

New Illinois Statute Addresses Settlement Timing and Procedure

A new Illinois Code of Civil Procedure section, 735 ILCS 5/2-2301 (effective January 1, 2014), prescribes settlement timing and procedure for certain civil cases. It applies to cases for personal injury, property damage, wrongful death or tort actions involving a claim for money damages, “except as otherwise agreed by the parties.” In such cases (again, unless otherwise agreed by the parties):

- A settling defendant must tender a release to the plaintiff within 14 days of written confirmation of the settlement. “Written confirmation” specifically includes “all communication by written means” and “tendered” means “personal delivery or delivery by a means providing a return receipt.”
- In cases where the law requires court approval of the settlement, the plaintiff must tender to the defendant a copy of the court order approving the settlement.
- A settling defendant must pay all settlement sums due within 30 days of the tender by the plaintiff of the executed release and all other applicable documents, such as the court order approving the settlement, where one is necessary.

Where there is a known third-party lien, the statute provides that “the plaintiff may protect the third-party’s right of recovery or subrogation interest” by tendering to the defendant:

- (1) in the case of an attorney’s lien, a signed release of attorney’s lien;
- (2) in the case of a healthcare provider lien, a signed release of the lien, a letter from plaintiff’s counsel agreeing to hold the amount of the lien in trust until final resolution of the lien amount, an offer to the defendant’s counsel for defendant to hold the amount pending final resolution, or any other documentation of another method of resolution of the lien as agreed by the parties; and
- (3) in the case of a lien from Medicare or Medicaid, the Illinois Department of Healthcare and Family Services or a private health insurance company, documentation of the agreement between the plaintiff and the lienholder as to the amount which will be accepted, a letter from plaintiff’s counsel agreeing to hold the amount of the lien in trust until final resolution of the lien amount, an offer to the defendant’s counsel for defendant to hold the amount pending final resolution, or any other documentation of another method of resolution of the lien as agreed by the parties.

If, after a hearing, the trial court finds timely payment was not made by a defendant, the statute mandates the trial court *shall* enter judgment against that defendant for the amount set forth in the executed release, plus costs incurred in obtaining the judgment and the statutory interest rate prescribed in 735 ILCS 5/2-1303 (9%) from the date plaintiff tendered the executed release and all other applicable documents.

Finally, class actions are excluded from this provision, as is the State of Illinois, certain state agencies, boards or commissions, state officers and employees sued in their official capacity, persons being indemnified by the State of Illinois, and municipalities or other units of local government.

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