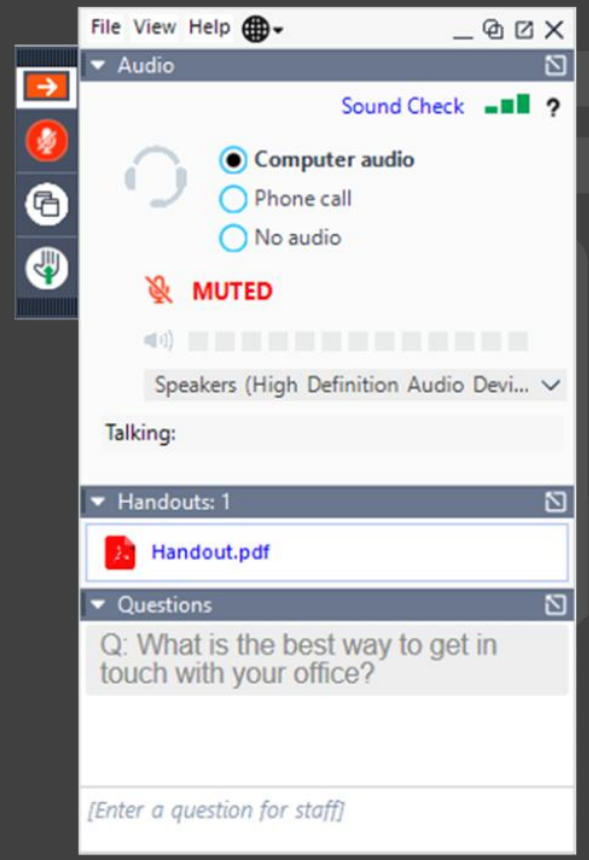
# KRAUSE CAST
## WEBINAR SERIES

# Welcome!

We will begin today's webinar shortly.

# Interactive Agenda



KRAUSE
FINANCIAL

# Elder Law Debrief

July 2025

Presented by:
Jim Wolverton, J.D.,
*Director of Legal Education*

# About Us

Krause Financial is an attorney-led firm that provides asset preservation solutions for estate planning and elder law attorneys and their clients. Using our specialized insurance products, resources, and support, we help attorneys streamline the process of advising clients planning for long-term care.

## Our Mission:

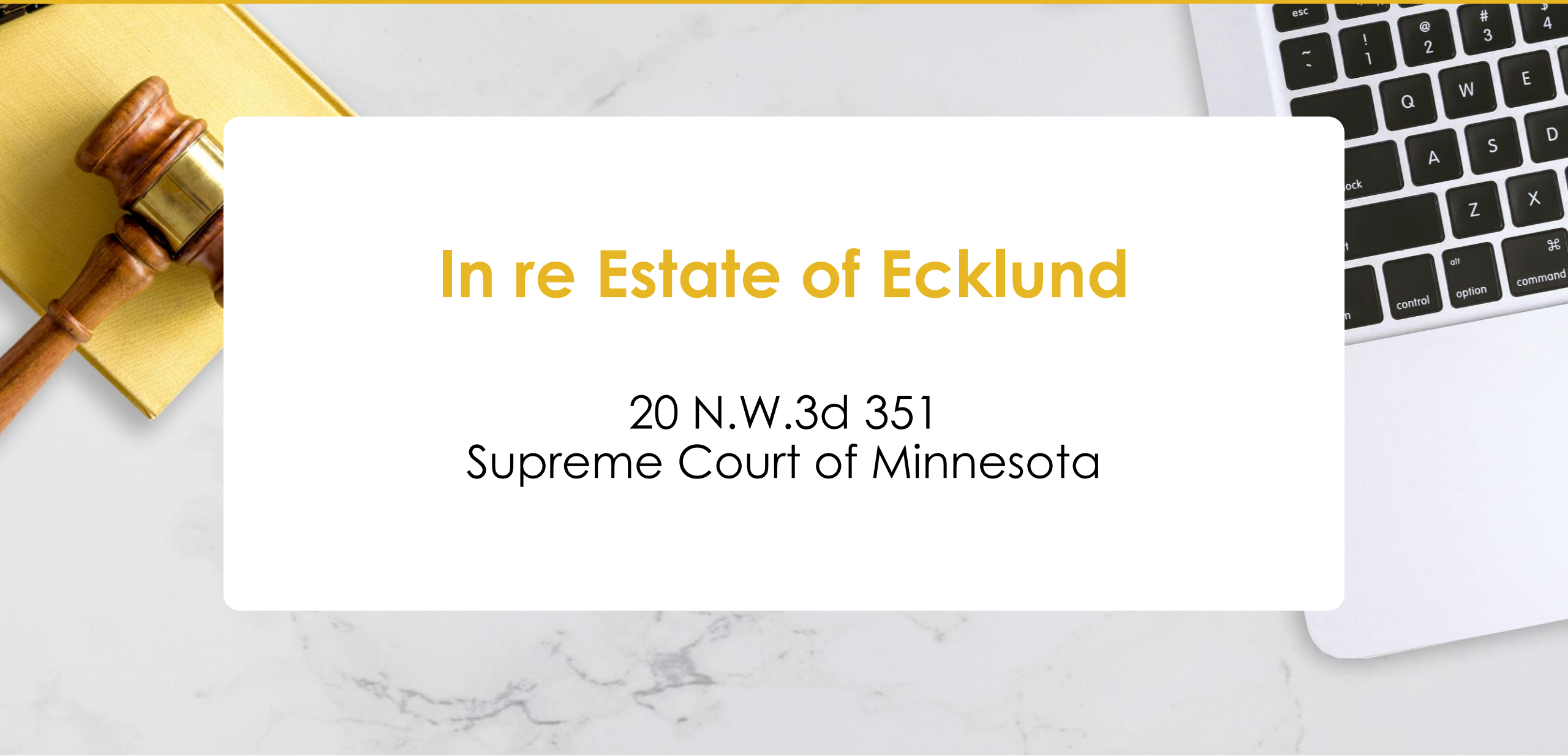
> Empower legal professionals to navigate long-term care planning with confidence.

