

Goldstein, William

THIRD PARTY ACTIONS (RCW 51.24)

Distribution of recovery

Under RCW 51.24.060, the Department must pay a proportionate share of the reasonable attorney's fees and costs "incurred" by the worker in obtaining the third party recovery. The term "incurred" refers to the amount of attorney's fees the worker is actually required to pay to secure the third party recovery, not the fee as originally specified in the contingent fee agreement. ...*In re William Goldstein*, BIA Dec., 88 2275 (1990)

Scroll down for order.

1 Mr. Goldstein argues that, as a result of the contingent fee agreement he signed, he "incurred"
2 an obligation to pay an attorneys' fee of one-third of the amount recovered in the third party action. As
3 the third party action was settled for \$75,000.00, he contends that the Department should have used
4 an attorneys' fee of \$25,000.00 in calculating its proportionate share of attorneys' fees. However, the
5 parties' stipulation further reveals that Mr. Goldstein's attorney reduced his fee to \$23,747.49 and the
6 Department used that figure in calculating its proportionate share of attorneys' fees. Focusing on the
7 word "incurred", our Industrial Appeals Judge determined that the \$25,000.00 figure should have been
8 used and reversed the Department order. We disagree, and affirm the Department order.

9 It is likely that the word "incurred", rather than "paid", was used in RCW 51.24.060(1)(c)(i)
10 because, at the time the Department calculates the distribution of a third party settlement, attorneys'
11 fees have usually not been paid. However, another subsection of the statute, RCW 51.24.060(1)(a),
12 requires that "reasonable attorneys' fees" be "paid proportionately" by the Department and the worker.
13 To be consistent, these two subsections must require the parties to bear a proportionate share of the
14 reasonable attorneys' fees which the claimant is actually required to pay to secure the third party
15 recovery. The use of the term "incurred" in the latter part of the statute simply recognizes the fact that
16 the attorneys' fees may not have actually been paid at the time the distribution is calculated. Any other
17 interpretation would require the Department to pay attorneys' fees which the claimant was not in fact
18 obligated to pay, thus providing a windfall to the claimant.

19 After consideration of the Proposed Decision and Order and the Petition for Review filed
20 thereto, and a careful review of the entire record before us, we are persuaded that the Department
21 order determining distribution of the third party settlement proceeds, is correct and must be affirmed.

22 Proposed Findings of Fact Nos. 1, 2, 3 and 6 and proposed Conclusion of Law No. 1 are
23 hereby adopted as this Board's final findings and conclusion. In addition, we enter the following
24 findings and conclusions:

25 **FINDINGS OF FACT**

- 26
- 27 4. Pursuant to the written contingent fee agreement of June 26, 1984,
28 described in Finding of Fact No. 2, claimant would have been obligated to
29 pay attorneys' fees in the amount of \$25,000.00. However, claimant's
30 attorney subsequently reduced the attorneys' fee from \$25,000.00 to
31 \$23,747.49.
 - 32 5. The attorneys' fee incurred by claimant as a result of the third party
33 litigation was \$23,747.49, not \$25,000.00.
- 34
35
36
37
38
39
40
41
42
43
44
45
46
47

1
2
3 **CONCLUSIONS OF LAW**
4

- 5 2. Within the meaning of RCW 51.24.060(1)(a) and RCW 51.24.060(1)(c)(i),
6 claimant, William Goldstein, incurred reasonable attorneys' fees in the
7 amount of \$23,747.49 and reasonable costs in the amount of \$2,989.11
8 in settlement of his third party action.
9
10 3. The order of the Department dated May 10, 1988, which adhered to the
11 provisions of an order dated April 11, 1988, which stated that the claimant
12 has recovered \$75,000.00 and RCW 51.24.060 requires distribution of the
13 settlement proceeds, as follows: (1) net share to attorney for fees and
14 costs \$26,736.60; (2) net share to claimant \$24,968.93; and, (3) net share
15 to Department \$23,294.47; and which declared a statutory lien against the
16 claimant's third party recovery in the amount of \$36,904.54, and made
17 demand upon the claimant to reimburse the Department in the amount of
18 \$23,294.47 plus an overpayment of \$334.00, is correct, and is affirmed.

19 It is so ORDERED.

20 Dated this 8th day of August, 1990.

21 BOARD OF INDUSTRIAL INSURANCE APPEALS

22 /s/
23 _____
24 SARA T. HARMON Chairperson

25
26 /s/
27 _____
28 PHILLIP T. BORK Member
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47