LIENS, SETTLEMENTS, WORKERS' COMPENSATION CONSIDERATIONS

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What are the 2 issues you deal with most in auto cases?

Medical Medicare Medicare

What is a lien?

- Statutory
 - That means there has to be a statute that gives you the right to pursue the claim
- Strictly construed
- Often method for abuse of victims by unscrupulous medical providers
- Lawyers, judges, clients hate them

What Does a Lien Give the Claimant?

- Another way to get money (not the only way, just another way)
- Has right to get money out of the lawsuit proceeds
- Becomes one of the claimants in the case
- To get that right, there are obligations

Medical Liens in Illinois

Medical Liens in Illinois

- Health Care Services Lien Act,
 770 Ill. Comp. Stat. § 23/1 et. seq.
 (2003)
- Incorporates all prior medical liens in this Act
- Sets out requirements for medical liens to be valid

VALID Medical Liens Have . . .

- Written notice
- the name of the injured person;
- address of the injured person;
- date of the injury;
- the name of the health care health care professional or health care provider;
- address of the health care health care professional or health care provider;
- the name of the party alleged to be liable to make compensation to the injured person for the injuries received (a/k/a the defendant).

- Service on the plaintiff (injured party);
- Service of the written notice on the defendant;
- Served on both by REGISTERED mail, CERTIFIED mail, or PERSONAL SERVICE.

Must have all to be valid

Why do you care?

- Invalid liens have NO right of recovery from case
- STILL may have contractual rights of reimbursement
- Use as a negotiating tool

Key Feature #1 of Medical Lien Act



The 40% Rule

- Good: Says all lienholders cannot take more than 40% of settlement
- Bad: Says lawyer cannot take more than 25%





	Gross	
Settlement Amount	\$100,000.00	
Fee	\$ 33,333.33	
Expenses	\$ 5,000.00	
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Hospital lien	\$ 35,000.00	
Doc lien	\$ 25,000.00	
PT Lien	\$ 10,000.00	
Total Liens	\$ 70,000.00	
Net to Client	\$ (8,333.33)	

	Gross	Fund Doctrine
Settlement Amount	\$100,000.00	\$ 100,000.00
Fee	\$ 33,333.33	\$ 33,333.33
Expenses	\$ 5,000.00	\$ 5,000.00
Hospital lien	\$ 35,000.00	\$ 35,000.00
Doc lien	\$ 25,000.00	\$ 16,666.67
PT Lien	\$ 10,000.00	\$ 6,666.67
Total Liens	\$ 70,000.00	\$ 58,333.33
Net to Client	\$ (8,333.33)	

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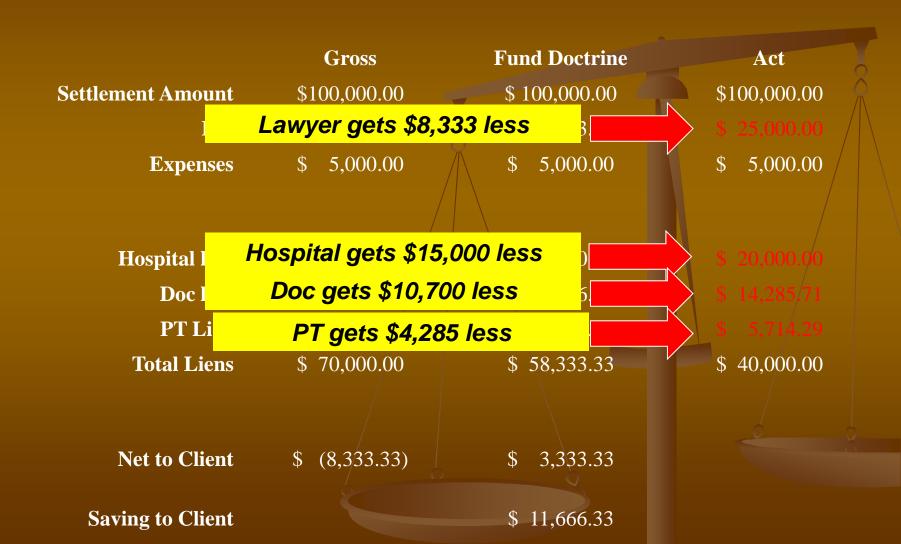
Typically

