Medicaid Lien Litigation In Virginia: Cases Citing Va. Code § 8.01-66.9

Afzall v. Commonwealth	In a declaratory judgment action by an injured minor seeking a determination that the Commonwealth's lien arising from Medicaid benefits provided in his treatment should be reduced by the legal fees and costs he incurred in obtaining the settlement of a negligence case against a third-party tortfeasor for causing the injuries, the bar of sovereign immunity applies because the Commonwealth has not waived that defense in the context of a declaratory judgment action within the purview of Code § 8.01-66.9. Thus the trial court was without jurisdiction to adjudicate this claim. The appeal is dismissed and final judgment is entered in favor of the Commonwealth. *Afzall v. Commonwealth*, 273 Va. 226, 226, 639 S.E.2d 279 (2007).
Commonwealth v. Huynh	In exercising the authority granted by Code § 8.01-66.9 to reduce a lien in favor of the Commonwealth for medical services rendered to an infant injured by the alleged negligence of her physician, the trial court erred in failing to award at least some portion of an infant's settlement with the physician to the Commonwealth. The judgment is reversed and remanded. … "The legislative purpose of Code § 8.01-66.9 [is] to secure to the public treasury such recompense as [may] be found, where public funds [have] been expended for the treatment of tortious injuries." *Commonwealth v. Lee*, 239 Va. 114, 118, 387 S.E.2d 770, 772 (1990). *However, no language in this statute suggests that the Commonwealth be permitted to enforce its lien in its entirety if in a particular case this would result in the injured party being denied a just recovery for her injuries or her attorneys failing to receive reasonable compensation for the services they rendered to obtain that recovery.*[1] **[Page 172]** Rather, the statute expressly directs the trial court to "apportion the recovery, . . . as the equities of the case may appear." *Commonwealth v. Huynh*, 262 Va. 165, 165, 171-172, 546 S.E.2d 677 (2001).

[1] Writer's case; *emphasis* by writer. NB: Ginny has flowered into a young adult. Nurtured in the bosom of a loving family and sheltered by the special needs trust approved by the Court "predicated on the inescapable conclusion that her future medical expenses would rapidly exhaust the money awarded to her if it were not sheltered in a manner that would allow her to continue receiving assistance from the Commonwealth," *id.*, page 173, her life has been both blessing and blessed.

University of Virginia v. Harris	When the trial court, acting pursuant to Code § 8.01-66.9, apportions a recovery between a plaintiff, the plaintiff's attorney, and the Commonwealth or its institutions, that apportionment is binding upon the parties whose claims are adjudicated in the apportionment proceeding, provided such parties had proper notice. *The shares of the recovery thus apportioned are thereafter immune from the claims of the other parties to the apportionment, although such claims may be enforced against other property.*[2] *University of Virginia v. Harris*, 239 Va. 119, 119, 387 S.E.2d 772 (1990).
Commonwealth v. Smith	A very young child who darted into heavy traffic was struck by a truck and sustained severe and permanent injuries. He was treated at a state-operated hospital and at a county hospital. A part of the cost of his treatment was paid for by the Medicaid program administered by the state. His counsel received notice of liens, pursuant to Code § 8.01-66.9, from the state agency and the state-operated hospital. His counsel attempted, unsuccessfully, to negotiate complete waivers of the liens with the Attorney General. The child's counsel then sought damages against the truck driver, naming the Commonwealth and its agents as defendants and requesting that the court set aside the Medicaid and hospital liens. The court sustained the demurrer of the governmental parties and dismissed them. Defendant truck driver's insurance carrier offered the full amount of the policy limit in settlement, provided that all issues relating to the Commonwealth's liens be resolved. The offer was rejected and the case set for trial, because the child's attorney said he could not regard the offer as acceptable if, after payment of the liens and attorney's fees, such a small amount would remain for the care of the child. The court ruled that no acceptable offer had been made and entered a final order reducing the liens and the counsel's fee and approving an infant settlement agreement between plaintiff and defendant. *Commonwealth v. Smith*, 239 Va. 108, 108, 387 S.E.2d 767 (1990).
Commonwealth v. Lee	[5] The legislative purpose of Code § 8.01-66.9 was to secure to the public treasury such recompense as could be found, where public funds had been expended for the treatment of tortious injuries. In cases of the present kind, a lien on the injured infant's claim might have some prospect of collection. By contrast, the parents would

