



Newsletters

Medical Litigation Newsletter - September 2010

September 29, 2010

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A Common Reduction?

The Illinois Fifth District Appellate Court recently considered the question of whether a hospital's statutory lien brought pursuant to the Health Care Services Lien Act (Act) (770 ILCS 23/4/1 et seq.) is subject to a reduction under the common fund doctrine for attorneys' fees incurred by a plaintiff in obtaining recovery against an individual liable for his injuries. The court answered the question in the affirmative.

The Relation-Back Doctrine for Medical Malpractice Practitioners

Medical malpractice defense attorneys know to expect changes in plaintiffs' theories as discovery proceeds. In most cases, the court will search for commonalities of fact and time between the proposed amendments and the contentions of the original pleadings such as to permit the amendment on the ground that it "relates back" to the original pleading filed within the period of limitations.

Hinshaw Representative Matters

Each issue of the Medical Litigation Newsletter will showcase a few cases that have recently been handled by Hinshaw lawyers. We are pleased to report the following:

Scott B. Cockrum obtained a defense verdict for an Indiana oncologist. The case involved a 29-year-old mother, who was suffering from a fever and a productive cough and was admitted to the hospital under the care of an oncologist. The oncologist immediately obtained consultations from infectious disease and pulmonology to assess the patient. Two weeks after her initial presentation to the hospital, the patient died after developing respiratory complications allegedly associated with one of her chemotherapy agents, Bleomycin. The allegations against the physicians were failure to diagnose Bleomycin toxicity, failure to timely administer steroids and failure to limit oxygen administration. Plaintiff also sued the decedent's consulting pulmonologists, who were represented by another law firm, and obtained a \$5 million verdict against the codefendant pulmonologists. The jury returned a defense verdict solely for the oncologist.

Attorneys

Jill M. Munson

Thomas L. O'Carroll



Patrick F. Koenen represented a general surgeon, who was accused of negligently performing a Nissen Fundoplication procedure on a 42-year old man who was suffering from Gastroesophageal Reflux Disease (GERD). Approximately three months after the surgery, a hernia developed in the patient's diaphragm, and a revision procedure was needed. It was alleged that the surgeon dissected the vagus nerves running along the patient's esophagus during these procedures and that the nerve damage resulted in the complete loss of stomach function; the stomach was ultimately removed at the Mayo Clinic. Plaintiff sought an award of approximately \$5 million in damages. After a two week trial, the jury returned a defense verdict finding that the surgeon was not negligent.

Thomas L. O'Carroll defended a colon/rectal surgeon on a case alleging failure to diagnose and treat an intra-abdominal infection that later led to sepsis. Before the patient died of necrotizing fasciitis, she incurred \$1 million in medical bills and was treated for nine years. Plaintiff claimed that the deconditioned state led to the death. A hospital defendant settled for \$4.5 million prior to trial, leaving the surgeon as the only remaining defendant. Plaintiff sought \$13.6 million. The jury deliberated for two days and reached a not guilty verdict on both the survival and wrongful death counts.

Michael P. Malone and Jill M. Munson successfully defended an emergency room physician, obtaining a verdict finding that the defendant doctor was not negligent. Credibility was a key issue in the case given conflicting contentions as to whether the physician had told the patient about an abnormal CT finding.

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