



## Alerts

### Illinois Supreme Court Rules Common Fund Doctrine Does Not Apply to Health Care Services Lien Act

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Health Law Alert

The Illinois Supreme Court recently held that the common fund doctrine does not apply to a health care professional or provider holding a lien under the Health Care Services Lien Act. *Wendling v. Southern Illinois Hospital Services and Howell v. Southern Illinois Hospital Services*, Nos. 110199, 110200 cons. (Ill. Mar. 24, 2011). 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 attorneys' fees and may not recover those fees from an adversary. It provides that a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from every person who receives money from the fund.

In reversing the Appellate Court of Illinois, Fifth Circuit, the Illinois Supreme Court ruled that the common fund doctrine does not apply to the relationship between a personal injury plaintiff and a lienholder hospital. The Court noted that the Health Care Services Lien Act (770 ILCS 23/45) expressly does not limit the right of a hospital to pursue collection, through all available means, of its unpaid reasonable charges that remain unpaid after satisfaction of its lien. The Court distinguished actions against a fund from a hospital's claim directed primarily against its patient. The hospital's claim is not contingent upon the outcome of a personal injury action or the creation of a fund; its right to payment arises from providing medical services.

The Supreme Court identified two additional reasons why the scope of the common fund doctrine is limited to cases such as insurance subrogation claims, class actions, and wrongful death cases involving an intervenor. First, hospitals have no standing to participate in a patient's personal injury lawsuit and cannot bring independent causes of action against the at-fault party. Second, in a typical common fund case, the fund is "created for the benefit of the entire class." In contrast, counsel for a personal injury plaintiff recovers funds for the benefit of his or her client, regardless of the interests of the hospital. As a result, the Court concluded that a personal injury plaintiff and a hospital-creditor are not similarly situated with respect to the fund and do not share the same interests in the fund.

The Supreme Court remanded the cases to the circuit court for further proceedings consistent with its holding that plaintiffs' attorneys are not entitled to keep one-third of the amount otherwise payable to providers and professionals to satisfy lien claims as additional legal fees for creating the settlement fund. The decision means that hospitals and providers may continue to recover 100 percent of the amount due on their lien claims.

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