



**PROPER PLANNING MAY CREATE PEACE OF MIND**



**March 2008**

**STATES FOLLOW U.S. SUPREME COURT'S LEAD IN AHLBORN**

Courts are continuing to follow the May 2006 United States Supreme Court's ruling in Ahlborn. The Court of Appeals in the State of Louisiana decided on February 19, 2008 that the state Medicaid agency was limited to recovering its lien from the settlement proceeds representing payment for medical care. (See Thornton v. DHH, La. App., 5th Cir., No. 07-CA-708, Feb. 19, 2008). Terry Thornton was responsible for repaying the state Medicaid agency only 25% of their actual lien.

Ms. Thornton was injured in an automobile accident in 2001. Five years after the lawsuit was filed the parties entered into a consent judgment. Ms. Thornton's attorney never gave notice of the lawsuit to the Department of Health & Hospitals which administers the Medicaid program (*Florida Statutes requires this*). Ms. Thornton accepted \$180,000.00 which consisted of \$163,650.00 for general damages and \$16,350.00 for medical damages (the parties determined the categories of damages). The latter figure represented 25% of the comparative negligence of the defendants. The Medicaid lien was \$65,337.69.

Ms. Thornton requested that the

Court determine that the Medicaid agency was limited to recovering its lien from the medical portion of the damages. Her attorney deposited the \$16,350.00 into the court registry.

The agency perfected its lien and filed an objection to the petition. The Court granted Thornton's motion for summary judgment and held that the agency was limited to recovering 25% of its lien which equated to \$16,334.42.

Louisiana's state statute provides that DHH may intervene in a suit for damages against the third party to recover medical expenses it has paid on behalf of the injured party. It also requires the plaintiff to serve a copy of the complaint on DHH; failure to do so creates liability for the lien, interest and attorney's fees. The plaintiff must also notify DHH when compromising a claim.

***"The Court granted Thornton's motion for summary judgment and held that the agency was limited to recovering 25% of its lien...."***

On appeal DHH argued: 1) what it believed was the value of the plaintiff's case; 2) that what she recovered was 91.5% of the true value; and 3) that DHH should recover 91.5% of its lien. The Court disagreed with DHH's analysis based upon Ahlborn.

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**Firm Facts:**

Stephanie is a Former Chair of The Florida Bar Elder Law Section. Our firm is proud to be a Business Friend of Eagle sponsor for the Florida Justice Association.

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