**30+**
Years of Experience

**40+**
Professionals on Staff

**400+**
MCA Cases Monthly

# Elder Law Cases



# In re Estate of Ecklund

20 N.W.3d 351
Supreme Court of Minnesota

# Case Facts

- Joanne Ecklund received long term care through Minnesota's Medicaid program.
- Minnesota DHS paid for the services by making $66,052.62 in capitated payments – monthly prospective payment to cover the predicted cost of health care services – to Medica, her managed care organization.
- Medica then contracted with care providers to furnish her with long term services at a negotiated rate. Medica paid providers only $8,806.84 on her behalf before she died for services she received.

# Case Facts

- DHS made an estate recovery claim against her estate to recover $66,052.62.
- The personal representative of the estate claimed that DHS should be limited to a recovery of the $8,806.84 Medica paid to providers.
- The district court and court of appeals agreed that the estate recovery statute limited the amount of recovery to the amount paid to providers on her behalf.

# Case Facts

- Federal law requires that states recover certain funds paid on behalf of Medicaid recipients from the recipients' solvent estates after the recipients' deaths.
- Minnesota's estate recovery statute states: DHS' claim shall only include the amount of medical assistance rendered to recipients 55 years of age or older that consisted of nursing facility services, home and community-based services and related hospital and prescription drug services.

# Case Facts

- To provide a recipient with managed care, DHS pays the recipient's MCO a monthly rate, called a capitation payment.
- The statutory definition of capitation rate is a method for payment for health care services under which a monthly per person rate is paid on a prospective basis to a health plan.
- In exchange for the capitation payments, the MCO maintains a network of providers the recipient may use for care, negotiates reduced prices for those services, and reimburses the providers accordingly.

# Case Facts

- DHS determines the capitation payments based on the entire Medicaid population, risk-adjusted into broad categories of payment rates.
- The capitation payments are not meant to perfectly capture the predicted cost of the health needs of a single individual.

# Case Facts

- The individual capitation amount may be greater or less than the cost of the care and services provided to a specific recipient. Regardless, DHS is compelled to pay, and the MCO is bound by contract to accept, the capitated rate.
- During Ecklund's managed care enrollment, she received medical care that qualified as long-term care services – hospital visit coverage, home health care and prescription drug services.
- The estate recovery statute identifies nursing facility services, home and community–based services, and related hospital and prescription drug services as recoverable long-term care services.

# Case Facts

- An actuarial analysis calculated that $66,052.62 of the total capitation payment DHS paid Medica during Ecklund's enrollment was attributable exclusively to estimated long-term care costs.
- During this period, medical providers billed Medica over $113,000 for Ecklund's care. Based on the discounts Medica negotiated with those providers, however, Medica only paid those providers $8,806.84.

# Case Facts

- When she passed away Ecklund left an estate which included a home which was sold for $250,000 and DHS filed a claim for the full $66,052.62.
- The PR disallowed the claim stating that the statute only allows for a claim of $8,806.84.
- The district court ruled for the PR on summary judgement which was appealed to the court of appeals. That court stated the plain language of the statute limited DHS estate recovery claim to what Medica paid for Ecklund's long-term care services and not the capitation payments.
- DHS appealed to the Supreme Court of Minnesota.