[2] *Emphasis* by writer. The debtor's "other property," if traceable to the personal injury recovery, may be exempt by application of Va. Code § 34-28.1, *Personal injury and wrongful death actions exempt; exceptions. Cf. In Re Apfel,* Case No. 16-72070-SCS (Bankr. E.D. Va., February 16, 2017)(Va. Code § 65.2-531 exemption applicable to worker compensation settlement extended to loan made by debtor Apfel).

	have little incentive to prosecute their claim for medical expenses against the alleged tort-feasor, particularly in the courts of a foreign jurisdiction, in a case where any recovery would inure to the government. [6] In *Commonwealth v. Smith*, 239 Va. 108, 387 S.E.2d 767 (this day decided), we discussed the final sentence of Code § 8.01-66.9, which empowers the court "in which a suit by an injured person or his personal representative has been filed" to reduce the Commonwealth's lien under certain circumstances. At the times pertinent to the present case,[1] even though the Commonwealth could have perfected its liens before suit was filed, the court had no jurisdiction to reduce the liens unless a suit were pending in that court brought by the injured person against the alleged tort-feasor. [7] We conclude that the Commonwealth's liens attached to the infant's claim, that the court erred in setting them aside, and that the court lacked jurisdiction to reduce them in this infant settlement proceeding. Accordingly, we will reverse the order appealed from and remand the case for further proceedings consistent with this opinion. *Reversed and remanded.* FOOTNOTES [1] As we noted in *Smith*, the General Assembly, in 1989. rewrote the final sentence of Code § 8.01-66.9 to vest the power to reduce the Commonwealth's lien in the court in which suit has been pled or, if suit has not yet been filed, in the court "in which such suit may properly be filed." The effective date of the amendment was made July 1, 1990. Acts 1989, c. 624. *Commonwealth v. Lee*, 239 Va. 114, 118, 387 S.E.2d 770 (1990)
	Circuit Courts
Chan v. Commonwealth	Va. Code § 8.01-66.9 referenced as *obiter dictum*, but included in these materials as a recent case with a thoughtful review of the policy and cases relevant to privacy and confidentiality stipulations in settlement agreements. Va. Code Ann. § 17.1-208, the Sunshine Statute, states that "[e]xcept as otherwise provided by law, any records that are maintained by the clerk of the circuit court shall be open to inspection by any person. . . ." Section 17.1-208 creates a presumption of access that is

