



Health Law Update

Roger R. Clayton, Gregory J. Rastatter and J. Matthew Thompson
Heyl, Royster, Voelker & Allen, P.C., Peoria

Illinois Supreme Court: Attorney Fees and Costs Should Not Be Deducted Before Calculating Amounts Recoverable Under the Health Care Services Lien Act

When a plaintiff has settled a personal injury lawsuit and it comes time to adjudicate health care liens, many physicians, clinics and hospitals entitled to recover simply do not show up for the hearing, thereby waiving their liens. Likely, the health care providers simply feel that hiring a lawyer or having someone appear on their behalf is not worth the time and expense. However, the health care providers may be missing out on significant sums of money, especially over the long term. And, the Illinois Supreme Court recently issued an opinion that could increase the amount a trial court must award to lienholders, making it even more desirable for health care providers to pursue the liens.

In *McVey v. M.L.K. Enterprises, L.L.C.*, the supreme court was asked to determine whether attorney fees and costs must be deducted from a verdict or settlement before calculating the amount available to satisfy health care liens under the Health Care Services Lien Act (the Act). 2015 IL 118143, ¶ 1. The importance of the issue to the industry is demonstrated by the entities filing friend of the court briefs on behalf of the appellant hospital, including the Illinois State Medical Society, Illinois Hospital Association, Illinois Chiropractic Society, Cook County, and OSF Healthcare System. See *McVey*, 2015 IL 118143, ¶ 8. In finding that attorney fees and costs should not be deducted before calculating health care liens, the supreme court effectively increased the amount of money that may be available to satisfy such liens. *Id.* ¶ 1.

Health Care Services Lien Act

The Act creates liens for health care providers and professionals providing services to injured patients and sets forth a statutory scheme for calculating the amount of the liens. 770 ILCS 23/10. Section 10 of the Act provides, in relevant part:

(a) Every health care professional and health care provider that renders any service in the treatment, care, or maintenance of an injured person . . . shall have a lien upon all claims and causes of action of the injured person for the amount of the health care professional's or health care provider's reasonable charges up to the date of payment of damages to the injured person. The total amount of all liens under this Act, however, shall not exceed 40% of the verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person on his or her claim or right of action.

(c) All health care professionals and health care providers holding liens under this Act with respect to a particular injured person shall share proportionate amounts within the statutory limitation set forth in subsection (a). The



statutory limitations under this Section may be waived or otherwise reduced only by the lienholder. No individual licensed category of health care professional (such as physicians) or health care provider (such as hospitals) as set forth in Section 5, however, may receive more than one-third of *the* verdict, judgment, award, settlement, or compromise secured by or on behalf of the injured person on his or her claim or right of action. If the total amount of all liens under this Act meets or exceeds 40% of *the verdict, judgment, award, settlement, or compromise*, then:

- (1) all the liens of health care professionals shall not exceed 20% of *the* verdict, judgment, award, settlement, or compromise; and
- (2) all the liens of health care providers shall not exceed 20% of *the* verdict, judgment, award, settlement, or compromise;

provided, however, that health care services liens shall be satisfied to the extent possible for all health care professionals and health care providers by reallocating the amount unused within the aggregate total limitation of 40% for all health care services liens under this Act; and provided further that the amounts of liens under paragraphs (1) and (2) are subject to the one-third limitation under this subsection.

If the total amount of all liens under this Act meets or exceeds 40% of the verdict, judgment, award, settlement, or compromise, the total amount of all the liens of attorneys under the Attorney Lien Act shall not exceed 30% of *the verdict, judgment, award, settlement, or compromise*.

770 ILCS 23/10 (a), (c) emphasis added). In *McVey*, the plaintiff contended that calculating health care liens under this statutory scheme should only be done after subtracting attorney fees and costs from the settlement, whereas the lienholder contended the calculation should be based upon the entirety of the settlement. *McVey*, 2015 IL 118143, ¶ 10.

Background of *McVey v. M.L.K. Enterprises, L.L.C.*

This case arose when a waitress at the defendant restaurant dropped a tray of drinks on the plaintiff's foot, causing the plaintiff's personal injury. *Id.* ¶ 3. The plaintiff received treatment for her foot injuries at Memorial Hospital of Carbondale (hospital or appellant). *Id.* The plaintiff filed a lawsuit against the defendant restaurant, which was ultimately settled for \$7,500.00. *Id.* Thereafter, the plaintiff filed a petition to adjudicate liens, and the parties stipulated that the amount of hospital's lien was \$2,891.64. *Id.* ¶ 4.

Upon hearing the petition, the trial court determined that the amount of the hospital's lien should be reduced to \$2,500.00, because no individual lienholder may receive more than one-third of the settlement under Section 10(c) of the Act. *Id.* ¶ 5, citing 770 ILCS 23/10(c). However, the trial court refused to subtract attorney fees and costs before calculating the amount due the hospital. *Id.* ¶ 6.