# Holding

- The statute provides – Limitation on Claims – the amount of medical assistance rendered to recipients 55 years of age or older that consisted of nursing facility services, home and community-based services and related hospital and prescription drug services.
- "Medical assistance" is defined as payment of part or all of the cost of the care and services identified for eligible individuals whose income and resources are insufficient to meet all of this cost.

# Holding

- DHS's interpretation – that it should recover the portion of the capitation payments it paid Medica attributable to Ecklund's long-term care costs – is a reasonable and straightforward interpretation of the plain language of the statute.
- The statute provides for DHS to recover the amount of payments it made for the cost of Ecklund's long-term care services. DHS paid Medica capitation payments to provide Ecklund with long-term care services. Therefore, DHS' allowable recovery is the value of those capitation payments attributable to long-term care services.

# Holding

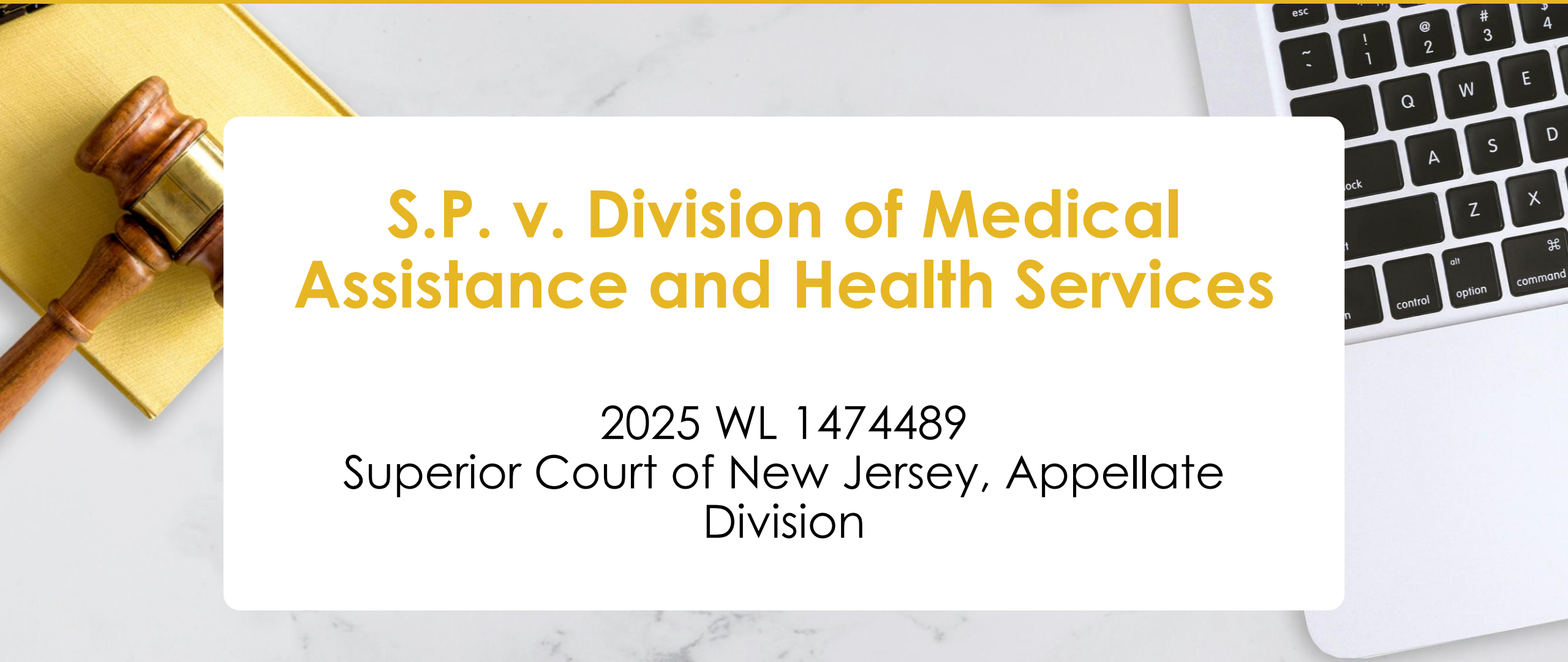
- The word "payment" is incorporated into the estate recovery statute and a capitation payment is a type of payment under statute and rule.
- The PR's own theory that DHS' recovery is limited to the amount an MCO pays a provider directly – fails because no matter the type of payment at issue – a capitation payment or a payment for services rendered – the recipient (Ecklund herself) never directly receives payment.

# Holding

- The concept of actual cost is itself inexact, as this case shows. Her providers set the cost of the services provided at over $113,000.  But under Medica's negotiated rates – rates are negotiated because of the capitated payment/managed care approach the cost of those services was reduced to just under $9,000.
- This significant difference, inherent in the system, demonstrates the difficulty in pinpointing "actual cost" for services and the PR provides no basis or rationale for distinguishing which cost is the "actual cost".