Doctrine

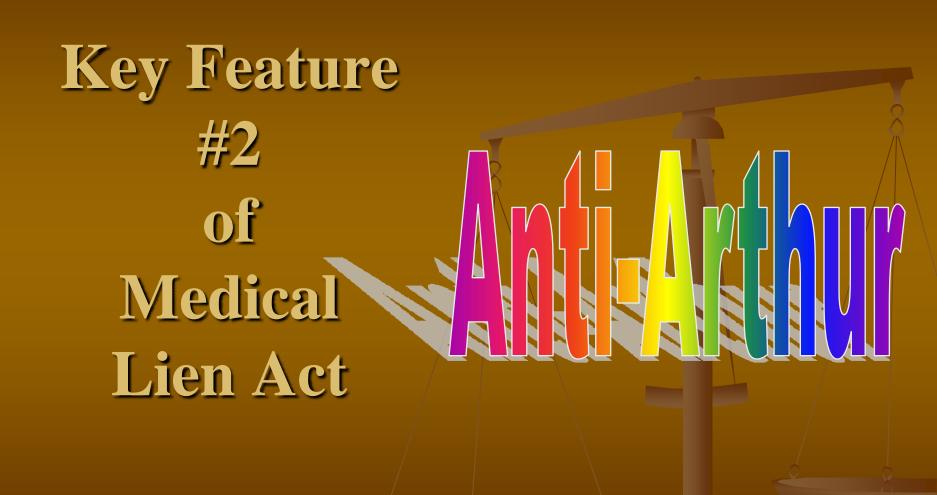
hospital lien not

subject to Fund

	Gross	Fund Doctrine	
Settlement Amount	\$100,000.00	\$ 100,000.00	
Fee	\$ 33,333.33	\$ 33,333.33	
Expenses	\$ 5,000.00	\$ 5,000.00	
Hospital lien	\$ 35,000.00	\$ 35,000.00	
Doc lien	\$ 25,000.00	\$ 16,666.67	
PT Lien	\$ 10,000.00	\$ 6,666.67	
Total Liens	\$ 70,000.00	\$ 58,333.33	
Net to Client	\$ (8,333.33)	\$ 3,333.33	
Saving to Client		\$ 11,666.33	



	Gross	Fund Doctrine	Act
Settlement Amount	\$100,000.00	\$ 100,000.00	\$100,000.00
Fee	\$ 33,333.33	\$ 33,333.33	\$ 25,000.00
Expenses	\$ 5,000.00	\$ 5,000.00	\$ 5,000.00
Hospital lien	\$ 35,000.00	\$ 35,000.00	\$ 20,000.00
Doc lien	\$ 25,000.00	\$ 16,666.67	\$ 14,285.71
PT Lien	\$ 10,000.00	\$ 6,666.67	\$ 5,714.29
Total Liens	\$ 70,000.00	\$ 58,333.33	\$ 40,000.00
	Client nets \$26,000 more than under Fund Doctrine		
Net to Client	\$ (8,333.33)	\$ 3,333.33	\$ 30,000.00
Saving to Client		\$ 11,666.33	\$ 38,333.00



Arthur v. Catour

- 770 Ill. Comp. Stat. § 23/25
- They have 20 days to prove up the bills
- Can a billing person render the opinion as to what the injuries were?
 - Isn't that medical judgment?
 - Does that mean doctor has to say it?
- Can a judge say this in <u>not</u> enough evidence to introduce the bills into evidence?
 - If this is enough to make the plaintiff liable, shouldn't it be enough to make the defendant pay?

One more thing

- When you negotiate, confirm all agreements in writing
- Make sure confirmation has this language:
- Send check with the same language

Medical Liens in Illinois

- Remember to check "liens" for compliance with Act
- Use 40% Rule to your client's advantage
- When needed, use the Anti-Arthur feature

What is the single biggest hea@uestionr all plaintiff's lawyers?



