

Why Should Personal Injury Law Firms Consider Outsourcing Lien Resolution?

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Introduction

You might ask yourself, why hire experts to assist with lien resolution when I can do it myself? You also might ask whether it is ethically permissible to outsource lien resolution to a lien resolution company? The first question is quite simple to answer, and the second one requires a little more examination of the rules regulating lawyers.

The problem really starts with the responsibilities a law firm has at the beginning of each new case as it pertains to liens. I use lien synonymously with subrogation, reimbursement, and debts here even though there are differences. Given the law, a law firm must track liens that are asserted against their client's personal injury claim and in some instances will have an affirmative duty to investigate and identify possible liens (Medicare & Medicare Advantage plans are good examples).

The law firm must determine whether a lien holder's claim has merit and is legally valid. To reach resolution, this requires a law firm to have significant contact and interaction with a variety of lien holders along with recovery vendors. At the conclusion of the case, it frequently requires protracted negotiations to reach an agreement to resolve the claims made by a lien holder or recovery vendor against a settlement, judgment, or verdict. The bigger issue, given the distractions it creates, is that law firms frequently wait too long to begin to negotiate a reimbursement to a lien holder which can delay disbursement to the injury victim. All the foregoing creates pressure on law firms to outsource lien resolution functions.

Key Takeaway: Outsourcing lien resolution is often a prudent strategy for law firms, not only for efficiency but also to meet their ethical and legal obligations to clients. Law firms face complexities from the outset of a case in identifying, tracking, and negotiating liens, which include subrogation claims and debts against their clients' personal injury settlements. These tasks require expertise and focused interaction with various stakeholders like lien holders and recovery vendors. The responsibility intensifies when law firms must assess the legal validity of lien claims and engage in often lengthy negotiations to resolve them. Additionally, delays in these negotiations can postpone receipt of settlements for injured clients. Given these challenges and obligations, the pressure for law firms to consider outsourcing lien resolution is significant.

Why Outsource?

As to the question of why outsource, it really comes down to efficiency and results. When resolving a lien on behalf of an injury victim, you typically are either dealing with a government benefit health plan or an aggressive recovery vendor on behalf of a plan. Dealing with Medicare, Medicaid, FEHBA on the government side can be time consuming and ineffective. Having to negotiate with and against recovery contractor groups for Medicare Advantage plans and Rawlings, Equian, Optum and Conduent can be equally difficult if not more so. Recovery contractors are massive corporations whose sole reason for existence is to take dollars from a personal injury victim's recovery. They do this by relying upon the efforts of talented trial lawyers who secure settlements and receive verdicts. These recovery contractors have very deep pockets and large staffs to pursue nothing but liens which makes for lopsided battles.

So, to sum up succinctly why you may want to hire an expert lien resolution group to help you and your client:

- 1) Make your law firm more efficient and profitable by reducing operating expenses;
- 2) Give you a deep team of experts to fight the massive recovery vendors; and
- 3) Most importantly, get the best possible resolution for the injury victim when it comes to what must be paid back to a lien holder.

Before moving on to ethical outsourcing discussed in the next section, let's unpack a little bit more about the reasons to partner with an experienced lien resolution provider. While the idea of subrogation and reimbursement may seem quite simple, the task of resolving these demands made against a personal injury settlement can become very time-consuming as well as very complex. "Lien law" is a dynamic and evolving area of the law with each type of lien having nuances and peculiarities along with resolution challenges.

This is so much so that the health insurance industry has for decades recognized these complexities and turned to lien resolution/recovery contractor vendors themselves to make sure they get paid back after an injury is sustained. Frequently, an attorney representing an injury victim is left to fight these vendors with one hand tied behind their back due to a lack of resources, time, and specialized knowledge. The recovery vendor's business model relies upon this to make it much more difficult than it needs to be for trial lawyers. They know it can be overwhelming and they exploit that to their own advantage. So, the first question to ask yourself is: do you want to take on large well-funded recovery vendors or partner with a lien resolution group who has the requisite expertise to fight fire with fire?

Partnering with a well-qualified lien resolution group minimizes a law firm's operating expenses. Every business seeks to decrease operating costs and increase efficiency. This can be accomplished by outsourcing all the time-consuming lien resolution functions. The large amount of time and effort a personal injury law firm devotes to post-settlement lien resolution issues typically creates a loss to the firm's bottom line. Alternatively, outsourcing lien resolution functions allows the lawyer or firm to pass on the cost to the client, in most states, similar to the cost of retaining an expert. A trial lawyer's valuable time is better spent on moving cases toward settlement or trial and not on cutting through government/private health plan red tape. Which, as stated above, are designed specifically to be difficult or frustrating to navigate.

