

LEGISLATIVE UPDATE

October 11, 2013

ILLINOIS LEGISLATURE IMPOSES TIME LIMITS FOR PAYMENT OF SETTLEMENTS

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On August 26, 2013, the Illinois Governor signed into law an amendment to the Illinois Code of Civil Procedure that establishes a timeline for the tendering of a release and payment of the settlement funds after a settlement agreement has been reached. The new provision, 735 ILCS §5/2-2301, takes effect January 1, 2014, and applies to all personal injury, property damage, wrongful death, and tort actions involving a claim for monetary damages, except class actions and claims involving Illinois governmental entities. Under §2-2301, the settling defendant is now required to tender to the plaintiff a release within fourteen (14) days of written confirmation of the settlement. Upon receipt of an executed release and other documentation, the defendant has thirty (30) days in which to tender the settlement funds to the plaintiff. A defendant's failure to timely make payment may result in a judgment entered against the defendant in the amount of the settlement, plus costs and interest at a rate of 9%.

The statute acknowledges that there may be third-parties with liens or subrogation interests which need to be addressed as part of the settlement. It provides that a plaintiff may tender to the defendant, with the executed release, documentation of the resolution of liens and subrogation interests. Given insurers' obligations under the Medicare, Medicaid & SCHIP Extension Act of 2007, it will be critical to incorporate as a term of settlement in an Illinois state case involving a Medicare-eligible individual that the plaintiff must tender to the defendant a Final Payment Letter from Medicare before the payment of any settlement funds and, upon receipt, the defendant will directly pay the amount owed to Medicare from the settlement fund. The resolution of all other known liens and subrogation interests should be handled in a similar manner.

Although this provision has not yet been interpreted by an Illinois court, the statute applies to all tort settlements as stated above "except as otherwise agreed by the parties." This language may give the parties the option of exempting their settlement from the requirements of §2-2301 by agreement. Thus, should the collection of funds be an issue, we suggest that settlement negotiations, and written confirmation thereof, specifically include language acknowledging that settlement shall not be subject to the requirements of §2-2301.

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