

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

FEDERAL INSURANCE COMPANY,)	
)	
PLAINTIFF,)	
)	
vs.)	CASE No. 09-CV-41-TCK-FHM
)	
The Estate of ROBERT CATCHER;)	
JAMIE LUKER, an Oklahoma resident;)	
PAULA MATTEUZZI, an Oklahoma)	
resident; ROBERT VEST, an Oklahoma)	
resident' and CATHERINE and)	
DONALD MARTIN, Individually and as)	
Husband and Wife, Oklahoma)	
residents,)	
)	
DEFENDANTS.)	

OPINION AND ORDER

Defendants Catherine and Donald Martin’s Unopposed Motion for Leave to Deposit Settlement funds into Court for Apportionment [Dkt. 131] is before the Court for decision. Previously, the motion was partially granted allowing deposit of the settlement funds into court, setting the issue of apportionment for hearing, and directing notice to be given.

At the hearing held June 27, 2011, the following persons requested a portion of the settlement funds: Catherine and Donald Martin; Richardson Richardson Boudreaux Keesling PLLC; Herbert E. Elias, Jr., Jonathan M. Sutton; and Saint Francis Hospital/Saint Francis Health System. All persons present consented to disposition of the apportionment issue by the undersigned United States Magistrate Judge.

Herbert E. Elias, Jr.

Attorney Elias represented the Martins from July 2005 to October 2008 regarding their claim which arose on June 11, 2005. Attorney Elias filed suit on behalf of the Martins in state court. Attorney Elias did not assert claims against Federal Insurance Company or its insured. Thus attorney Elias played no role in asserting or prosecuting the claims that resulted in the settlement funds at issue. Therefore the undersigned finds that attorney Elias is not entitled to any portion of the settlement funds.

The Application for Award of Attorney Fees by Herbert E. Elias, Jr., [Dkt. 140], is denied.

Saint Francis Hospital / Saint Francis Health Systems

At the hearing, Saint Francis Hospital / Saint Francis Health Systems orally presented a request for a \$10,469.89 portion of the settlement funds based on a hospital lien for \$1,083.89 and an amendment to the lien for an additional \$9,386.00.

The only objection to this request was based on the failure to file written notice of claim prior to the hearing. In light of the notice provided by the filing of the liens with the county clerk, the undersigned finds there was no prejudice to any party resulting from the failure to file a notice of claim.

Saint Francis Hospital / Saint Francis Health Systems is hereby granted \$10,469.89 of the settlement funds.

Richardson Richardson Boudreaux Keesling, PLLC

At the hearing, Richardson Richardson Boudreaux Keesling PLLC orally requested a \$5,217.50 portion of the settlement funds for attorneys fees. No objection was made to this request.

Richardson Richardson Boudreaux Keesling PLLC is hereby granted \$5,217.50 of the settlement funds.

Jonathan Sutton

Attorney Sutton represented the Martins in state and federal court. Attorney Sutton brought claims on behalf of the Martins against Federal Insurance Company's insured and obtained an offer of settlement from Federal Insurance Company for \$70,000, the full amount of the settlement funds. Attorney Sutton requested forty (40) percent of the settlement funds as attorney fees plus expenses of \$828.55, pursuant to his Contract for Representation with the Martins.

The Martins object to Attorney Sutton receiving any portion of the settlement funds. The Martins contend Attorney Sutton failed to communicate the settlement offer to them, failed to advise them of his withdrawal from the case, and was paid his fees and expenses from a settlement in the state court case.

The evidence at the hearing concerning the communication between Attorney Sutton and the Martins was not clear. Mrs. Martin contended that there was no communication between her and Attorney Sutton after she left his employ on July 6, 2010. Mr. Martin contended that there was little communication with Attorney Sutton but acknowledged some discussion at the state court. Attorney Sutton contended he did communicate with the Martins but he did not provide any documentation of his communications with the Martins.

Generally it is good practice for an attorney to document communications with clients, especially communications regarding settlement and withdrawal from representation. The Court finds the lack of written communication from Attorney Sutton

to the Martins to be particularly troubling. Absent the actions taken by the Richardson firm, it is possible the Martins' claims would have been dismissed.

Because of the communication issue, Attorney Sutton's withdrawal from the case, and the fact that Attorney Sutton did not conclude the settlement, the Court finds that Attorney Sutton is not entitled to the full forty (40) percent set forth in his contract with the Martins. The Court concludes that, although Attorney Sutton should receive attorney fees pursuant to the contract, the rate should be reduced to 33 percent. Further, the attorneys fees to Attorney Sutton will be reduced by \$5,217.50 to account for the fees the Martins incurred to the Richardson firm. No expenses will be allowed as Attorney Sutton did not establish that the expenses were not recovered in the state case.

Attorney Sutton is hereby granted \$17,882.50 of the settlement funds. ($\$70,000 \times 33\% = \$23,100 - \$5,217.50 = \$17,882.50$).

Catherine and Donald Martin

The Martins are granted the remaining settlement funds, \$36,430.11. ($\$70,000 - \$10,469.89 - \$5,217.50 - \$17,882.50 = \$36,430.11$).

Conclusion

Defendants Catherine and Donald Martin are GRANTED \$36,430.11.

Richardson Richardson Boudreaux Keesling, PLLC is GRANTED \$5,217.50.

Saint Francis Hospital / Saint Francis Health Systems is GRANTED \$10,469.89.

Jonathan M. Sutton's Claim to Attorneys Fees and Costs, [Dkt. 135], is GRANTED IN PART in the amount of \$17,882.50.

The Application for Award of Attorney Fees by Herbert E. Elias, Jr., [Dkt. 140],
is DENIED.

SO ORDERED this 1st day of July, 2011.


FRANK H. McCARTHY
UNITED STATES MAGISTRATE JUDGE