

Subrogation and Health Insurance Liens in Georgia Injury Cases

Why Your Health Insurer May Demand a Share of Your Settlement

Most Georgia injury victims understand the basic structure of a personal injury claim. The [Centers for Disease Control and Prevention](#) estimates that unintentional injuries cost Americans hundreds of billions annually in medical expenditures, and health insurers covering those costs have built robust recovery systems to reclaim what they paid from third-party settlements. You were hurt, someone else was at fault, and you pursue compensation for what happened to you.

What many victims don't understand, until the settlement check arrives and the full amount isn't there, is that a third party has been quietly watching the case the entire time. Your health insurance company paid your medical bills while the case was pending, and now it wants to be repaid out of your recovery.

This isn't a mistake or a technicality. It's a legal doctrine called subrogation, and it operates as a formal lien on your injury proceeds in most cases. At the [Law Offices of Gary Martin Hays & Associates, P.C.](#), our [Georgia personal injury lawyers](#) regularly negotiate these liens as part of maximizing what clients actually keep from their recovery. Understanding how the process works, which types of plans are governed by which rules, and what rights injured Georgians have to contest or reduce the amounts claimed is essential knowledge for anyone pursuing a serious injury claim.

We've recovered over \$1 billion for [Georgia families](#), and part of that work involves ensuring that insurers don't quietly reclaim a disproportionate share of the compensation we fought to win for our clients.

What Subrogation Means in Practice

Subrogation is the legal right of one party who pays a debt to step into the shoes of the person they paid it for and pursue recovery from the party who actually caused the loss. In the personal injury context, your health insurer paid your surgical bills, your imaging costs, your rehabilitation sessions, and your prescription costs after your accident. When you later recover money from the at-fault driver, your insurer argues that it should be reimbursed because the at-fault party, not your insurer, was the one who should have been responsible for those costs from the beginning.

Here's how that plays out: a Georgia driver is injured in a rear-end collision on I-75 and is billed \$80,000 in medical charges. Their health insurance plan actually pays \$22,000 to settle those bills at negotiated network rates. The driver settles their personal injury claim for \$200,000. The health insurer now asserts a subrogation lien claiming \$22,000, the amount it actually paid. If the lien isn't challenged, negotiated, or reduced, the victim walks away with \$178,000 rather than \$200,000 before attorney fees and costs.

For causes of action arising on or after April 21, 2025, the gap between the billed amount and the paid amount has become a centerpiece of Georgia personal injury litigation. Under the [Senate Bill 68 phantom damages reform](#), juries now see both numbers and decide the

reasonable value of treatment based on both. That shift affects how the medical-damages component of a settlement is valued at trial, which in turn affects the proportions used in any later lien negotiation. The broader framework of [Georgia's SB 68 tort reform](#) reshaped the legal landscape every Georgia injury claim now operates within.

Key Types Of Health Coverage And How Subrogation Works For Each:

- **ERISA-Governed Employer Health Plans:** These plans are governed by the [Employee Retirement Income Security Act](#), a federal law that preempts state insurance regulations for employer-sponsored health coverage. ERISA plans often assert extremely aggressive subrogation rights and may claim their full reimbursement even when the injured person didn't fully recover all of their damages, a situation called the "make whole" problem. The U.S. Supreme Court addressed ERISA subrogation limits in a series of decisions that require close reading to apply correctly in each case.
- **Individual And Small-Group Health Insurance Plans Under State Law:** Plans that aren't ERISA-preempted are subject to Georgia's own insurance statutes, which impose certain limitations on subrogation. Georgia law under [O.C.G.A. § 33-24-56.1](#) provides a framework for how non-ERISA plan liens are handled in personal injury cases, including whether the insurer must reduce its claim proportionally when the injury victim didn't receive a full recovery.
- **Medicaid Plans:** Georgia Medicaid subrogation rights are governed by federal Medicaid law and state implementation rules. The federal government limits what states can recover through Medicaid subrogation to amounts specifically attributable to past medical expenses, not future medical costs or non-economic damages. Medicaid lien amounts in Georgia injury cases require careful analysis against the specific allocation of the settlement proceeds.
- **Medicare:** Federal Medicare law contains the Medicare Secondary Payer Act, which gives the federal government a mandatory recovery right for Medicare payments made in connection with a claim. Medicare must be notified when a personal injury case is pending, and failure to resolve a Medicare lien before disbursing settlement proceeds can expose both the attorney and the client to personal liability for the full amount owed.
- **Workers' Compensation Plans (Where Overlapping):** When a Georgia injury victim's medical bills were also paid by a workers' compensation carrier because the crash occurred in the course of employment, the WC carrier has separate subrogation rights governed by [O.C.G.A. § 34-9-11.1](#). These rights interact with the third-party personal injury claim in ways that require coordinated handling.