# Holding

- The court then cites the CMS manual as stating that DHS must recover capitation payments as well as similar language in the state Medicaid manual.
- The court reverses the decision of the Court of Appeals and directs the District Court to award DHS $66,052.62 from Ecklund's solvent estate.



# S.P. v. Division of Medical Assistance and Health Services

2025 WL 1474489
Superior Court of New Jersey, Appellate Division

# Case Facts

- S.P. filed a Medicaid application.
- She was the named beneficiary of a trust established by her brother which was funded by $300,000 in life insurance proceeds.
- It was provided that the purpose of the trust was for her housing expenses - to purchase a house and to let her live rent free, to make payments on the mortgage, etc.

# Case Facts

- In 1992, most of the trust funds were used to purchase a home where S.P. lives with her adult daughter and grandson.  Neither are beneficiaries of the trust nor pay rent.
- Beginning in 2017, S.P. deposited her social security income (SSI) directly into the trust.  The trustee, Young, believed this would strengthen the trust.  The trustee and the trust accountant designated these payments as “rental income”.

# Case Facts

- As of October 2022, the trust had a balance of $21,645.28.  The annual reports do not match the payments made.
- In December 2022, the county found S.P. ineligible for Medicaid because she was over the $2,000 resource limit. Specifically, once she started funding the trust with her income, the trust assets became a non-excludable available resource.
- She appealed to an ALJ.  The ALJ found by virtue of her depositing her Social Security benefits into the trust the trust began containing the assets of S.P. and was, therefore, a countable available resource for her for Medicaid purposes.
- This appeal followed.

# Holding

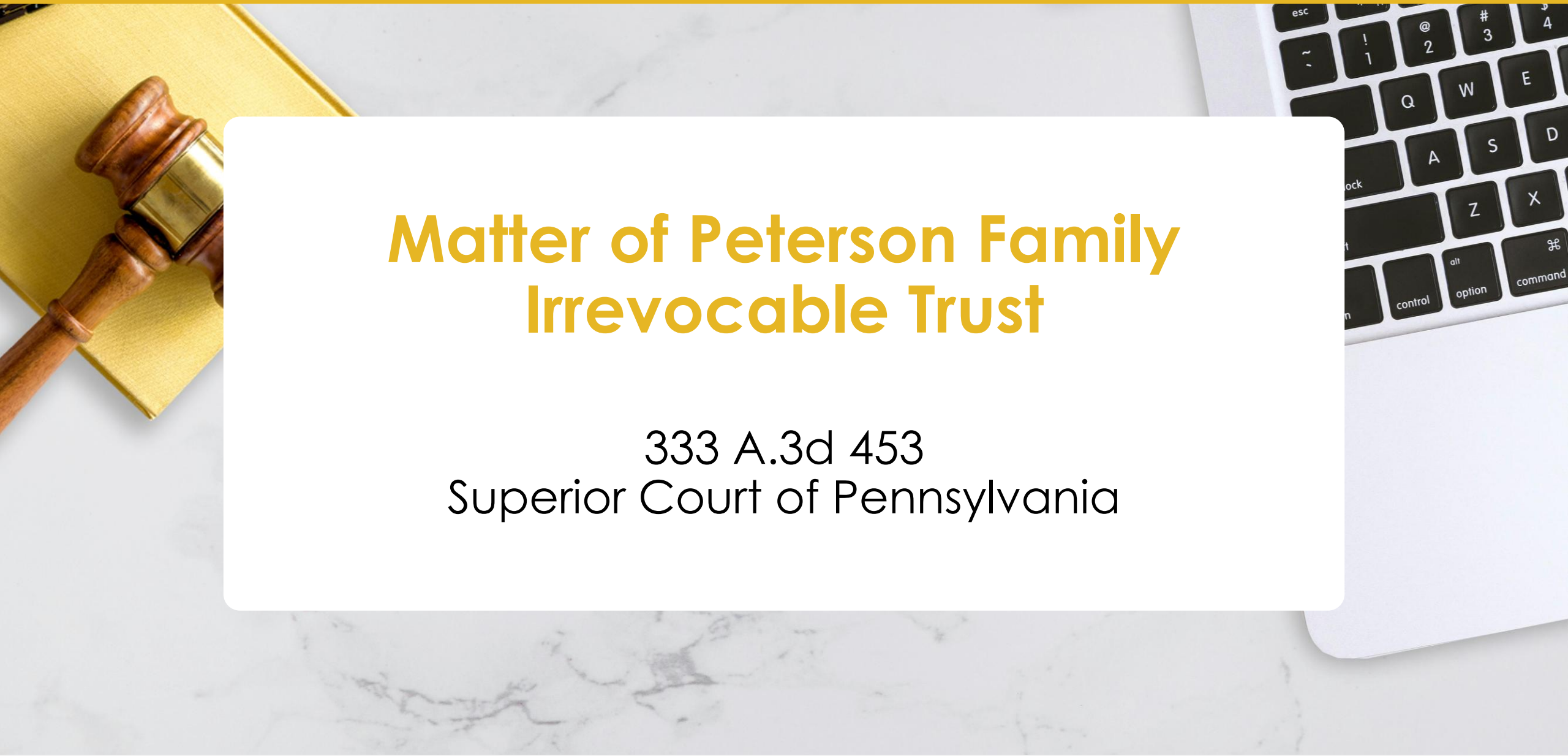
- A resource is considered available to an individual when the person has the right, authority or power to liquidate real or personal property or his or her share of it.
- Certain resources may be excluded for eligibility purposes including irrevocable trust funds since they are not accessible to an individual through no fault of their own.
- The no fault provision exists to protect against the utilization of self-settled trusts to reduce the total assets that qualify for Medicaid.

