ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

ANSLEY v. BANNER HEALTH NETWORK,
CV-19-0077-PR

PARTIES:

Petitioner: Banner Health Network, et al. (collectively, the "**Hospitals**")

Respondent: Walter Ansley, et al. (collectively, the "**Patients**")

FACTS:

In 1982 Arizona joined the federal Medicaid program by establishing the Arizona Health Care Cost Containment System ("**AHCCCS**"). To join Medicaid, Arizona was required to complete a standardized form called a "state plan" that was created by the Center for Medicare and Medicaid Services ("**CMS**"). Federal regulations required that Arizona's state plan establishing AHCCCS include "both basic requirements and individualized content that reflects the characteristics of the State's program." 42 C.F.R. § 430.12(a).

To implement Medicaid, AHCCCS required care providers, including the Hospitals, to enter into Provider Participation Agreements ("**PPA**"). These PPAs governed how the Hospitals' implemented both Medicaid and AHCCCS rules and regulations. They also established how AHCCCS would pay the Hospitals for services the Hospitals provided to indigent patients.

After establishing Medicaid, Congress sought to address problems with nursing homes collecting Medicaid payments and then seeking additional money from patients and their families. Congress worked with CMS, which promulgated 42 C.F.R. § 447.15; in relevant part that regulation states:

> A State plan must provide that the Medicaid agency must limit participation in the Medicaid program to providers who accept, as payment in full, the amounts paid by the agency plus any deductible, coinsurance or copayment required by the plan to be paid by the individual.

Congress also passed 42 U.S.C. § 1396a(a)(25)(C), which provides, in relevant part:

> [I]n the case of an individual who is entitled to medical assistance under the State plan with respect to a service for which a third party is liable for payment, the person furnishing the service may not seek to collect from the individual (or any financially responsible relative or representative of that individual) payment of an amount for that service (i) if the total of the amount of the liabilities of third parties for that service is at least equal to the amount payable for that service under the plan . . . .

Section 1396a and 42 C.F.R. § 447.15 are commonly referred to as the federal prohibition against "**balance billing**." The practice of balance billing occurs when a hospital or other care provider accepts a lower payment from AHCCCS and then seeks to recover from the patient the difference between the amount paid by AHCCCS and the provider's customary fee for the service provided.

Arizona law grants providers, such as the Hospitals, a "lien for the care and treatment or transportation of an injured person" in an amount equal to the Hospital's "customary charges for care." A.R.S. § 33-931(A). And, through A.R.S. § 36-2903.01(G)(4), Arizona law provides that a "hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by" the lien created by A.R.S. § 33-931(A).

Against this background, in 2012 a group of patients treated at Arizona hospitals under AHCCCS brought a class action lawsuit against the Hospitals. The patients had all obtained money from tort actions against third-party tortfeasors. (For example, a patient might have settled a lawsuit and obtained money from a driver who hit her car and caused her injury that had been treated at a Hospital). And the Hospitals had all recorded liens under A.R.S. §§ 33-931(A) and 36-2903.01(G) against the monies obtained by the patients from the third-party tortfeasors.

The class action complaint contended that the Hospitals' liens were not enforceable. The complaint established two classes of plaintiffs: (1) those who had paid some portion of their tort recovery to a Hospital to obtain a lien release (the "**settling patients**"), and (2) those who had not yet paid any Hospital to release a lien (the "**Patients**"). The settling patients had all executed accord and satisfaction agreements with the Hospitals; under these agreements, the settling patients paid the Hospitals some amount in exchange for a Hospital releasing its lien on the remainder of the money to be paid by the third-party tortfeasor. The complaint argued that the Hospitals' liens were unenforceable against both the Patients and the settling patients because the Arizona state law liens were preempted by the Supremacy Clause in article 6, paragraph 2 of the United States Constitution and the federal prohibition on balance billing.

The *Abbott* litigation re: settling patients.

