



Ankin Law Office LLC

Protecting the Rights of Injured Workers

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Illinois Supreme Court Changes Rules Regarding Medical Liens



At the end of March, the Illinois Supreme Court handed down an important decision that dramatically changed the way that health care liens are handled in personal injury cases. Before [Wending v. Southern Illinois Hospital Services](#), Docket Nos. 110199, 110200 cons., the “common fund doctrine” applied to medical providers. Under this doctrine, medical providers were responsible for paying their share of the costs of recovering unpaid medical bills. The court explained the rationale behind the doctrine as follows:

The common fund doctrine is an exception to the general American rule that, absent a statutory provision or an agreement between the parties, each party to litigation bears its own attorney fees and may not recover those fees from an adversary...Underlying the doctrine is the equitable concept that the beneficiaries of a fund will be unjustly enriched by the attorney’s services unless they contribute to the costs of the litigation.

After analyzing applicable laws and case precedent, the court concluded that the common fund doctrine did not apply to health care liens. The rationale was based in large part on the conclusion that hospitals received no benefit from any judgment obtained in a personal injury case:

(T)he Hospitals were not unjustly enriched because their claims were not contingent on the plaintiffs’ rights against a third party or the creation of a fund. The Hospitals’ claims existed irrespective of the outcome of the personal injury litigation...(T)he (Health Care Services Lien Act) expressly allows a hospital to “pursue collection, through all available means, of its reasonable charges” that remain unpaid after satisfaction of the lien. 770 ILCS 23/45 (West 2008). Therefore, the Hospitals did not directly benefit from, and were not unjustly enriched by, the efforts of the plaintiffs’ attorneys.

Accordingly, medical lien holders are no longer responsible for paying their share of the plaintiff’s attorneys fees. Unfortunately, when all is said in done, this does not bode well for the majority of [Illinois personal injury plaintiffs](#). In cases where the settlement is greater than medical expenses, which is the vast majority of cases, the injured plaintiff will ultimately receive a smaller portion of the settlement monies because of this decision.

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