	"equivalent to the constitutional right of access." Daily Press, Inc. v. Commonwealth, 285 Va. 447, 456 (2013). To overcome this presumption, the party moving to seal records bears the burden of "establishing an interest so compelling that it cannot be protected reasonably by some measure other than a protective order." Shenandoah Publishing House, Inc. v. Fanning, 235 Va. 253, 259 (1988). The question, then, is whether the Court is bound to follow the Sunshine Statute or the Confidentiality Statute. Both statutes have undefined limits of applicability. Just as § 17.1-208 applies "[e]xcept as otherwise provided by law," § 8.01-581.22 permits exceptions "as provided by law or rule." In Perreault v. Free Lance-Star, the Virginia Supreme Court addressed the tension between § 8.01-581.22 and § 17.1-208, albeit in the wrongful death context. Critically, the wrongful death statute in that case required that the petition "state the compromise, its terms, and the reason therefor." Perreault, 276 Va. 375, 384-385 (quoting Va. Code Ann. § 8.01-55). Similarly, § 8.01-66.9, on which Chan relies to seek relief from the Commonwealth's lien, requires that the Court "set forth the basis for any such reduction in a written order." In the wrongful death context, it is the petition that is the source of the sensitive information; in the context of lien reduction, sensitive information may be revealed when the Court fulfills its obligation to set forth in writing the basis for any reduction in the lien owed to the public. Although Chan maintains that Perreault does not control (and, strictly speaking, perhaps it does not), the Court did explain that the legislative purpose of § 8.01-55 is to serve "the public's 'societal interest in learning whether compromise settlements are equitable and whether the courts are administering properly the powers conferred on them'." Id. at 389 (quoting Shenandoah Publishing, 235 Va. at 260). In light of that purpose, the Court stated it could not "conceive that the General Assembly intended to permit the confidentiality provisions allowed but not required by Code § 8.01-581.22 to trump the provisions of Code § 8.01-55 and, consequently, the right of public access provided for by Code § 17.1-208." Id. *Chan v. Commonwealth*, 25 Cir. CL1500071600, 92 Va. Cir. 122 (2015).
Mutz v. Whitehead	Itself a published form, it is included here as it may be useful starting point for a settlement order referencing Va. Code § 8.01-66.9 with a structured settlement, containing a table of claims allowed and liens paid together with inclusive release and settlement language for the benefit of the Defendants.

	Mutz v. Whitehead, 24 Cir. CL0402484200 (2005).
Tomlin v. Chesapeake Hosp. Corp.	With the above statutory and case law mandates in mind, the court will now consider the specific liens at issue. Tomlin's lawyers seek a one-third recovery, $5,000, pursuant to their retainer agreement with Tomlin. They also seek costs and expenses totaling $7,829.70, which include costs incurred by Tomlin's present lawyers as well as costs incurred by the lawyers who previously represented him. If both of those amounts are allowed, only $2,170.30 will be left for Tomlin and MCV. The lien for fees must be reduced. The court recognizes that the one-third contingency fee arrangement Tomlin has with his lawyers is standard in this type of case. The court also recognizes that $5,000 in this particular case will not fully compensate Tomlin's lawyers for the work they performed on his behalf. Moreover, it must be remembered that had it not been for counsel's wise decision to enter into a high-low agreement with defendant, no recovery would now be available at all. Counsel must be rewarded for their effort, but the reward cannot be much in light of the funds available. With regard to litigation costs and expenses, MCV asks the court to award nothing to Tomlin's counsel. The court cannot agree to that request. While the limited funds available will require counsel to accept a lower fee than they bargained for, the court does not believe it appropriate to have them actually *lose* money, which will happen if they do not recover the full amount of their costs. Costs represent counsel's out-of-pocket expenses. Even though they are a significant percentage of the recovery in this case, there is no evidence or argument that they are in any way exaggerated or inflated. They will be allowed in their entirety. The court will reduce the attorney's fee to $2,170.30, giving Tomlin's counsel a total lien of $10,000. Of the remaining $5,000, $3,000 will be awarded to Tomlin. MCV's lien will be reduced to $2,000. As this court said in *Ross v. Greene*, *supra*, "the court would be hard-pressed to deny any plaintiff *some*portion of a settlement or verdict when, without plaintiff's efforts to obtain a recovery, no creditor would be paid *anything* other than what could be collected outside of the personal injury claim." 45 Va. Cir. at 271. Indeed, even more elementary than the fact that there would be no recovery in this case but for counsel's agreeing to a high-low arrangement is the fact that there would also be no recovery had Tomlin not brought an action in the first place. *In any event, the court has already*

