

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KA YANG, YIA YANG and
XAI YANG, a minor through
his guardian ad litem,
Daniel F. Schmeeckle,

Plaintiffs,

v.

PORTAGE COUNTY, WISCONSIN,

Defendant.

ORDER

12-cv-797-bbc

Plaintiffs Kai Yang, Yia Yang and Xai Yang brought this action to declare their rights under federal law. In their complaint, plaintiffs allege that defendant Portage County paid for some of plaintiff Xai's medical expenses after he was seriously injured in a car accident. The parties dispute the extent to which each of them is entitled to a \$25,000 settlement that plaintiffs obtained from their insurance company, with defendant relying on Wis. Stat. § 49.89(5) and plaintiffs relying on 42 U.S.C. § 1396p and Arkansas Department of Health and Human Services v. Ahlborn, 547 U.S.C. 268 (2006), to support their respective positions.

On November 27, 2012, approximately one month after filing the law suit, plaintiffs filed a motion for a summary judgment in which they are seeking an order limiting defendant's recovery of the settlement proceeds to the amount that would be authorized

using a formula in Ahlborn. Dkt. #5. In addition, they seek attorney fees and costs. In response, defendant has filed a “motion to deny plaintiffs’ motion for summary judgment or hold [it] in abeyance.” Dkt. #11. Although defendant admits that the question whether federal or state law controls is a legal question, it says that it cannot respond to plaintiffs’ summary judgment motion now because it needs “to conduct discovery as to the nature and extent of the elements of Xai Yang’s claimed damages.” Dft.’s Br., dkt. #12, at 6. Defendant does not explain why it needs that information, but a review of other filings in the case suggests that the amount of plaintiff Xai’s damages from the accident may have an effect on the amount to which defendant is entitled.

Responding to defendant’s motion, plaintiffs argue that defendant is not entitled to discovery because it failed to take advantage of opportunities to learn about the extent of plaintiff Xai’s damages before plaintiffs filed this lawsuit. However, this argument is a nonstarter because plaintiffs cite no authority for the proposition that a party can “waive” its right to discovery by failing to engage in less formal factfinding before being sued.

Alternatively, plaintiffs argue that the primary questions raised in their summary judgment motion are questions of law: “whether 42 U.S.C. §§ 1396p(a)(1), 1396p(b)(1) and Ahlborn prohibit the type of lien claimed by Portage County and whether the Ahlborn pro-rata allocation formula should apply to this matter.” Plts.’ Br., dkt. #14, at 9. In addition, plaintiffs say that, if the court sides with them on these two questions, “an evidentiary hearing [on] Xai Yang’s damages will be perfunctory.” Id.

Because the parties agree that potentially dispositive questions can be resolved

without further factual development, I will limit plaintiffs' summary judgment motion to those questions. If further factual development is necessary after the resolution of that motion, I will give the parties an opportunity to conduct discovery at that time.

ORDER

IT IS ORDERED that defendant Portage County's "motion to deny plaintiffs' motion for summary judgment or hold [it] in abeyance," dkt. #11, is GRANTED IN PART. In responding to the summary judgment motion filed by plaintiffs Kai Yang, Yia Yang and Xai Yang defendant may limit its brief to the questions "whether 42 U.S.C. §§ 1396p(a)(1), 1396p(b)(1) and Ahlborn prohibit the type of lien claimed by Portage County and whether the Ahlborn pro-rata allocation formula should apply to this matter." Defendant may have until January 3, 2013, to file a response to plaintiffs' motion. Plaintiffs may have until January 18, 2013, to file a reply.

Entered this 18th day of December, 2012.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge