 So.2d 65, 67. There appears to be no dispute that Charity Hospital and the two other health care providers involved in this lawsuit had valid and perfected privileges pursuant to La.R.S. 9:4752.

La.R.S. 9:4752, however, does not contemplate the situation presented in this case, where there are multiple privilege holders and an insufficient settlement fund to pay them. Thus, we must consider any other applicable law.

As an alternative argument, Charity Hospital argues that the settlement fund should be distributed pro rata under La.Civ. Code article 3188 which provides: "The

creditors who are in the same rank of privileges, are paid in concurrence, that is on an equal footing.” Charity Hospital claims that under this article, the settlement funds should be distributed according to the percentage of each outstanding medical bill in relation to the total amount of outstanding medical bills. Thus, Charity Hospital argues, placing the creditors on even ground in this case would allow each creditor to receive a pro rata share--it would receive 82% of the fund available to the health care providers, Tulane Trauma Center would receive 8% of the available fund, and Chalmette Medical Center would receive 10% of the available fund.

We agree with Charity Hospital’s analysis and calculations in this regard. Having concluded that La.R.S. 9:4752 does not instruct a trial court on proper allocation among competing health care providers, we find that article 3188 does apply in this case to require a pro rata allocation. Although there is no explanation in the jurisprudence of the concept of “paid in concurrence” or “equal footing” contained in article 3188, a pro rata allocation most reasonably fulfills these concepts.

La.R.S. 9:4752 gives a privilege for the reasonable charges or fees of a health care provider. The trial court presumably reviewed the pertinent medical bills and, indeed, in its judgment, the court stated the applicable outstanding amounts owed to each health care provider. Because the trial court specified the outstanding amounts without limitation, we must presume that each of the amounts represents reasonable charges owed to the providers. Hence, we can find no basis in the record for the trial court’s allocation.

Because the trial court failed to apply article 3188, we find manifest error in the trial court’s allocation of the settlement funds among the health care providers. We, therefore, reverse the judgment of the trial court on its allocation among the three providers and remand for proper allocation in accordance with our decision.

Having found merit in one of Charity Hospital's alternate arguments, we need not consider other arguments offered by Charity Hospital. We find no merit, however, in Ms. Miller's answer to the appeal in which she argues that the trial court erred by failing to assign any percentage of the settlement funds to her. She requests one-third of the funds for her willingness to prosecute the claim. Ms. Miller provides no statutory or jurisprudential support for her theory. Our review of La.R.S. 9:4752 leads us to conclude that the statutory scheme is to first require payment to the attorneys whose work brought about the fund at issue. Next, the statute contemplates full recovery to health care providers with perfected claims. See Nicholes v. St. Helena Parish Police Jury, 604 So.2d 1023, 1033 (La.App. 1st Cir. 1992).

For the forgoing reasons, we reverse the trial court's judgment in part and remand.

REVERSED IN PART, REMANDED