

MEMORANDUM OF LAW

DATE: September 19, 1985

TO: Bruce Herring, Risk Management Department

FROM: City Attorney

SUBJECT: Settlement of Third Party Claims

You have indicated in a memorandum dated August 16, 1985 that The City of San Diego currently does not discount claims for reimbursement to the City Med Health Plan when a member has incurred attorney's fees and costs in achieving a settlement from a third party. Information you have received indicates that the current practice in the insurance industry is to discount such claims for reimbursement. In light of that information, you have asked this office to advise you as to what your position should be in future cases of this nature.

There is no legal requirement to discount claims for reimbursement to cover attorney's fees where an individual recovers from a third party and attorney's fees are not awarded

as routine costs in personal injury lawsuit. However, if an individual expends attorney's fees in winning a lawsuit which creates a fund from which others derive benefits, a court may order the passive beneficiaries to bear a fair share of the litigation cost. The courts have established this rule to prevent someone who has contributed neither time, effort nor money to a successful lawsuit from enjoying the benefits without bearing the burden of contributing to the cost. *Quinn v. State of California*, 15 Cal.3d 162, 124 Cal.Rptr. 1, 539 P.2d 761 (1975). The courts may apportion these costs even in the absence of an expressed or implied agreement concerning attorney's fees. *D'Amico v. Board of Medical Examiners*, 11 Cal.3d 1, 112 Cal.Rptr. 786, 520 P.2d 10 (1974). In addition, such apportionment is normally based on the totality of the proceeds received by the insured rather than the amount received only for medical expenses. *Hartford Accident and Indemnity Co. v. Gropman*, 163 Cal.App.3d Supp. 33, 209 Cal.Rptr. 468 (1984).

Based on an analysis of the above cases, we believe that The City of San Diego should consider adopting a policy whereby the City discounts its claims in third party recovery situations where the City employee member has retained an attorney who has expended time, energy and effort recovering funds to be returned

to The City of San Diego. Such a policy may have a beneficial effect on the City Med Health Plan because it should encourage City employees to retain private counsel to recover losses suffered by the Plan. If the City does not adopt such a policy, not only is there no incentive for members to sue third parties, thereby creating a situation where the City would have to bear the cost of its own collection, but there is also a strong possibility that the City's claim would be discounted by a court if such a case were to proceed to trial. It would be in the best interest of The City of San Diego to have a policy which encourages rather than discourages the early settlement of these cases. Although it is impossible to predict the exact amount of monetary savings such a policy would generate, the experience in the insurance industry is that such a policy is financially beneficial in the long run. This office stands ready to assist you in drafting such a policy if you so desire.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

JMK:mm:045.1(x043.2)

ML-85-62