The trial court was guided by the plain language of the Act, along with the supreme court's decision in *Wendling v. Southern Illinois Hosp. Services*, 242 Ill. 2d 261 (2011), which held that lienholders were not required to pay for the costs of litigation to recover their lien. *Id.* The trial court refused to follow the Appellate Court Fifth District's decision in



Stanton v. Rea, 2012 IL App (5th) 110187, which held attorney fees and costs should be deducted from the settlement or verdict before calculating the amount of the lien, because it conflicted with supreme court precedent. *Id.* ¶ 6.

The appellate court reversed the trial court, finding its prior decision in *Stanton* should have been followed, and the trial court should have deducted attorney fees and costs before calculating the amount payable to the hospital. *McVey v. M.L.K. Enterprises, L.L.C.*, 2014 IL App (5th) 130350-U, ¶ 11. The supreme court then allowed the hospital's petition for leave to appeal. *McVey*, 2015 IL 118143, ¶ 8.

Health Care Liens are to be Calculated Based Upon a Plaintiff's Total Recovery, Without Considering Attorney Fees or Costs

The only issue before the supreme court was whether the hospital's lien should be calculated based upon the plaintiff's total recovery, or whether attorney fees and costs should be deducted before calculating the hospital's lien. *Id.* ¶ 10. In reaching its decision, the supreme court was guided mostly by the plain language of the statute, because it is "the most reliable indication of the legislature's intent, and, when the language is clear, it must be applied as written without resort to aids or tools of interpretation." *Id.* ¶ 11, citing *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). With this principle in mind, the supreme court found that health care liens must be calculated based upon the plaintiff's total recovery because, "[s]imply put, there is no language in section 10 that would allow the calculation of a health care lien to be based upon the total 'verdict, judgment, award, settlement or compromise' less attorney fees and costs." *Id.* ¶ 14.

The supreme court also found its own precedent and that of the appellate court instructive, and in conflict with the plaintiff's proposed interpretation. *Id.* ¶¶ 15-18. In *Wolf v. Toolie*, the Appellate Court, First District similarly found nothing in the Act allowing health care liens to be calculated from the net amount of the plaintiff's recovery after deducting attorney fees and costs. 2014 IL App (1st) 132243, ¶ 22. In *Wendling v. Southern Illinois Hospital Services*, the supreme court reversed the lower courts' ruling that health care liens should be reduced by one-third to reflect the lienholders' share of legal fees under the common fund doctrine. 242 Ill. 2d 261, 270 (2011). On the contrary, the *Wendling* court found that the lienholders were not unjustly enriched by the attorneys' services and not required to contribute to the costs of litigation. *Id.* The *McVey* court found that, here, the plaintiff was similarly attempting to improperly shift attorney fees and costs onto the hospital. 2015 IL 118143, ¶ 18.

The supreme court held that "the Act is unambiguous and does not permit the deduction of attorney fees and costs prior to calculating the amount to be paid to any health care lienholder." *Id.* ¶ 19. In so finding, the supreme court reversed the appellate court and overruled *Stanton v. Rea*, 2012 IL App (5th) 110187. *Id.*

Conclusion

The supreme court's unanimous decision is a clear win for those providing health care services to patients suffering personal injuries. Now, trial courts must calculate the amount of a health care lien based upon the plaintiff's total recovery. In many cases, this will result in the recoverable amount being increased, and health care providers should seriously consider hiring an attorney or personally appearing at hearings on motions to adjudicate liens in order to protect their right to recovery.



About the Authors

Roger R. Clayton is a partner in the Peoria office of *Heyl, Royster, Voelker & Allen, P.C.*, where he chairs the firm's healthcare practice group. He also regularly defends physicians and hospitals in medical malpractice litigation. Mr. Clayton is a frequent national speaker on healthcare issues, medical malpractice, and risk prevention. He received his undergraduate degree from Bradley University and law degree from Southern Illinois University in 1978. He is a member of the Illinois Association of Defense Trial Counsel (IDC), the Illinois State Bar Association, past president of the Abraham Lincoln Inn of Court, president and board member of the Illinois Association of Healthcare Attorneys, and past president and board member of the Illinois Society of Healthcare Risk Management. He co-authored the Chapter on Trials in the IICLE Medical Malpractice Handbook.

Gregory J. Rastatter is a partner in the Peoria office of *Heyl, Royster, Voelker & Allen, P.C.*, where he is a member of the firm's healthcare practice group. His practice involves representing and advising hospitals on compliance issues, including drafting and analysis of hospital and medical staff bylaws, physician and allied health professional contracts, and other aspects of health law for compliance with state and federal law and Joint Commission standards. He received his undergraduate degree from Bradley University and a law degree from the University of Illinois College of Law in 2003. Mr. Rastatter is a member of the Peoria County Bar Association, the Illinois State Bar Association, and the American Bar Association.

J. Matthew Thompson is an associate in the Peoria office of *Heyl, Royster, Voelker & Allen, P.C.* He practices primarily in the area of general tort defense. He received his B.S. in Accounting from Culver-Stockton College in 2005 and his J.D. *cum laude* from Southern Illinois University School of Law in 2008.

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