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## Injured plaintiffs to receive higher award ratio under new state law

**BY JOSH WEINHOLD***Law Bulletin staff writer*

SPRINGFIELD — Edward W. McNabola, a partner at McNabola Law Group, calls it the “sad truth” of personal-injury law.

Too often, he said, he must look a client in the eyes and tell them that, despite their life-altering injury, they can’t get the compensation owed to them due to the defendant’s insufficient insurance.

And plaintiffs frequently recover even less than that reduced award, McNabola said, because their insurance company placed a lien on their case, seeking to reclaim some of what it paid for medical care.

So the payout to the plaintiff drops again — and sometimes, the insurer ends up receiving more than the injured person.

“Historically, medical providers have been able to hold plaintiffs hostage in personal-injury cases,” McNabola said. “Often, people who are seriously injured do not recover the full value of their case.”

But that will change soon, as Gov. Patrick J. Quinn signed House Bill 5823 this week. The new law, which takes effect Jan. 1, reduces the amount insurers can collect from a plaintiff’s award when full damages can’t be paid out.

The new law amends the Health Care Services Lien Act and allows insurance company claims to be cut proportionally to the drop in a plaintiff’s recovery.

So if a person sustains an injury worth \$1 million, but settles for the \$100,000 in insurance coverage held by the defendant, McNabola said, any lienholders’ claims would also drop by 90 percent.

Similarly, if a plaintiff’s award falls a certain percentage because a court deems him or her partially responsible for an incident, the insurance company’s claim drops by the same percentage.

“Sometimes, the most just solutions are the most simple,” McNabola said.

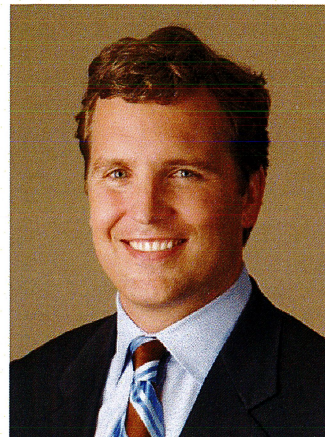
Medical malpractice defense attorney Christopher M. Daddino, a partner at Cassidy, Schade LLP, said over the past decade he saw Medicare and private insurers become much better at recovering money through liens.

While defendants previously only needed to worry about dealing with the plaintiff in a case, negotiations now also often involve a lienholder to determine a payout that satisfies the insurer.

“Companies, including the government, are becoming absolutely, positively more involved in recouping their monies,” Daddino said.

The new law, though, serves as a “pretty powerful tool” for plaintiffs, he said, providing some certainty that they can get a larger portion of the damages awarded to them.

“This is all designed to kind of change the dynamic, to get some rules on how people that are

**Edward W. McNabola**

injured in claims deal with their insurance companies who pay for medical care and want some of that money back,” Daddino said. “This is a huge issue.”

The bill represented the Illinois Trial Lawyers Association’s primary legislative objective of the spring session. State Rep. Andre M. Thapedi and state Sen. John G. Mulroe, both Chicago Democrats, sponsored it.

Thapedi, who worked as a medical-malpractice defense attorney before founding his personal-injury firm Thapedi & Thapedi LLC, said the law serves as “an equalizer” for plaintiffs.

“I’ve had the opportunity to see many different aspects of how (cases) work,” he said. “And how a lot of times plaintiffs, once the case is finally resolved, don’t get their fair share of what they’re entitled to.”