	noted Huynh's holding that the injured party must receive some recovery.[3] An award of $3,000 to Tomlin is appropriate under the circumstances of this case. While this provides little compensation to MCV — in fact, it may not cover MCV's out-of-pocket costs — the court can do no better. Some recovery must be given to Tomlin and the attorney's lien is superior to MCV's lien. The non-Commonwealth health care providers will have no liens at all. This is unfortunate, but unavoidable. The statute sets the priority of the liens. The amount of the settlement allows no other result. *Tomlin v. Chesapeake Hosp. Corp*., 13 Cir. CH041254 (2005).
Quivers v. Suffee	Citing *Huynh* five years before *Ahlborn,* the trial court determined that no reduction was necessary in the balance of equities, in part because the special needs trust would shelter the infant plaintiff's recovery: "If those services are not paid for by plaintiff out of her recovery in this case, they will be paid for by the taxpayers of the Commonwealth. Also, the parties have informed the court that because of plaintiff's circumstances, which need not be set out here, any recovery obtained by plaintiff in this action will be placed in a 'special needs trust.' Such trust not only allows plaintiff's recovery to be used solely for her welfare and benefit under the direction of a trustee, but also allows plaintiff to remain eligible for Medicaid, meaning that her future medical expenses will be paid for without having to spend the money recovered in this case. Thus, none of the $136,762.53 that plaintiff will receive as her net recovery will have to be used for medical treatment." *Quivers v. Suffee*, 13 Cir. LM15854, 58 Va. Cir. 94 (2001).
Diaz v. Arlington Anesthesia, Inc.	The perfect storm of high medical expenses, permanent brain damage, and a malpractice cap, decided five years before *Ahlborn,* resulted in a severe hardship *even if* a special needs trust were available to give some shelter to the hopelessly disabled plaintiff. This is a heartbreaking case where the plaintiff, Carlos Diaz, was catastrophically and permanently injured after being admitted to Arlington Hospital for repair of an inguinal hernia. During the course of his medical treatment, Carlos suffered from brain damage and cerebral palsy, from which there is no reasonable hope of

[3] *Emphasis* by writer.

	recovery. Carlos requires constant care and will need specialized medical treatment for the rest of his life. On March 28, 2001, this Court entered an Order approving a settlement as to defendants Arlington Health Foundation and Arlington Hospital for $150,000.00. This Court entered a second order approving a settlement as to Arlington Anesthesia, Inc. and its agents on May 3, 2001, in the amount of $500,000.00 (plus $6,187.50 in costs paid directly to certain expert witnesses). The plaintiff now seeks to reduce the Commonwealth's $866,053.22 Medicaid lien and apportion the settlement. …. The Assistant Attorney General proposes that the lien be reduced to $200,000.00. This number is indeed much higher than the proposals of the plaintiff's attorney and the Guardian ad Litem. However, in taking into account the equities of the case, the Court must recognize that the Commonwealth is not the tortfeasor. The Court's decision could impact the many other citizens who are in need of Medicaid funds. For this reason, the Court finds that the proposals of plaintiff's counsel and the Guardian are low. The lien is very large at $866,053.00, and allowing the Commonwealth to recover such a small fraction of the settlement proceeds would not serve the best interests of its citizens. The Court also finds that the Commonwealth's proposal of $200,000.00 is high. The Court has considered the permanent injuries suffered by Carlos, and the fact that in this case, the cap on damages is unfortunate. Carlos will be totally dependent on others for the rest of his life. For this reason, given the equities of the case, the Court will reduce the amount of the Medicaid Lien to $85,000.00. *Diaz v. Arlington Anesthesia, Inc*., 17 Cir. CL97662, 56 Va. Cir. 329 (2001).
Terry v. Harris	Citing Huynh and with insufficient funds to pay everyone everything claimed, the Court applied the reduction voluntarily assumed by plaintiff’s counsel to the lienholders and claimants: Having considered the equities of this case, and intending that each of the major players — the plaintiff, plaintiff's counsel, and the Commonwealth — receive a fair and significant portion of the recovery that they would otherwise be entitled to receive, the court concludes that the appropriate thing to do is to reduce the

