



Lien On Me – An Attorney’s Guide to Liens

Seminar Topic: John LaMantia is a litigation attorney who has been practicing for 18 years. This program presents an outline of applicable laws for liens in the state of Illinois as they apply to different matters, while providing an in depth examination of the ethical considerations regarding liens in injury cases and the laws that apply. While watching this program attorneys will get an understanding of their ethical obligations to their clients whether they are the plaintiff or the defendant.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current law, impending issues and future trends that can be applied in practical situations.





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About The Author

Born and raised in Chicago, Illinois, Mr. LaMantia graduated from St. Ignatius College Preparatory High School and attended Fordham University in the Bronx, New York before returning to obtain his Juris Doctrate from John Marshall Law School.

Mr. LaMantia has 17 years of significant jury and bench trial experience as lead attorney in multiple jurisdictions in defending and representing insurers, construction and transportation businesses, governmental entities, and obtaining substantial recoveries for personal injury plaintiffs. In addition to his trial practice, Mr. LaMantia is an Adjunct Professor in the Chicagoland area teaching business law and political science.

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Lien:

Is a form of security interest granted over an item of property or future interest (such as a pending case) to secure the payment of a debt or performance of some other obligation. Any official claim or charge against property or funds for payment of a debt or an amount owed for services rendered.

Subrogee:

The person or entity that assumes the legal right to attempt to collect a claim of another (subrogor) in return for paying the other's expenses or debts which the other claims against a third party.

I. COMMON FUND DOCTRINE

Attorneys who obtain recoveries for their clients by settlement or judgment – create the “fund”
– that benefits satisfaction or payment of a lien holder or subrogee.
Under the common fund doctrine, the attorney who creates the fund is entitled to be reimbursed for their reasonable attorney’s fees incurred in procuring the settlement.

Required Elements:

- 1). The fund was created as the result of legal services performed by the attorney;

- 2). The subrogee or claimant of the fund did not participate in its creation; and
- 3). The subrogee or lien holder benefitted or will benefit from the creation of the fund.

Bishop v. Burgard, 198 Ill.2d 495, 508, 764 N.E.2d24, 33 (2002)

The policy behind the common fund doctrine is to prevent lien holders or subrogees from freeloading. Bishop

II. ERISA LIENS

Employee Retirement Income Security Act of 1974

Plan provided 100% of benefits previously paid by the plan irrespective of whether the claimant was fully compensated for injuries and damages.

Bishop court looked to prior holding in:

Scholtens v. Schneider, 173 Ill.2d 375, 671 N.E.2d 657 (1996)

ERISA subrogation rights do not preempt a Court's application of the common fund doctrine.

Result:

Common fund doctrine does apply to ERISA liens.

III. MEDPAY LIENS

Does common fund doctrine apply to claim of subrogation under a medical payments portion of an insurance policy?

Stevens v. Country Mutual Insurance, 387 Ill.App.3d 796, 903 N.E.2d 733 (2008)

Result:

Common fund doctrine applies to med-pay subrogation/ med-pay liens.

IV. HOSPITAL LIENS

Illinois Supreme Court has recently settled the issue of whether hospital liens claimed under the Health Care Services Lien Act are subject to the common fund doctrine.

Health Care Services Lien Act provides that a health care professional or provider who renders treatment to a plaintiff/injured party “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. 770 ILCS 23/10(a) The total amount of all health care liens filed on a case is limited to 40% of the judgment or settlement 770 ILCS 23/10(a).

Pro-rata formula among all treaters to equal 40% – silent as to common fund doctrine or attorney fees on obtaining fund for lien satisfaction.

Wendling v. Southern Illinois Hospital, et al, March 24, 2011

Illinois courts have never applied common fund doctrine to a creditor-debtor relationship, such as the one that exists between medical treater and patient/plaintiff.

Maynard v. Parker, 75 Ill.2d 73 (1979)

CFD is inapplicable to hospital/health care services liens because their claims are not contingent on the plaintiff's rights against a third party or the creation of a fund. Their liens exist irrespective of the litigation.

Result:

Common fund doctrine does not apply to health care services liens

V. MEDICARE: SUBROGATION vs. LIEN

Medicare presents one of the most interesting aspects of the problem of subrogation versus liens. The Medicare statute, in all its present forms, clearly states that the federal government, the Medicare provider, has an independent right of action and a right of subrogation:

The United States shall be subrogated...to any right...of an individual...to payment with respect to...service under a primary plan. *42 USC Section 1395 y(b)(2)(B)(iv)*

The United States may bring an action against any and all entities that are or were required or responsible... to make payment. *42 USC §1395y(b)(2)(B)(iii)*

Insurers are responsible to report to the Secretary of Health and Human Services that a third party claim has been paid on behalf of a Medicare beneficiary. The Secretary is empowered to issue a civil penalty in the amount of \$1,000 per day for non-compliance. *42 USC*

1395y(b)(8)(E)(1)

\$1,000 per day penalty for non-compliance became effective January 2011.

Hadden v USA, 2011 U.S. A pp. Lexis 23289. (6th Cir. November 21, 2011)