# Holding

- Consistent with federal law, when an individual's own proceeds from a judgment or settlement are transferred to a trust, the trust is considered an available resource.
- Therefore, a trust containing self-funded assets of a Medicaid recipient is a countable available resource regardless of the purpose for which the trust was initially established and any restrictions on distributions.

# Holding

- Here S.P.'s self-funding of the trust transmuted it into an available resource putting her over the asset limit.
- Once she supplemented the trust with her own funds they were no longer inaccessible through "no fault of her own". Instead, the funds were rendered inaccessible by S.P.'s voluntary choice to deposit them in the trust.



# Matter of Peterson Family Irrevocable Trust

333 A.3d 453
Superior Court of Pennsylvania

# Case Facts

- In 2011 Don and Marjorie Peterson, as settlors, entered into an agreement to establish the Peterson Family Irrevocable Trust.
- Their daughter would serve as trustee and their two grandchildren as beneficiaries.
- The only asset in the trust was their home.
- In 2024, they filed a petition to terminate the trust.

# Case Facts

- Don and Marjorie stated in their petition that they should be able to terminate the trust because the trust violates federal and state law for asset preservation and the relationship with their daughter/trustee has changed rendering the trust's ongoing administration impracticable and wasteful.
- The granddaughter/beneficiary filed an answer contesting the petition.
- The orphans' court denied the petition to terminate the trust.
- This appeal followed.

# Holding

- The Pennsylvania Uniform Trust Code allows the orphan court to terminate a non-charitable irrevocable trust if, due to unanticipated circumstances, termination will further the purposes of the trust.
- If an orphans' court finds that adherence to the administrative provisions stated in the trust agreement would be impracticable, wasteful, or impair the trust's administration, the orphans' court has the power to modify the administrative provisions but not the power to terminate the trust.

# Holding

- The intent of the trust was to shield their personal residence from Medicaid asset eligibility considerations.
- The trust has a provision that allows income to be used for the settlors' health, education, real estate purchases and promising business opportunities.
- The court agrees that the trust does not shield the assets from Medicaid claims which is against what the settlors believed was the effect of the trust.

# Holding

- The issue is whether their mistaken belief at the time they formed the trust gives rise to an unanticipated circumstance such that the orphans' court is permitted to terminate the trust.
- To allow a mistake or ignorance of the law to void actions taken by parties would subvert the effective administration of the law.
- Pennsylvania Supreme Court defined mistake of law as a mistake as to the legal consequences of an assumed state of facts.

# Holding

- Their erroneous belief that the terms of the trust exempted its assets from consideration from Medicaid eligibility, and shielded the asset from claims asserted under Medicaid, is a mistake of law.
- Therefore, they are not entitled to the relief of trust termination due to their mistake concerning the legal consequences arising from the creation of the trust – Medicaid asset protection.

# Plaisted v. Harper

2025 WL 1378473
United States District Court, S.D. Ohio, Western Division

# Case Facts

- Ohio's estate recovery program cannot collect on a Medicaid reimbursement claim against the estate's property during a surviving spouse's or surviving disabled child's lifetime.
- Nor can the State place a lien on a decedent-beneficiary's former home so long as a surviving spouse or surviving disabled child lives there.

# Case Facts

- The plaintiffs allege that the defendants who serve as debt collectors for Ohio's estate recovery program unlawfully asserted a lien on their respective homes after either their spouse or mother died.
- Defendants made a motion for judgment on the pleadings because the plaintiffs lack standing.

# Case Facts

- Holden is a disabled retiree. She owned a one-half interest in a home with her mother jointly with rights of survivorship.  Now she's the sole owner.
- Holden's mother received Medicaid benefits and after her death sent Holden a letter that informed her Ohio had a $372,435.73 claim against her mother's estate and a corresponding questionnaire.
- Defendants also filed an Affidavit of Fact Relating to Title with the County's Recorder's Office which stated the address, parcel number and stated that Ohio "may have a claim against the estate in the amount of $369,751.23 for Medicaid services rendered".