	Commonwealth's lien by the same percentage by which plaintiff's counsel voluntarily reduced her fee. Specifically, plaintiff's counsel voluntarily reduced her fee from one-third ($16,666.66) to one-fourth ($12,500), a reduction of 25%. Applying that same percentage to the $15,737.90 Medicaid lien, a reduction of $3,934.48 is obtained, leaving a balance to be apportioned to the Commonwealth in this action of $11,803.42, and plaintiff a net recovery of $24,349.33. That amount, plus the $1,000 that the court will award to his mother, is only slightly more the $25,000 that the Commonwealth feels is appropriate. It is the amount that the court will award. *Terry v. Harris*, 13 Cir. LM17814, 56 Va. Cir. 326 (2001).
Ford v. Jones	Recalling its 1998 decision in Ross v. Greene, *infra*, and citing Smith, *supra* (both decided before *Ahlborn* and *Huynh*) the trial court reduced fees and the Commonwealth, holding itself without authority to reduce liens of private health care facilities. In balancing the equities of the case, it made an award based on the fact that plaintiff was seriously and permanently injured and should receive more than a de minimus portion of the settlement; plaintiff's lawyer performed considerable work in achieving a settlement and is entitled to be paid for his services, although full payment under the circumstances cannot reasonably be ordered; and while MCV, standing in the shoes of Virginia's taxpayers, is entitled to some payment on its bill, it would likely receive no payment at all were it not for the effort of plaintiff and his lawyer in achieving this settlement. Under all of these circumstances, the above award is proper." *Ford v. Jones*, 13 Cir. LF29044, 54 Va. Cir. 479 (2001)
Motley v. Mobley	Decided before *Ahlborn*, *Motley* is another case that would not likely have been as difficult, if filed at all, had there ben an apportionment of the gross settlement between special and general damages. In rejecting the plaintiff's request for a reduction that would have given the severely injured 65 year old plaintiff "a net recovery of at least $100,000," the court stated that it "must remain cognizant of the equities involved. There is no magic in the $100,000 net except that it may comport with the equities in the case. The court finds it does not. First, the court considers that plaintiff has already received some benefit in the bankruptcy discharge of her litigation costs and the underlying obligation for medical expenses. This has obviously inured to her benefit and to the detriment of two creditors, her counsel and the Commonwealth. Under all the circumstances,

	especially given the relative merits of plaintiff's claim, I do not believe the equities call for any reduction of lien in this case. Therefore the court will not order a reduction; the request for this is denied. *Motley v. Mobley*, 13 Cir. LC24404, 50 Va. Cir. 308 (1999).
In Re: Wood	Another case decided before *Huynh* and *Ahlborn* in which the trial court struggled with insufficient funds and an intractable public hospital refusing to reduce its Va. Code § 8.01-66.9 public hospital lien. Plaintiff's counsel had voluntarily reduced their fees and the trial court said that the public hospital lien could be paid in full. If Marks & Harrison, P.C., and Cary B. Bowen, Esquire, still agree to reduce their fees by one-third, the total amount of payments by plaintiff will be $16,941.60, leaving her $8,572.35, which is actually $2,080.26 *more* than she would receive under her own proposal. Even if plaintiff's attorneys' fees are not reduced, she will pay out only 20,386.04, leaving her with $5,127.91, which is only $1,364.18 less than she would receive under her proposal. That is not enough of a difference to justify reducing the Commonwealth's lien. *In Re: Wood*, 13 Cir. LE26674, 47 Va. Cir. 545 (1999)
Ross v. Greene	Decided before *Huynh* and *Ahlborn.* As can be seen, in none of the above cases did a plaintiff receive no net recovery. Indeed, the court would be hard-pressed to deny any plaintiff some portion of a settlement or verdict when, without plaintiff's efforts to obtain a recovery, no creditor would be paid *anything* other than what could be collected outside of the personal injury claim. It is only the present plaintiff's voluntary action of not seeking a net recovery here that prevents him from receiving one. In other words, if instead of making the request he makes, plaintiff had asked the court to reduce liens in such a way as to allow him at least some net recovery, the court cannot imagine that his request would have been refused. Plaintiff then could have paid his net recovery to DCSE without any ability of the Commonwealth to object. In fact, what is really in dispute in this case is approximately $8,500.00; that is, plaintiff proposes to pay DCSE about $8,500.00 more than the Commonwealth wants DCSE to be paid. Since the court would have certainly allowed plaintiff a net recovery of at least that much if he had requested it, the court will not punish plaintiff for asking instead that such amount be paid directly to DCSE. While this does not insulate MCV from having its claim eventually discharged in bankruptcy, the situation would be no different if plaintiff had sought and received a net

