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Insurance Company Reimbursement under the "Common Fund Doctrine"

When a person suffers personal injuries in an accident, typically medical care is sought through the person's usual medical care providers and insurance company.

In a personal injury case, plaintiffs are sometimes surprised to learn that they are required to reimburse their health insurance company for benefits paid on the injured person's behalf if the injured party recovers from a third-party who is responsible for the injuries.

This situation often arises in automobile accidents or other accidents that occur because of a third-party's negligence. While reimbursement to the insurance company for medical bills can be a concern, New Mexico law provides a doctrine that provides some relief.

New Mexico law requires health insurance companies in most circumstances to reduce the amount of the reimbursement they seek. Under the "common fund doctrine," an attorney who creates a pool of funds for a group has the right to seek payment from the pool, or to seek proportional contribution from those who accept the benefits of the attorney's efforts. *Wright v. First Nat. Bank in Albuquerque*, 123 N.M. 417, 941 P.2d 498 (1997).

Basically the doctrine requires insurance companies to contribute to the attorneys fee paid by the insured party because the insured incurs attorney's fees in recovering a judgment or settlement that benefits a subrogated insurer.

For example, if an injured person retains an attorney to bring a personal injury claim and the person enters into a one third contingency fee agreement with the attorney, paying the attorney a third of what he receives, the insurance company will similarly reduce their claimed reimbursement by one third. Assuming a plaintiff receives a personal injury settlement of \$30,000, and pays his attorney one third or \$10,000 plus tax and costs usually, the insurance company will reduce their reimbursement similarly. As a result of the common fund doctrine, if the insurer has paid \$9000 in medical benefits, it will reduce its subrogation by one third to \$6000.

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The effect of the common fund doctrine is to require insurance companies to share their insureds' litigation expenses. The reason being that the insurer benefits from the insured's and attorney's efforts in obtaining a fund to pay the insured, in the form of a settlement or damages award, and the insurer, in the form of a subrogation reimbursement.

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