

COA Opinion: Contingent fee agreement with no-fault plaintiff entitled plaintiff's attorney to one-third share of medical expenses owed by insurer to service provider

14. May 2010 By Jason Byrne

On May 13, 2010, the Court of Appeals published its opinion in *Miller v. Citizens Insurance Company*, No. 290522. In this case, a medical center that had provided services to an injured plaintiff was challenging the trial court's decision to award the plaintiff's attorney one-third of the medical expenses that the no-fault insurer agreed to pay pursuant to a settlement with the plaintiff. In an opinion authored by Judge Cavanagh, the Court of Appeals affirmed the award of fees to the plaintiff's attorney. The Court of Appeals focused on the fact that there was a contingent fee agreement between the plaintiff and his attorney that entitled the attorney to a one-third share of any recovery - which, in this case, included the medical expenses owed to the center. The center argued that this had the effect of reducing recovery they were entitled to, and that they did not have any agreement with the attorney for such a reduction. In response, the Court of Appeals noted that the center was aware that plaintiff's attorney was pursuing the recovery of these expenses, but chose not to intervene in the litigation or otherwise assert its rights independently. Additionally, the Court of Appeals noted that the Center received the benefits of the plaintiff's attorney's efforts and the resulting settlement, without incurring any of the expenses associated with obtaining that result. Thus, the Court of Appeals cited the "common fund" rule that allows such fee recovery where the prevailing party creates a fund that benefits himself and others. Here, the settlement benefited both the plaintiff and the medical providers, including the center.