	recovery. Accordingly, the court will order that DCSE's entire claim be paid out of the settlement proceeds. *Ross v. Greene*, 13 Cir. LB6744, 45 Va. Cir. 267 (1998).
Emery v. Fletcher	Decided before *Huynh* and *Ahlborn*, the trial court balanced the equities here by looking at the long term care that would be needed for the rest of the severely impaired infant plaintiff, injured in a motor vehicle accident. The child, now age fourteen, has serious permanent physical and mental disabilities. Obviously the child will need long term care. The parties have been negotiating a reduction of the Medicaid lien in good faith. The Commonwealth has proposed that the $85,000 award be divided into thirds, one-third to be applied to the Medicaid lien, one-third to the child, and one-third to the child's attorney. The child, through his attorney and his next friend have proposed that the attorney voluntarily reduce his attorney's fees from one-third to twenty-five percent, that the costs be paid in full, that $50,000 be placed in a trust for the child, and that the balance be divided equally between the Medicaid lien and the father's lien. The father proposes to use his portion of the funds to provide dental care for the child, which he is not able to do at the present time because of his financial condition, and to provide a computer for the child to use at home to enhance his skills. Balancing the equities in this case, and considering that the extra funds for the benefit of the child will allow the child's father to keep the child off the welfare rolls for a longer period of time, I've reduced the Commonwealth's Medicaid lien to $7,288.85. The father's lien is reduced to $4,500.00. The costs of $1,461.15 will be paid out of the settlement proceeds. The attorney's fees, voluntarily reduced from $28,333.33 to $21,250.00 shall be paid. The balance of $50,000 shall be applied for the benefit of the child in a trust with adequate surety approved by the court. *Emery v. Fletcher*, 23 Cir. CL9348, 41 Va. Cir. 630 (1995).
In Re: Travis Alan Ashe	Decided before *Huynh* and *Ahlborn.* Relying upon *Barreca*, *infra*, and the intention of funding a special needs trust with the net proceeds, the trial court declined to reduce the public hospital / Medicaid lien at all, finding that the equities of the case did not require reduction. It must also be noted that plaintiff's net recovery in this case will be placed in a "special needs trust" to be established under 42 U.S.C. § 1396 p, and the Virginia Plan for Medical Assistance, § VR 460-03-2.6109. What that means is that none of the proceeds will be available to pay for plaintiff's future medical needs. Thus, it is very likely that the Commonwealth, either through Medicaid or one of its other programs, institutions, or departments, will be called upon