# Case Facts

- The affidavit further stated that Ohio via its estate recovery statute maintains a one-half interest or up to the claim amount, whichever is less, in Holden's property.
- Based on the letter, Holden believed that Defendants were trying to take away her home and worried she and her sister would be left homeless. She hired an attorney to restore clear title. Defendants released the affidavit but not before causing her fear, anxiety, worry, and emotional distress.

# Case Facts

- Funez's allegations mimic Holden's. He owned a home jointly with his wife with rights of survivorship. His wife received Medicaid benefits and after she passed they received the same letter, questionnaire and affidavit filed with the county recorder for a claim of $65,398.27.
- He hired an attorney to clear his title and thought those documents meant he would have to sell his house to pay the claim and felt Defendants wanted him to be homeless. Defendants did not remove the affidavits from Funez's property. He also alleges emotional distress from the situation.

# Case Facts

- The Plaintiffs brought a two-count action in federal court.
- The first count claims a violation of Fair Debt Collection Practices Act (FDCPA) by filing affidavits that falsely assert a non-existent interest in Plaintiffs' homes.
- The second count claims a slander of title under Ohio law, again based on the affidavits, which apparently include "statements disparaging each of the Plaintiffs' titles".
- Defendants moved for a judgment on the pleadings for lack of standing.

# Holding

- Once standing is questioned the plaintiff as the party invoking federal subject matter jurisdiction, has burden of persuading the court that all the requirements necessary to establish standing to bring the lawsuit have been met.
- A challenge to the court's subject-matter jurisdiction at the pleading stage can be either facial or factual.  Here, Defendants mount a facial attack which merely questions the sufficiency of the pleadings.

# Holding

- Standing requires a plaintiff establish:
  - he or she suffered a concrete, particularized and actual or imminent injury;
  - the injury is traceable to the defendant's conduct; and
  - a favorable ruling would redress that injury.

# Holding

- The court handles each element separately:
  - *he or she suffered a concrete, particularized and actual or imminent injury;*
- Plaintiffs allege infringement of property rights as a theory of injury and the court agrees an encumbrance on one's property is a tangible harm sufficient to give a plaintiff a standing for claims.

# Holding

- The court handles each element separately:
  - *the injury is traceable to the defendant's conduct;*
- That same injury via an encumbrance of title satisfies the traceability prong as it traces back to Defendant's conduct of recording the affidavits.

# Holding

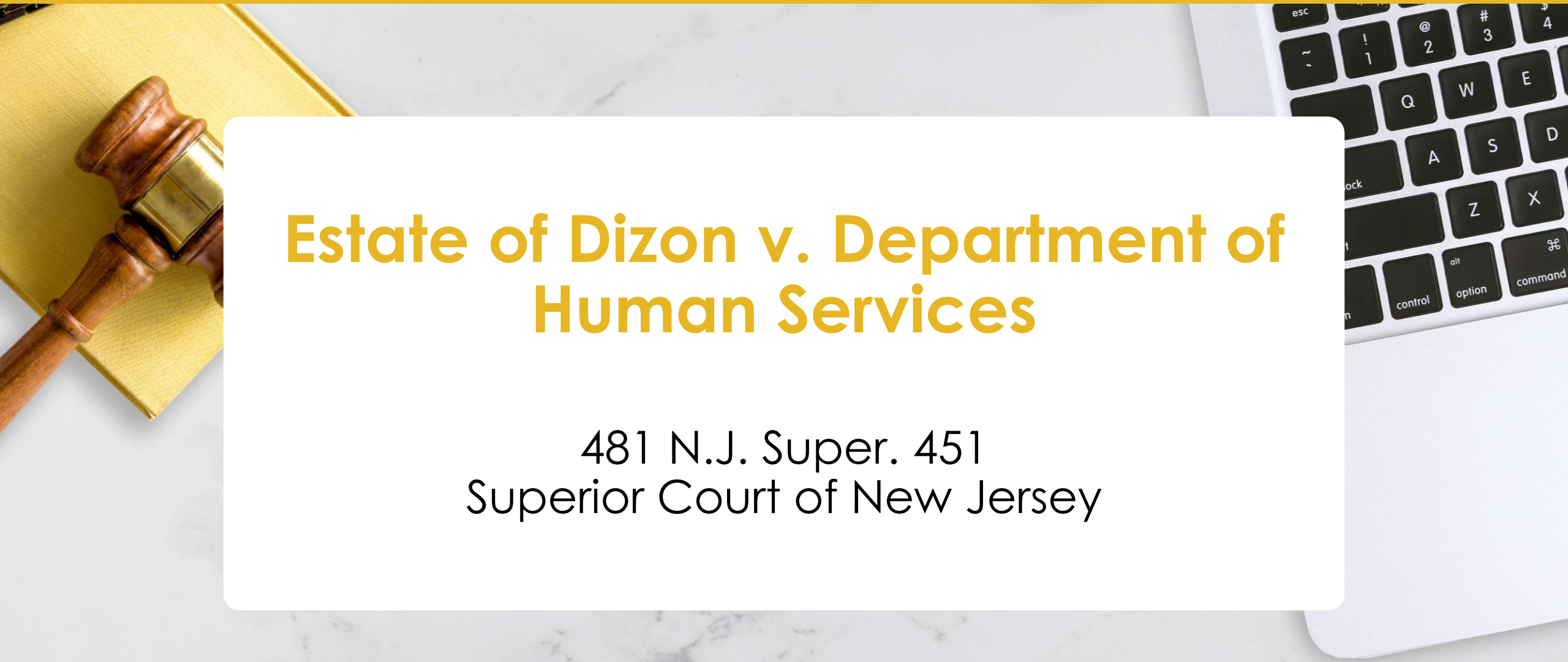
- The court handles each element separately:
  - *a favorable ruling would redress that injury*
- Plaintiffs satisfy this prong as well because they request injunctive relief and damages both of which the court has power to provide and which would redress their alleged harm.

