CALIFORNIA SUPREME COURT HOLDS THAT LIABILITY FOR ATTORNEY FEES IS NOT INCLUDED UNDER THE MADE WHOLE RULE

Monday, August 24, 2009 at 06:07PM

In a decision issued today, the California Supreme Court put to rest the question of whether, in the automobile med-pay insurance context, attorney fees incurred by an insured to obtain a third-party recovery is taken into consideration in determining whether that insured has been "made-whole." The California Supreme Court held in the negative. Instead, those fees are subject to a separate equitable apportionment rule (the "common fund" doctrine).

In its conclusion, the California Supreme Court held:

"In light of the policy justifications underlying the made-whole rule and reimbursement principles generally, we conclude that 21st Century states the better case. The automobile liability insurance company has not been paid to bear responsibility for the entire amount of attorney fees and costs the insured needed to spend in order to recover damages. Instead, a pro rata apportionment rule for attorney fees here better allocates responsibility for attorney fees between the insured and the insurer. Quintana does not claim that 21st Century's $1,000 payment was insufficient to discharge its obligations under the med-pay policy limit. Nor has she claimed that $400 was less than 21st Century's pro rata share of the litigation costs, or asked for leave to amend should we affirm the Court of Appeal's judgment. Therefore, by accepting the $600 as full reimbursement (and thus contributing $400 to Quintana's attorney fees), 21st Century has properly discharged its obligation to pay its pro rata share of attorney fees and has ensured that Quintana has been made whole. In light of this conclusion, we affirm the Court of Appeal's judgment."

A copy of the opinion can be found here.

[**Disclaimer**: Please note that this post does not constitute legal advice and provides only the author's own snapshot view of the cited opinion. No warranties are made as to the accuracy of the author's view of the opinion or as to its legal effect (including, but not limited to, whether it may be subsequently modified, depublished, and/or overruled). The import and applicability of a cited opinion to an actual matter or case depends upon the specific facts presented and should be reviewed by an attorney.]