Hiring a lien resolution group provides your law firm with a powerful partner in the lien resolution process. By partnering with lien resolution professionals, you gain a knowledgeable partner and resource for the lien resolution issues plaguing law firms. Without knowing every potential lien resolution argument and the latest rules/processes associated with health plan liens, attorneys and their staff are prone to inefficiency, or worse yet, mistakes.

A lien resolution group will have the necessary expertise to accelerate the lien resolution process as well as to get the best possible reduction. Before moving on to the last point, it is important to explore some examples. Dealing with multiple lien types in a single case can pose significant challenges for even the most experienced trial lawyers as they all will have unique rights of recovery, recovery departments and differing practices related to notice, perfecting, and compromising claims.

For example, someone covered by an employer-based ERISA plan might move to a Medicare plan after losing their job due to the injuries they suffered. These plans will have

different processes to resolve. You can have a client who is dual eligible meaning you have both Medicaid and Medicare liens. Both Medicaid and Medicare lien resolution issues are quite complex by themselves – understanding *Ahlborn/Gallardo* for Medicaid and Medicare compromise/waiver processes for Medicare. Another problematic area can be ERISA lien resolution and the impact on applicable lifetime coverage limits and future care denials.

Given the ever-shifting legal landscape of lien resolution, lawyers must keep up to date in a variety of ways from Medicare-to-Medicare Advantage and Medicaid. Add in ERISA, FEHBA, military, hospitals, provider, and private health insurance liens and you have a tremendous amount of law to keep up with and necessary analysis of the issues to get it all correct. For a lawyer handling a personal injury case, there are a multitude of questions to answer related to each lien such as:

- What are my legal obligations as plaintiff's counsel and am I personally liable?
- When looking at the client's net recovery, are they made whole and is full reimbursement to the lien holder proper?
- Is there a lien? Reimbursement obligation? Just a debt?
- What standard reductions are provided by state or federal statutes for the applicable lien?
- What other reductions of a lien or reimbursement obligation may be available to the client such as legal defenses, compromise/waivers or offsets?
- Is the reimbursement obligation owed limited to past payments or does it also include future payments?
- Are there any state-specific laws peculiar to the jurisdiction that impact lien resolution for the client?

- For non-government benefit plans, what law applies? State or federal? Is it governed by ERISA, FEHBA, FMCRA or state law? Combination of laws?
- Who is the plan administrator and recovery vendor for non-government plans?
- Can the Plan or vendor actually prove it is the type of plan it claims to be? And its recovery rights under the law?

Proper expertise and a team to issue spot these kinds of problems along with powerful negotiation strategies can make sure the end result is the best possible outcome and is in the injury victim's best interests.

Lastly, the importance of an outstanding resolution result for a lien can't be overstated. Getting outstanding results when it comes to lien resolution leaves the client with a positive, lasting impression at settlement. Clients who are not properly educated about lien resolution, don't understand these obligations, and have to pay back too much are often frustrated and discontent with the end result. A client's poor impressions post settlement can affect a lawyer or law firm's reputation in the community. Ultimately, client satisfaction with regard to the resolution of lien obligations may produce repeat business or boost new client referrals for a lawyer or law firm.

Conclusion

Outsourcing lien resolution is not just about delegating tasks; it's a strategic move for law firms handling personal injury cases. There is a compelling case for outsourcing. Improved efficiency and better outcomes are the primary reasons. Navigating lien law is a complex, time-consuming effort, especially when dealing with government benefit health plans or powerful recovery vendors. The recovery vendors are purposely organized to make lien resolution

difficult, thus impairing a law firm's effectiveness and bottom line. Outsourcing solves this by providing specialized expertise and resources to combat these well-funded entities. It also frees up valuable time for attorneys to focus on settling other cases or trials, rather than slogging through red tape. Moreover, the intricacies of lien law are ever-changing, spanning from Medicare to ERISA, making it almost impossible for a single attorney or even a law firm to keep up. By outsourcing, law firms can have a dedicated team that is up to date on current laws and skilled in negotiation, which leads to better outcomes for the clients. Client satisfaction with how liens are resolved can have a lasting impact on a law firm's reputation and future business.

While outsourcing lien resolution can provide substantial advantages, it is crucial to approach this strategy from a clear ethical framework. Ensuring ethical practices in outsourcing protects client interests and maintains professional integrity. The following section discusses how to comply with ethical rules when outsourcing.