# Holding

- Defendants claim the affidavits are not a lien under state law. However, federal law (not state law) controls when deciding whether a plaintiff established an injury sufficient to confer standing in the pleadings.
- Here, there is no question that Plaintiffs have an ownership right under state law. The only question is whether the affidavits interfered with that state-law interest. Harm is not limited to "liens" but extends to "encumbrances" more generally. These affidavits constitute encumbrances.

# Holding

- The court limits its holding to denying the motion based on the pleadings and not on the merits.
- For the present purposes, the court is persuaded that Plaintiffs have sufficiently alleged standing and denies the motion for Partial Judgement on the Pleadings.



# Estate of Dizon v. Department of Human Services

481 N.J. Super. 451
Superior Court of New Jersey

# Case Facts

- Leonor Dizon received Medicaid benefits for 12 years.
- While at a medical center she fractured her neck after falling from her bed and passed away 10 days later.
- Medicaid made a claim against the estate for $214,391.95.
- The estate then filed a medical malpractice complaint which included survivorship claim.
- Medicaid filed its lien against the estate's assets including, but not limited to, the value of the estate, including proceeds from the medical malpractice lawsuit.

# Case Facts

- The estate filed suit seeking the court restrict the Medicaid lien from the survivorship claim.
- The court determined that the statute's plain language was clear and that a survivorship claim met the statutory definition of an asset.
- The decedent possessed an interest at the time of her death in the medical malpractice claims therefore it formed part of the estate and was subject to the Medicaid lien.
- This is the estate's appeal to that decision.

# Holding

- To satisfy the federal estate recovery requirements, states must define a decedent's estate to include at least all real and personal property and other assets included within the individual's estate.
- Accordingly, the Division is authorized and empowered to use all reasonable measures to ascertain the legal or equitable liability of third parties to pay for care and services of the recipient and, where appropriate, to seek reimbursement.

# Holding

- The estate recovery statute authorizes the Division to file a lien against the estate of a Medicaid recipient.
- The statutory definition of "estate asset" includes all real and personal property and other assets defined in the probate statute, as well as other real and personal property and other assets in which the recipient had any legal title or interest at the time of death to the extent of that interest.

