

# **TORTS 101: WHAT YOU NEED TO KNOW ABOUT**

## **S.79 BUT MAY NOT HAVE ASKED**

### **I. Hypothetical Factual Background:**

Assume Smith is injured in an automobile accident for which Brown is responsible. Smith is treated for his injuries at Mercy Hospital and incurs medical expenses in the amount of Fifty Thousand Dollars (\$50,000). Smith retains Able Law to represent him in a tort claim to be asserted against Brown and the latter's insurance carrier, Acme Insurance, the 3rd party liability insurance carrier.

Mercy Hospital files a hospital lien per 18 V.S.A. Section 2251 to secure satisfaction of its Fifty Thousand Dollars (\$50,000) bill.

After months of negotiations, Able Law convinces Acme Insurance to pay a gross settlement of One Hundred Fifty Thousand Dollars (\$150,000) to compensate Smith for his injuries. In the course of these negotiations, Able Law relies upon and cites the Fifty Thousand Dollars (\$50,000) hospital bill, as well as other materials, as evidence of the severity of Smith's injuries, thereby validating the substantial value of Smith's claim and inducing Acme Insurance to pay the stipulated settlement amount.

### **II. Disbursement of One Hundred Fifty Thousand Dollars (\$150,000) gross settlement per the hospital lien statute in its present form:**

\$50,000 to Able Law as legal fees (secured by an attorney's lien which has priority over Mercy Hospital's hospital lien);

**\$49,500** to Mercy Hospital (a \$500 discount is mandated by the existing hospital lien statute);

\$50,500 to Smith.

**III. Disbursement of One Hundred Fifty Thousand Dollars (\$150,000) gross settlement per S. 79 (assuming that Smith has no health insurance available to him):**

\$50,000 to Able Law as legal fees;

**\$16,667** to Mercy Hospital [i.e. the hospital lien may not exceed 25% of the net settlement which in this hypothetical case is \$100,000 (i.e. \$150,000 gross - \$50,000 legal fees = \$100,000 net settlement) plus Mercy Hospital additionally must pay \$8,333 (i.e. one-third of the \$25,000 secured by its hospital lien) as its pro rata share of Able Law's legal fees].

\$83,333 to Smith.

**IV. Disbursement of One Hundred Fifty Thousand Dollars (\$150,000) gross settlement per S. 79 if Smith has health insurance coverage available to him:**

If Smith has private health insurance, or is covered by Medicare or Medicaid, then Mercy Hospital's \$50,000 bill cannot be satisfied from the \$150,000 tort settlement at all since S. 79 does not allow the assertion of a hospital lien in these instances. This means that Mercy Hospital's \$50,000 bill will be reduced substantially by whichever of these first party health insurers is charged such that in the most extreme instance (probably involving Medicaid) only **\$10,000** net will be received by Mercy Hospital on its total \$50,000 bill.

If Mercy Hospital has to reduce its recovery under any of the scenarios highlighted above then the losses experienced by it must be retrieved from other revenue sources including self-insured patients, private health insurers, governmental bodies, and tax payers. This draconian *cost shifting* is most inequitable and certainly is not in the public interest.