

## Lien Resolution Outsourcing — Forging Partnerships & Protecting the Injured

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The twenty first century trial attorney faces post settlement/award issues the likes of which could not have been foreseen even twenty years ago. Foremost among these post settlement issues is lien resolution. Today's trial attorneys have clients who have their medical benefits provided by a wide variety of sources such as; Medicare, Medicaid, Medicare Advantage plans, ERISA, FEHBA, military or private health insurance plans. Each of these healthcare plans will demand to have the benefits they "advanced" repaid from any award or settlement obtained by the injured plaintiff. The trial attorney, much to their chagrin, must now not only determine what type of plan paid the medical benefits, but determine the scope and validity of their recovery rights. So in essence they are collection agents for whatever plan the client received benefits under and must figure out who to reimburse and how much.

The area of lien resolution has become increasingly complex over the last twenty years. Lawyers and companies that specialize in this area have developed to address the growing need for trial attorneys who need such experts to help them. It is exactly that need, for experts in the area of lien resolution, which has led the ABA and many states to authorize trial attorneys to engage experienced lien resolution experts. In August of 2008 the ABA issued Formal Opinion 08-451 wherein they said "The outsourcing trend is a salutary one.... Outsourcing affords lawyers the ability to reduce their costs and often the cost to the client". Additionally, when the Commonwealth of Virginia issued Legal Ethics Opinion 1850 in December of 2010 they agreed with the rationale of the ABA in writing "Many lawyers ...outsource[e] to provide more efficient and effective service to their clients". The Virginia Bar goes on to note that "Legal outsourcing can be highly beneficial to the lawyer and the client, since it gives the lawyer the opportunity to seek the services of outside lawyers and staff in complex matters".

Similarly, in issuing NYCLA Opinion 739 the New York Bar perhaps gave the strongest advocacy for lien resolution outsourcing. They wrote: "Resolving liens is a complex area of law with many traps for the inexperienced and unwary". The NYCLA Opinion 739 goes on to describe the type of obstacles that must be overcome and activities that must be performed by the trial attorney who fails to outsource his lien resolution activities.

"The policies governing recovery of Medicare, Medicaid and private insurance liens have become much more aggressive over the past few years. The attorney must ferret out and track the liens that are asserted against the claim, and under the new federal rules, has to actively investigate any possible lien held by Medicare (42 CFR 411.25). When there is a recovery, before any funds are disbursed, a determination has to be made as to whether the asserted liens have merit, and if so, which portions of those liens are valid. Repeated contact with the lienholder may be needed, often through a third party collection agency, and extensive negotiations, or even litigation, may ensue before an agreement can be reached."

*Id.* at 2

The prudent trial attorney wants to focus on what he or she does best, proving and winning cases for the injured client. Knowing the intricacies of ERISA legal issues, Medicare waiver/compromise

processes or FEHBA plan law isn't what a trial attorney is focused on. That is for the lien resolution experts and it is their function to protect from subrogation what the trial attorney worked so hard to obtain. It is this partnership and sharing of the common goal, to maximize the plaintiff's recovery, which will result in the best possible result for the party who needs it most—the injured plaintiff.