# Holding

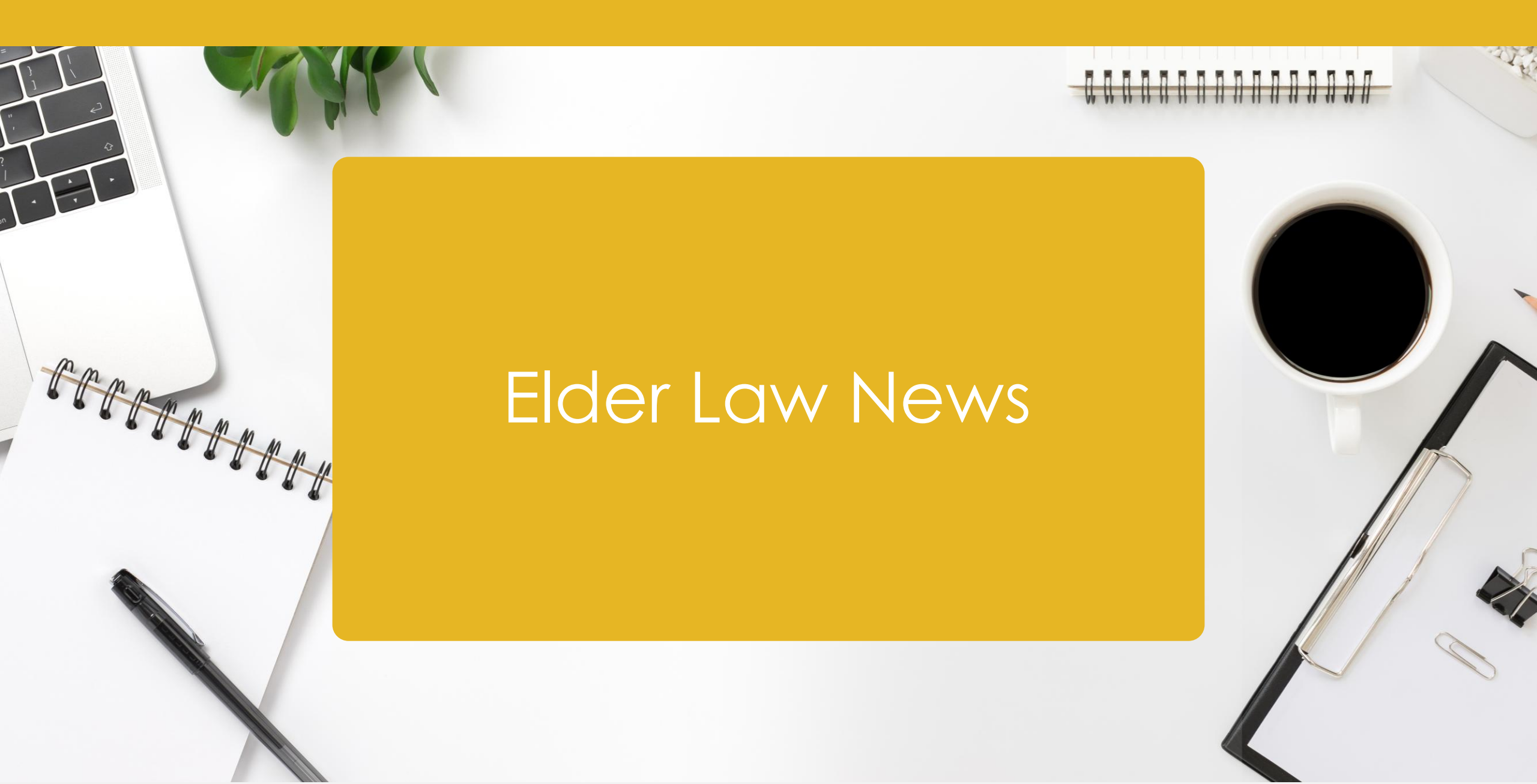
- It is clear an estate asset is widely defined to include all interests a Medicaid recipient possessed at the time of death.
- Therefore, a decedent's estate possesses as an estate asset any interest in medical malpractice claims held by the Medicaid recipient.
- An estate is indisputably charged to pursue survivorship claims on behalf of the beneficiaries, as the estate did here and seek recovery against a tortfeasor.

# Holding

- As decedent held an interest in the potential medical malpractice claims arising from her injuries sustained at Trinitas, her interest passed to the estate after her death.
- We conclude the decedent's interest in any recovery from alleged medical malpractice became an asset of the estate, which the estate thereafter pursued as survivorship claims for decedent's beneficiaries.
- That interest is therefore subject to an estate recovery claim.

# Holding

- A footnote mentions there was not wrongful death claim pursued in this case.  It is undisputed that a wrongful death claim is not subject to a Medicaid lien.



# Elder Law News

# Medicaid Impacts of Big Beautiful Bill

- Retroactive Medicaid coverage shrinks from three months to one month or two months based on program.
- Eligibility checks will be conducted every six months rather than once a year.
- Work requirements for Medicaid beneficiaries ages 16 – 64 will be required for eligibility.
- Home equity limits for LTC Medicaid eligibility capped at $1,000,000 with exceptions for homes located on farms.
- Overall, less federal funding for Medicaid across the board that states will have to make up or lose programs/coverage.
- Many of the new restrictions to Medicaid do not go into effect until 2027 after the mid-term elections.

# California Asset Test May Return

- California removed any asset test for Medi-Cal eligibility effective January 2024.
- The current budget making its way through the California legislature proposes an individual asset limit of $130,000 for a single person and $195,000 for a couple.
- If passed as currently written, the proposed changes would take effect January 1, 2026.

# Attorney Access


- Join Attorney Access, our **digital resource hub** designed for estate planning and elder law attorneys and their staff members, for more news and content!

Sign up now at
**krausefinancial.com/join**

KRAUSE
FINANCIAL

# Thank you for attending!