

# The Newsletter

A newsletter by the **Law Offices of J. Michael Hayes** devoted to relevant issues of negligence and insurance law.  
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## LIENS AND SUBROGATION RIGHTS

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<p><b>Liens and Subrogation claims are factors in almost every personal injury case.</b></p> <p><b>What is a Lien?</b></p> <p>A lien is an encumbrance on your claim that must be satisfied or paid out of any recovery you receive</p> <p><b>What is a “Right of Subrogation”?</b></p> <p>Insurance companies are entitled to recover monies they pay you if those payments were occasioned by someone else’s fault. For example, where you are paid for collision damage to your vehicle by your insurance carrier, they may “step into your shoes” and make a claim against the negligent party for the monies they paid out to you.</p> <p><b>Basic No Fault</b></p> <p>Generally, there is no right of recovery by the insurer for no fault benefits up to \$50,000 paid on your behalf.</p> <p><b>Additional Personal Injury Protection</b></p> <p>Where no-fault payments are in excess of \$50,000 and are made pursuant to additional coverage in your automobile policy which you have to purchase separately, your carrier has an APIP “right of subrogation” as to the amounts paid against the “at fault” driver. This is not a right of action that your attorney should pursue. It could create a conflict of interests.</p> <p><b>Workers’ Compensation REVISION 6-1-08</b></p> <p>Amounts paid by Worker’s Compensation <b>may not</b> constitute a lien. The Workers’ Compensation Law 29(1) <b>is entitled “Subrogation”. The statute “deems” that any litigation by an injured party is first to recoup medical expenses and wages that were paid by the carrier. The rationale of <i>Ahlborn</i> (see: Medicaid) may apply and mitigate against this claim constituting a lien. Upon appropriate pleading of the case, the Worker’s Compensation carrier may only have the right to intervene or pursue their own claim independently. There may be no lien here!</b></p> <p>Generally, Workers’ Compensation paid “in lieu of” no-fault benefits, up to \$50,000, does not result in a lien. However, where the Worker’s Compensation carrier is out of State, then that foreign state’s recovery laws apply and there may <u>not</u> be a set off for the first \$50,000.</p>	<p><b>Health Care Providers</b></p> <p>Health care providers have a right of subrogation to recover the amounts they have paid. Some insurance companies are writing policies to say they have a “lien”. Some have provisions that they must be fully repaid before the injured claimant may recover anything for his/her personal injuries. Each private health policy must be reviewed before consent to repayment is made.</p> <p>The right of subrogation by health care providers is permitted only in the Fourth Department (Western New York). The other three Departments do not recognize these rights. The issue <b>is going to the Court of Appeals by leave granted April 14, 2008. However, it seems well recognized that these providers only have a right of subrogation. If there is no claim for medical expenses in the lawsuit, then there should be no “equitable lien” upon resolution and all the settlement go to the client.</b></p> <p><b>Medicaid REVISION 6-1-08</b></p> <p><b>Medicaid is only a right of subrogation as holds the June, 2006 US Supreme Court case <i>ADHD v Alborn</i> Provided the injured party does not recover medical expenses paid by another provider, such as Medicaid, there is no lien! The entire recovery may go to your client.</b></p> <p><b>Medicare REVISION 6-1-08</b></p> <p><b>The federal statute provides that Medicare is only a right of subrogation. It is not a lien. If the claimant recovers and collects Medicare’s money, then an “equitable lien” is created. In the absence of that factor, no money should have to be repaid to Medicare out of the personal injury settlement or verdict.</b></p> <p><b>Solutions / Approaches</b></p> <p>Each case and settlement must be considered and approached carefully and knowledgeably. The attorney for the injured claimant should never represent both the health care provider and the client. Where coverage is limited, there may be a conflict and joint representation would be an ethical violation.</p> <p>In instances of inadequate insurance coverage, at the time the action between the injured party and the “at fault” party is settled, subrogation claims may not be resolved at the same time. In such instances it is imperative that Releases include a reservation of the rights of subrogation for the insurer.</p>
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**Mr. Hayes has written a book, *Liens vs. Subrogation*, discussing the impact of *Ahlborn* and its net effect of transforming these former “liens” into “rights of subrogation”. To save your client significant money and to simplify your practice, refer to the index to this important work at [jmichaelhayes.com/books](http://jmichaelhayes.com/books). To order a copy, contact J. Michael Hayes, Esq. at 69 Delaware Avenue, suite 1111, Buffalo, NY 14202, telephone (716) 852-1111 or e-mail [jmh@jmichaelhayes.com](mailto:jmh@jmichaelhayes.com).**