True or false

- A hospital has to accept Medicare?
- Medicare will pay insured's bills?
- Only people over 65 are Medicare eligible?
- Medicare has a lien?
- You have to wait for Medicare to come to you?
- You have to notify Medicare when you get hired?
- Medicare knows what it is doing?
- There is nothing you can do to make Medicare move faster?

- False
- False if there is someone else to pay
- False. Many others qualify.
- FALSE
- False
- False
- True (if you define knowing what you are doing as not knowing what you are doing)
- FALSE

How to Deal With Medicare

The Three Step Process

- ■Notify
- **■**Wait
- Adjudicate

■ <u>Step 1</u>

- Notify Medicare of claim
- When?
 - When case SETTLES
 - No need to do so before
- How?
 - "Case settled letter"

Medicare Coordination of Benefits Contractor Post Office Box 5041 New York, New York 10274-5041

VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Re: Plaintiff v. Defendant

Our file: 07-110221 Participant: Peter Plaintiff HIC: 555-55-555A

Sir or madam:

We have been retained to represent Peter Plaintiff in a claim for injuries sustained on May 19, 2009. Enclosed is a copy of his release that allows me to discuss this matter with your office.

We have obtained a settlement of \$300,000,000 on his behalf. The settlement is for liability claims only. The insurance adjuster for the defendant, Mr. Barry Badguy, may be reached at Illinois Worst insurance, 2222 Screw Hem Drive, Corporate, Illinois 60000 ((555) 555-5555). We have extended \$40,000.00 in expenses and an itemization is enclosed. We are entitled to a professional fee of $\frac{1}{2}$, or \$100,000,000.

Pursuant to 42 C.F.R. § 433.139, please provide me with an itemization of the amounts for which Medicare claims reimbursement. Thank you in advance for your anticipated cooperation.

Very truly yours,

Great Lawyer

Enclosures

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Our file: 07-110221 Peter Plaintiff Participant: HIC: 555-55-5555A

Sir or madam:

We have been retained to rer 19, 2009. Enclosed is a copy of his re

We have obtained a settlement of claims only. The insurance adjuster for th Illinois Worst insurance, 2222 Screw Hem have extended \$40,000,00 in expenses and an professional fee of 1/3, or \$100,000,000.

Pursuant to 42 C.F.R. § 433.139, please pro which Medicare claims reimbursement. Thank you

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Enclosures

Serve by certified mail

HIC

- Case Expenses WITH detail
- Fee in % and \$
- Request itemization

■ <u>Step 2</u>

- Wait 90 days
- Why?
- 42 CFR411.139(d)(2) gives60 days plus to endof month
- Tell your client





And wait



■ **Step 3**

- Adjudicate the Medicare claim
- Why?
 - You will wait years
 - Must get attention
 - Must protect client
 - Must protect YOU

- How do you adjudicate the Medicare claim?
 - Simple motion asking for amount they deserve
 - Describe details of case, claims
 - Attach your notice to Medicare and POS

- Where do you adjudicate?
 - ANYWHERE your CASE has SMJ, period
 - State court
 - Federal court
 - Why does State Court have jurisdiction?
 - Who has the money?
 - Is the Medicare claim new?
 - Isn't the Medicare claim a *collateral issue* to the case
 - Think ERISA just because it involves Federal law doesn't mean it has to be heard in Federal Court

- Who gets notice of your motion to adjudicate?
 - HHS in Washington DC
 - Local US Attorney's Office
 - Medicare, CMS
 - ANYONE at Medicare you've ever communicated with
 - Defense attorney
 - All other claimants
 - Courtesy copy to judge
- Serve by FedEx get signature
- Give at least two weeks notice, more is better

- What will happen
 - The AUSA will call
 - Will be mad
 - Will threaten to remove
 - Will say no jurisdiction
 - Politely explain that you just want to give the government the money they deserve
 - You will get your numbers

Why does this work?

- You're not trying to steal their money
- You have complied with all laws
- Have you ever worked for the Federal Government?

And if it doesn't, aren't you far better off than you were before?

