

TORT NOTES
By: James J. Morici, Jr.

**NEW LEGISLATION CORRECTS INEQUITIES OVER JOINT AND SEVERAL
LIABILITY AND HEALTH CARE LIENS**

On June 4, 2003, Governor Blagojevich signed into law public acts 93-10 (House Bill 2784) and 93-12 (Senate Bill 729) which amended 735 ILCS 5/2-1117 to specifically exclude the plaintiff's employer from the calculation of fault under joint and several liability. These statutes were passed in order to correct the statutory interpretation of the Illinois Supreme Court in the case of Unzicker v. Kraft Food Ingredients Corporation, 203 Ill.2d, p. 64, 783 N.E.2d 1024 (2002). In Unzicker, the Court ruled that under the aforementioned statute that a plaintiff's employer was within the category of persons defined as someone "who could have been sued by the plaintiff" for purposes of apportionment of damages. It had long been argued that including the plaintiff's employer within that category was unrealistic since under the exclusivity provisions of the Illinois Workers Compensation Act the employer is not within the class of entities who could be sued by the plaintiff. The effect of the recent statutes overrules the Supreme Court's decision in Unzicker and removes the plaintiff's employer from the apportionment equation.

Legislation effective July 1, 2003 created the Health Care Services Lien Act. This act has served to simplify the liens of health care providers against personal injury cases which under the patchwork of prior legislation and under the Illinois Supreme Court's 1997 interpretation of the affect of those statutes in Burrell v. Southern Trust (176 Ill.2d 171, 679 N.E.2d 1230 (1997)) often resulted in little or no compensation for injured Plaintiffs.

A bit of historical perspective is in order. Prior to the recent legislation there were eight separate lien statutes existing in the State of Illinois which would give a share of the proceeds of personal injury litigation to those providers to cover their expenses. The way the statutes were written and interpreted in Burrell, they were "stackable." In other words, if the amount of the liens in total exceeded the available insurance or net award, then the Plaintiff would receive nothing. Before Burrell, lienholders would often work with Plaintiff's lawyers to equitably divide settlement proceeds, often in 1/3 shares to be divided among the lienholder, attorneys fees, and net recovery to the Plaintiff. After Burrell, the various lienholders would often usurp the entire settlement leaving the injured party with no recovery.

The recent legislation rectifies this inequity by repealing the eight former lien statutes and replacing them with one act. The new act creates two classes of lienholders for healthcare liens: (1) health care professionals and (2) health care providers. Professionals are individuals such as doctors while providers are entities such as hospitals.

The Act prohibits the total amount of the liens against the settlement or award from exceeding 40% of the amount secured by or on behalf of the injured person. All lienholders share proportionate amounts within the 40%, but in no event may any single lienholder receive more than 1/3 of the settlement or award. In the event that the total amount of the liens exceeds 40% than neither the professional liens nor the provider liens may exceed 20% of the total. The law

does allow that if there are unused portions within the aggregate total of 40%, it may be used to satisfy as much of the liens as possible.

The Act also addresses attorneys fees which prior to this legislation had superceded all others. Under the current legislation, if the health care liens meet or exceed 40% the attorney's lien may not exceed 30% of the settlement or award. In the event that a case is appealed the limitation does not apply. The Act requires that a health care professional or provider serve written notice on the injured person and the party against whom the claim or right of action exists. It also requires that the injured person or his or her representative must give notice of the settlement award to the lienholders who have given notice of a lien. Lienholders have a right to file a petition in the Circuit Court to adjudicate the rights of all interested parties and to enforce the liens and nothing in the Act prohibits a lienholder from pursuing a claim against an injured person for the remainder of the fees owed to the lienholder. While a citation is not immediately available, anyone wishing a copy of Public Act 93-0051 is encouraged to contact the author.

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