The litigation first focused on the settling patients. After significant trial and appellate litigation, the Arizona Supreme Court granted review. In its opinion, the Court assumed but did not decide that Arizona's lien laws were "preempted by federal law." *Abbott v. Banner Health Network*, 239 Ariz. 409, 411 ¶ 2 (2016). The Court held that under prior cases "the pertinent question is whether the legality of the liens (that is, whether federal Medicaid law preempts the Arizona laws authorizing the liens) was 'settled' at the time of the agreement." *Id.* at 414 ¶ 14. Because Arizona's lien statutes had previously been found to be "valid and enforceable," the Court held that the accord and satisfaction agreements between the settling patients and the Hospitals were "valid." *Id.* at 412 ¶ 15, 415 ¶ 20.

The current litigation re: the Patients.

Trial court proceedings.

While the *Abbott* litigation was on appeal, the trial court continued proceedings on the Patients' claims. The Patients moved for summary judgment, making two principal arguments:

> (1) that the Hospitals' state-law right to a lien on the patients' tort recovery for any difference between what AHCCCS had paid and the Hospitals' customary charges was preempted under the Supremacy Clause by the federal regulations prohibiting balance billing (the "**preemption argument**"); and
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> (2) that the Hospitals' PPA contracts with AHCCCS incorporated federal law, including the federal prohibition on balance billing; that by imposing state-law liens on the Patients' tort recoveries from third-parties, the Hospitals had breached the federal balance-billing prohibition incorporated into the PPA contracts; and that the Patients were third-party beneficiaries of the PPA contracts entitled to enforce them against the Hospitals (the "**third-party beneficiary argument**").

The trial court rejected the Patients' third-party beneficiary argument, ruling that the PPA contracts were valid when entered into and that the Hospitals did not breach those contracts by enforcing their rights under Arizona's lien statutes. However, the trial court accepted the Patients' preemption argument, ruling that the Hospitals' enforcement of their state-law lien rights constituted collection from the Patients, rather than from the third-party tortfeasors who had paid the Patients. The trial court thus concluded that Arizona's lien statues were preempted by the federal prohibition on balance billing.

As a remedy, the trial court issued an injunction prohibiting the Hospitals from enforcing their existing liens against the Patients and from filing any further liens in the future. The injunction provided no monetary recovery for the Patients. The trial court also granted the Patients over $1 million in attorneys' fees under the private attorney general doctrine established by *Arnold v. Arizona Department of Health Services*, 160 Ariz. 593, 609 (1989). Under that case a plaintiff can be awarded his attorneys' fees if he has "vindicated a right that: (1) benefits a large number of people; (2) requires private enforcement; and (3) is of societal importance." *Id.*

Court of appeals proceedings.

The Patients appealed the denial of their third-party beneficiary claim. The Hospitals appealed the trial court's ruling that federal law preempted Arizona's lien statutes. The Hospitals argued that the Supremacy Clause does not permit plaintiffs to directly sue the Hospitals to enforce Medicaid provisions. Rather, the Hospitals contended that the Patients must seek federal review before CMS and then, if necessary, judicial review in federal court under the Administrative Procedures Act. The Hospitals also appealed the award of attorneys' fees.

The court of appeals did not address the trial court's preemption ruling or the Hospitals' argument that the Patients could bring their claims only in federal court; instead, the court of appeals ruled that the trial court had erred in denying the Patients' third-party beneficiary claim. *Ansley v. Banner Health Network*, 244 Ariz. 389 (App. 2018), *superseded by* 246 Ariz. 240 (App. 2019). The court of appeals held:

> that (1) federal law preempts the Hospitals' rights under Arizona law to impose liens on the Patients' tort recoveries to recover the balance between what AHCCCS paid the Hospitals and the Hospitals' customary rates, (2) the Patients are third-party beneficiaries of the contracts the Hospitals entered with AHCCCS, and

(3) those contracts require the Hospitals to comply with the preemptive federal law.

