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Illinois Remains A Judicial Hellhole

The American Tort Reform Foundation recently released its 2013/2014 report on Judicial Hellholes and the usual suspects from Illinois made the list. Madison and St. Clair Counties once again held a spot in the top five. Cook County remained on the "watch list" for the third straight year.

Unfortunately the report finds that "[t]here is no reason to believe the litigation environment has improved in Chicago, which for several years ranked among the worst Judicial Hellholes." To support this finding, the report cites to the abuse in class action suits, the millions the City of Chicago pays out in lawsuits annually, and a recent decision that promotes forum shopping.

Illinois, which was dubbed the "Lawsuit Abuse Capital of the Midwest," received a dishonorable mention for having the fourth-



For over 40 years, Purcell & Wardrobe has built its reputation as trial attorneys successfully defending clients in complex litigation while adhering to the highest ethical standards.

highest workers' compensation premiums in the country. The report assigns some of the blame on court rulings, including one approving a workers' compensation award for a maid that fell in her own driveway!

Another recent report conducted by the Harris Research Company ranked Illinois 46th out of 50 states for legal fairness. All of this confirms what many of us already knew -that Illinois is a difficult place to defend lawsuits. But it is also important to recognize that there are cases to be won (even in Cook County). We have successfully defended clients at recent trials in product liability, construction, civil rights and transportation in this "hellhole." This is in addition to a string of victories on insurance coverage and appellate battles. We know how to fight the good fight in this environment.

The Role of the Summary Jury Trial

The summary jury trial is an alternative to the time and expense of conventional trials that still allows the litigants the satisfaction of having their day in court. The original goal of the summary jury trial was to provide the litigants with perspective as to the value of their case before they and the courts expended the considerable resources that go into a full trial. This was done through a non-binding mini trial wherein the parties would summarize their evidence to a six-person jury chosen from a ten-person panel whose "verdict" would give the parties insight into what to expect from a full jury trial. Today, the summary jury trial is being modified to accomplish much more.



As a voluntary option, summary trials can be adapted to fit the particular needs of the pending action. The goals are to limit proceedings in a way that requires the parties to get to the point quickly and also control the parties' risks. The former goal is accomplished through stipulations to limit the number of witnesses and introduce certain facts and evidence in summarized fashion. The process streamlines not only trial, but also discovery because parties are not likely to expend substantial time and effort to gather evidence and assemble witnesses that cannot be used within the time constraints of the summary trial.

The latter goal, risk reduction, is accomplished through agreements to accept the award as binding within set parameters (e.g., a "high/low"). While at first glance this may seem similar to binding arbitration, the summary trial is distinguishable as it allows the parties to present their cases to an actual jury rather than professional mediators and attorneys, whose own courtroom experiences affect the arbitration process.

A secondary benefit is received from jury impact. As the summary jury trial can be accomplished in a single day, the parties are less likely to encounter issues with jurors' availability or tardiness, will not have to concern themselves with instructions not to discuss or independently research the parties and issues (the "Google effect"), and will avoid the effect of juror boredom and distraction.

The summary jury trial will not work in all scenarios. Clearly, the summary jury trial cannot work in the catastrophic, multi-party accident scenario or where the parties refuse to cooperate to negotiate a trial plan. However, it is a useful tool to consider to break the impasse in cases where settlement seems unlikely and the costs of trial are prohibitive to either party obtaining satisfaction.

Use The New Lien Law To Your Advantage

It is common to have settlement talks stall because of the amount of healthcare liens that the plaintiff must pay back. Defendants usually view this to be the plaintiff's problem, but understanding the limitations on the lienholder's rights can help facilitate settlement and reduce the bottom line.

Overview of the Lien Act

Health care providers and entities that pay for medical services are entitled to statutory liens on any recovery by the plaintiff. The Illinois Health Care Services Lien Act created two classes of liens, one for "health care professionals" and another for "health care providers." 770 ILCS 23/5. The lien attaches to any verdict, judgment, award, settlement, or compromise secured by the plaintiff up to the date of payment. 770 ILCS 23/20, 10(a).



The statute limits the total amount of all liens to 40 percent of the damages paid to the plaintiff. 770 ILCS 23/10(a). The lienholder must provide notice to the plaintiff *and* to the party against whom the claim or right of action exists (i.e., the defendants). 770 ILCS 23/10(b). The recovery for multiple liens in same class (professionals or providers) must be proportionate, and no one class can receive more than one-third of the total recovery. 770 ILCS 23/10(c). The following rules apply when the total amount of lien is equal to or greater than 40 percent of the recovery including: (i) All liens of professionals shall not exceed 20 percent; (ii) All liens of providers shall not exceed 20 percent; (iii) Attorney's liens are limited to 30 percent. 770 ILCS 23/10(c)

Recent Amendment Reduces Lien Recoveries

An amendment to the statute that became effective January 1, 2013, further limited the recovery rights of lienholders. Under the amendment, the court can reduce the amount of a lien-holder's claim when the plaintiff's recovery is diminished by: (i) comparative fault; or (ii) reason of uncollectability (e.g., limited insurance). Liens for medical expenses must be reduced in the same proportion as the plaintiff's recovery is reduced. 770 ILCS 23/45. After that reduction, the lien-holder must bear the *pro rata* share of the plaintiff's attorney's fees and litigation expenses under the new amendment. 770 ILCS 23/50.

The amendment also includes a procedure to have the full value of the claim and the degree of plaintiff's fault determined by the court and adjudicated upon notice. 770 ILCS 23/50.

More Settlements & Lower Settlements

The new law adversely affects lien-holders, primarily to increase recoveries to the plaintiffs, but it can also help defendants. Knowing the limits on the lien-holder's recovery rights will help reduce the amount plaintiffs must pay back to their health care professionals and providers, which in turn should lower the amount it will take to settle claims.

Under the current statute, lien-holders will need to think twice before pursuing a lien on a contested liability case where their costs for prosecuting the claim will increase and their recovery rights will track the plaintiff's fault. In those instances where the liens are holding up settlement, the parties should consider adjudicating the matter before the court and obtain a finding on the plaintiff's comparative fault. Rather than paying the plaintiff more to satisfy the lien, defendants should work with the plaintiffs to adjudicate the liens. Generally speaking, courts tend to favor settlements and may be more sympathetic to the settling parties than the lien-holders.



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