

Article on Common Fund: written for the Plaintiff Attorney – What we are up against!!!

When pursuing recovery of your damages from another individual or company, your recovery amount may become negotiable and even reduced by the involvement of insurance companies. In other words, if you are seeking recovery for personal bodily injury or property damage from a third party, and your personal insurance company has already paid for part of these damages on your behalf, your insurance company may be entitled to reimbursement of those payments.

But how far can an insurer go in the request for reimbursement for your subrogation action? One of the most highly disputable issues involves the issue of attorney fees. Because many insurance companies establish subrogation and recovery units within their organization, they often do not expend much of a cost in terms of legal expenses to acquire part of your recovery. Instead, the insurance company may perform a "piggyback" of sorts; riding on your coat tails and allowing you to foot the bill for your own legal expenses while they enjoy the benefits of reimbursement.

If you are pursuing third party recovery damages, and your personal insurance company has placed notice that they intend to seek reimbursement from your recovery, it is important to inquire as to how much of your attorney fees they plan to pay on your behalf. In many cases, your insurance company may indicate they hold no obligation to share in the expense of retaining your attorney and often quote the language found in the American Rule, citing each party is responsible for the payment of their own legal expenses.

Do not accept this response. In many states and court environments, the exceptions to the American Rule are quite common. In fact, under a doctrine known as the Common Fund Doctrine, courts will require that an insurer carry some degree of burden with regard to attorney fees, especially in situations where the insurance company never retained an attorney to represent themselves. Essentially, the Common Fund Doctrine presumes your attorney has engaged in the recovery of a sum of damages, benefiting many parties, and, therefore, each of those parties should partake in payment of that attorney's fees in order to acquire their portion of the settlement or recovery.

Each and every day, millions of Americans are hurt on the job, hurt in auto accidents, injured on the premises of others and even experience personal property damage. While many of these damages are paid by our personal health insurance carriers, you may seek to recover damages, through a subrogation action, from the at-fault third party. In doing so, be certain you are familiar with the method by which your insurance company will seek and recover their own reimbursement. If they choose to "watch-and-see" while you and your attorney pursue subrogation, your attorney should allocate part of his attorney fees to the insurance company citing they are responsible under the Common Fund Doctrine.