Id. at 394 ¶ 8. As for attorneys' fees, the court of appeals did "not decide" whether the private attorney general doctrine could apply to "a preemption claim brought under the Supremacy Clause;" rather, the court of appeals affirmed the award of attorneys' fees because "the superior court had discretion to award fees under A.R.S. § 12-341.01(A)" on the third-party beneficiary contract claim rejected by the trial court, but upheld by the court of appeals. *Id.* at 403 ¶ 46.

The Hospitals filed a motion for reconsideration arguing that the court of appeals' opinion was inconsistent with the U.S. Supreme Court decision in *Astra USA, Inc. v. Santa Clara County*, 563 U.S. 110 (2011), and that the opinion converted a "generic 'compliance with federal law' provision" in the Hospitals' PPAs into a private right of action to enforce the federal Medicaid Act in state court. The Hospitals also argued that the U.S. Supreme Court decision in *Armstrong v. Exceptional Child Center, Inc.*, 135 S. Ct. 1378 (2015), barred the Patients' preemption argument because it required such a claim to be addressed to CMS, not the courts.

The court of appeals withdrew its initial opinion and issued a new opinion. Unlike the initial opinion, the new opinion addressed the trial court's preemption ruling and affirmed it. The court of appeals noted that the preemption question was "an issue of first impression in Arizona," but was persuaded that Arizona's lien statutes are preempted by the federal regulations because "each court addressing the issue elsewhere has come to the same conclusion." *Ansley*, 246 Ariz. at 248 ¶ 17.

The court of appeals rejected the Hospitals' argument "that 'payment in full' under § 447.15 only limits a provider's right to payment from the state Medicaid agency or the patient and does not prevent them from intercepting the balance from a third-party tortfeasor," because "that interpretation is contrary to Arizona law, under which a patient has a property interest in his or her tort recovery." *Id.* at 248 ¶ 18. The court of appeals held that the Patients' claims could be litigated in state court because the Supreme Court decision in *Armstrong* did not require them to bring their claims to CMS and then to sue in federal court.

The new opinion again reversed the trial court's denial of the Patients' third-party beneficiary claim. The new opinion held that because the federal prohibition on balance billing preempted Arizona's lien statutes, the Hospitals' PPAs with AHCCCS necessarily incorporated that federal prohibition and the Patients were third-party beneficiaries who could sue to enforce the PPAs against the Hospitals. The court also held that the Supreme Court decision in *ASTRA USA* did not bar the Patients' third-party beneficiary claims.

As for attorneys' fees, in their motion for reconsideration the Hospitals argued that the Patients' retainer agreements with their attorneys did not allow for an award of fees under A.R.S. § 12-341.01 because the trial court had issued an injunction that had not granted the Patients any monetary award. The court of appeals rejected this argument, concluding that the retainer agreements entitled the Patients' attorneys' to a percentage of any "relief obtained" and that the injunction issued by the trial court constituted such "relief."

The Hospitals petitioned this Court to review the court of appeals' new opinion. The Court granted review of the issues listed below.

ISSUES:

1. Congress conferred no private right of action to enforce Medicaid regulations and has instead charged the Centers for Medicare and Medicaid Services ("CMS") with enforcing federal law. The U.S. Supreme Court has prohibited attempts to circumvent Congress by alleging (A) a claim for "preemption" under the Supremacy Clause; or (B) a breach-of-contract claim as a third-party beneficiary of a contract incorporating federal Medicaid law. Can Respondents allege that 42 C.F.R. §447.15 preempts Arizona law, either under the Supremacy Clause or as "third-party beneficiaries" of Petitioners' contracts with the AHCCCS Administration?

2. Is A.R.S. §36-2903.01(G)(4) preempted by 42 C.F.R. §447.15?

3. All statutes are presumptively valid and constitutional and are incorporated into contracts by operation of law. Until this litigation, no court had ever questioned A.R.S. §36-2903.01(G)(4). Did Petitioners breach a generic compliance-with-law term in their contracts by enforcing lien rights expressly granted by §36-2903.01(G)(4)?

4. Are attorney's fees awardable under either A.R.S. § 12-341.01 or the private attorney general doctrine?