	again to provide services to plaintiff, or to pay for services provided by others. It is appropriate, then, that while funds are available, and in light of the fairly significant net recovery which plaintiff will receive even without a reduction, that the Commonwealth be reimbursed for the services already provided, and for the payments already made. Neither of the Commonwealth's liens will be reduced. *In Re: Travis Alan Ashe*, 13 Cir. 001, 35 Va. Cir. 333 (1995).[4]
Barreca v. Tillery (May 3, 1994)	Decided before *Huynh* and *Ahlborn*, this case presaged the apportionment argument in *Huynh* made on behalf of a teenager rendered quadriplegic in a swimming pool case. [T]he court must decide whether any lien at all should be allowed to the Commonwealth. While no available amount will give the Commonwealth any significant portion of its entitlement, the court will allow a lien of $10,000 [in light of the original claim of $150,000]. Even though this case presented a situation in which a very real possibility existed for the Commonwealth to receive nothing, I feel that where a recovery is achieved, the Commonwealth should receive some part of it, even if it is only a very small part. That will be the case here. *Barreca v. Tillery*, 13 Cir. LW202A, 34 Va. Cir. 36 (1994).
Barreca v. Tillery (May 12, 1994)	In declining to change the Order of May 3, *supra*, the Court "reject[ed] the suggestion in numbered paragraph 1 that this court is somehow bound by the agreement between plaintiff and her counsel. Once plaintiff invokes Va. Code § 8.01-66.9, it is up to the court, not the parties, to set the amount of the liens." Citing Va. Code § 8.01-66.9, the trial quoted: [A]fter written notice is given to *all those holding liens* attaching to the recovery, [the court may] reduce the amount of the liens and apportion the recovery, whether by verdict or negotiated settlement, between the plaintiff, *the plaintiff's attorney*, and the Commonwealth . . . as the equities of the case may appear. . . . Emphasis added. Indeed, counsel's argument in this regard is directly refuted by University of Virginia v. Harris, 239 Va. 119, 387 S.E.2d 772 (1990), where the Court, in discussing § 8.01-66.9, stated:

[4] Writer's case.

	The General Assembly, therefore, not only intended that the court would have authority to reduce the lien asserted by the Commonwealth or one of its institutions, *but also intended that the court would have the power to determine what portion of the recovery each of the contending parties would ultimately receive, and to divide and distribute the recovery accordingly*. 239 Va. at 125 (emphasis added). Finally, neither my decision nor § 8.01-66.9 raises any constitutional question.[5] The decision will stand. *Barreca v. Tillery*, 13 Cir. LW202B, 34 Va. Cir. 36 (1994).
Nichols v. Gregory	Decided before *Huynh* and *Ahlborn.* In a wrongful death case with a limits settlement of $50,000 versus more than $110,000 in medical and death related expenses, Judge Johnson was again called upon to make the best of an impossible situation. Both the plaintiff and the Commonwealth make sound and valid arguments. On the one hand, taxpayers should not be required to pay for medical services which could have been covered by some type of insurance had the decedent, or his family, or the defendant, or the car's owner had the foresight and financial ability to purchase more insurance. On the other hand, an innocent decedent's beneficiaries should not be deprived of the only form of compensation which the law has devised for the loss of a loved one simply because the injuries were so severe that the cost of medical treatment exceeds the amount of available insurance. Obviously, however, these truths exist only in a perfect world. In the real world, the court must balance the interests of the Commonwealth, including its taxpayers, against the interests of the victims of other people's negligence, and § 8.01-66.9 is the means by which such balancing is done. Having considered all of the relevant facts, the court concludes that the lien reductions and distribution proposed by plaintiff are appropriate. First, unless the case is settled, there will be less money for everybody, since a trial will necessitate additional costs and expenses. Second, while the Commonwealth's taxpayers will be burdened by allowing payments to the beneficiaries, such burden is slight compared to the loss suffered by the beneficiaries. Third, by

[5] Ironically, *Ahlborn* and *Wos* reached the United States Supreme Court on the supremacy clause of the United States Constitution.

	reducing the amount of attorney's fees claimed, the actual extra burden imposed upon the Commonwealth is only $12,570.40; i.e., plaintiff's attorney will receive a fee of $12,500 instead of the $16,667 agreed upon, a difference of $4,167. Subtracting that difference from the total amount to be paid to the beneficiaries — $16,737.40 — a net difference of $12,570.40 results. This is the extra burden on the taxpayers. Finally, § 8.01-66.9, by its very enactment, envisions some burden on the taxpayers. Such a burden exists whenever a lien of the Commonwealth is reduced. If the General Assembly did not intend to create such a burden in cases such as this, the statute would not have been passed. Having considered all of the above factors, the lien reductions and distribution proposed by the plaintiff will be ordered. *Nichols v. Gregory*, 13 Cir. LW16204, 31 Va. Cir. 302 (1993).