The Make-Whole Doctrine and Georgia's Protections

The most important protection available to Georgia injury victims in non-ERISA subrogation disputes is the make-whole doctrine. The doctrine holds that a health insurer's subrogation right is secondary to the injured person's right to be fully compensated. If the settlement or verdict doesn't fully compensate the victim for all of their damages, the insurer cannot assert a lien that would leave the victim worse off.

Applying the doctrine requires valuing the full range of damages the injured person suffered, including future medical costs, lost earning capacity, pain and suffering, and loss of enjoyment of life, and comparing that full value to the actual recovery. When those numbers show that the victim was undercompensated, the make-whole argument becomes the foundation of a lien reduction negotiation. Our attorneys document the disparity between full damages and actual recovery as part of every serious case.

For ERISA plans, the make-whole doctrine may not apply unless the plan document is silent on the point. Federal courts have split on how broadly ERISA preempts the make-whole defense, and the outcome often depends on specific plan language. That's why our attorneys obtain and analyze the full plan document, not just the insurer's summary, as early as possible in every case where an ERISA health plan paid injury-related bills.

Hospital Provider Liens Versus Health Insurance Subrogation

It's important to distinguish health insurance subrogation claims from direct hospital provider liens. When a hospital provides care to an injury victim and hasn't been fully paid through insurance, it can assert a direct lien on the victim's personal injury recovery under [O.C.G.A. § 44-14-470](#). These hospital liens are legally distinct from the health plan's subrogation claim, though both may appear simultaneously in the same case.

How [hospital liens and provider claims affect Georgia personal injury settlements](#) is a separate but related analysis. When both a provider lien and a health plan subrogation claim are asserted, the settlement proceeds may be claimed from two directions simultaneously. Resolving that situation requires understanding the priority rules, the applicable statutes, and the negotiating leverage available against each type of claimant.

Negotiating Lien Reductions in Serious Injury Cases

The amounts stated on subrogation notices and lien assertions are opening positions, not final numbers. Health insurers, Medicaid, and even Medicare in certain circumstances can and do accept negotiated reductions, particularly when the injured person can demonstrate that the full settlement didn't cover all of their damages.

Effective lien negotiation requires several things: a documented calculation of the victim's total damages, a clear accounting of what the settlement covers, evidence of the insurer's proportionate share of the recovery relative to the overall claim value, and in ERISA cases, a careful reading of the plan document's subrogation and recovery provisions. Insurers respond to well-documented reduction requests more favorably than to bare requests for leniency.

For Georgia injury cases governed by SB 68, the math now lines up more cleanly than it did under the prior phantom damages regime. Because juries see both the billed and paid medical figures, the medical-damages component of a settlement often tracks the lower paid amount more closely than the higher billed amount. That alignment supports a clearer reduction argument with the subrogating insurer: the insurer paid X, the settlement-derived medical damages component reflects roughly X, and the remainder of the settlement properly addresses lost earning capacity, pain and suffering, and other categories the insurer had no role in covering. The post-SB 68 environment makes early damages framing more important than

ever, because the figures the jury sees now drive both the settlement value and the lien-reduction analysis.

Our attorneys begin identifying and quantifying lien claims early in every case, not at the moment of settlement. That timing allows us to [use a life care planner](#) and other damages consultants to build the full framework before lien negotiations begin, rather than scrambling after the settlement is reached to contest claims that have already hardened into demands.

What Injured Georgians Actually Keep

The practical effect of subrogation on what a Georgia injury victim actually takes home is significant and frequently underestimated. A settlement that looks substantial at first glance can be reduced dramatically by an uncontested health plan lien, a Medicare Secondary Payer demand, and a provider's direct hospital lien operating simultaneously. Understanding and managing all three is part of what distinguishes a recovery that fully compensates an injured person from one that merely covers the most visible costs.

When a serious injury produces permanent limitations on earning capacity, our attorneys ensure that [lost earning capacity](#) is documented separately from past lost wages. That separation matters in lien reduction negotiations because past medical costs are what the insurer paid, not future losses, and demonstrating that a significant portion of the settlement covers losses the insurer had nothing to do with is often the most effective argument for reducing the claimed amount.

If you've been injured and are concerned about what liens or subrogation claims may affect your recovery, [contact us](#) for a free consultation. We represent Georgia injury victims on a contingency basis, so our firm's legal fee comes only from the recovery we obtain, not from your pocket while the case is pending.