

CIVIL LITIGATION ALERT — ILLINOIS

9/26/13

The Rules for Civil Case Settlements Undergo Revision

Illinois Governor Patrick Quinn recently signed into law Public Act 098-0548. The Act amends the Illinois Code of Civil Procedure by adding a new statutory section (735 ILCS 5/2-2301) that substantially alters the way that civil settlement agreements are handled. The new law goes into effect January 1, 2014.

The new statute applies to settlements reached in cases involving personal injury, property damage, wrongful death, or tort actions involving claims for money damages. The statute does **not** apply to the government of the State of Illinois (including state agencies or employees acting in their official capacity), municipalities or local governments. Further, the law does not apply to class action lawsuits.

Where it does apply, however, the statute mandates that defendants that have agreed to a settlement in a civil case meet certain deadlines in the tender of release documents and the timely payment of the settlement amount. Specifically, defendants must:

- Tender an executed release to the plaintiff within 14 days of written confirmation of the settlement, and;
- Pay all sums due under the settlement agreement to the plaintiff within 30 days after the plaintiff submits certain documents to the defendant, including the executed release, a copy of the order approving the settlement (if required), as well as any necessary documentation regarding the release of liens.

Defendants who fail to pay all moneys owed within the allotted 30 days face some significant penalties. A plaintiff may seek a judgment against the defendant for the amount of the settlement set forth in the executed release, plus costs and interest, calculated from the date of the tender by the plaintiff of the executed release and other necessary documents.

The new statute also addresses liens and other third-party rights of recovery or subrogation interests. These interests may include liens by attorneys, healthcare providers, insurance companies, and Medicare and Medicaid. By the terms of the statute, plaintiffs **may** protect the rights of third parties by providing defendants with one of several different types of documents, including:

- A signed release of the attorney's lien;
- A signed release of a healthcare provider lien;
- Documentation of the agreement between the plaintiff and Medicare, Medicaid, etc. as to the amount of the settlement that will be accepted in satisfaction of the right of recovery;
- A letter from the plaintiff's attorney agreeing to hold the full amount of the claimed lien in the plaintiff's attorney's client fund account pending final resolution of the lien amount;
- An offer that the defendant hold the full amount of the claimed right to recovery pending final resolution of the amount of the right of recovery;
- Documentation of any other method of resolution of the lien as agreed by the parties.

For further information on the effect of this new statute, please contact the following Roetzel attorney:

Mark D. Belongia
312.582.1605 | mbelongia@ralaw.com