

December 1, 2010

**When it comes to adding insult to injury, this takes the cake.**

**Imagine you've been in a terrible car crash.** You suffered life-threatening injuries yet lived to tell the tale. You even managed to recover some of your damages in a lawsuit against the person who ran into you -- money that you and your family will need to survive, given that you can no longer work for a living due to your chronic pain and debilitating injuries.

**But then, just when you thought you were out of the woods, you are hit with a federal lawsuit from your insurance plan, seeking 100% repayment of all the medical expenses they covered after you were hurt.** You try to fight, but the company ends up walking away with both the premiums you paid them over the years and a good chunk, if not all, of your damages, leaving you even worse off than if you had never sued the person at fault in the first place.



Photo: Creative Commons/Purple Phoenix

Sound unfair? You bet it is. But this exact scenario is playing out all across America. In case after case, self-funded ERISA health insurance employee benefit plans have been asserting first priority liens over the proceeds of third-party lawsuits, even where the injury victim has recovered only a fraction of her damages. **This practice, known as "ERISA subrogation," has become one of the biggest threats to victims' rights in this country.** And it's only getting worse.

**Public Justice is fighting this practice on three different fronts.** In *O'Hara v. Zürich Insurance Company*, we recently asked the U.S. Supreme Court to allow an injury victim to hold onto his fair share of his personal injury recovery. Next month, in *U.S. Airways v. McCutchen*, we will be asking the United States Court of Appeals for the Third Circuit to do the same. And just yesterday, in *CGI v. Rose*, we filed our motion for summary judgment on behalf of Rhonda Rose, a Washington state woman being sued by her health insurance plan for 100% of the medical expenses that it covered after she was seriously injured in an auto accident and recovered only a fraction of her damages.

**In each case, we are asking the court to enforce ERISA's statutory requirement that reimbursement is only permitted to the extent that it is "appropriate."** Fair-minded people would not find it "appropriate" for insurers to strip undercompensated personal injury victims of their tort recoveries and we aim to get the courts to agree.

To read Public Justice's motion for summary judgment in *CGI v. Rose*, [click here](#).

To read Public Justice's cert. petition in *O'Hara*, [click here](#).

Thanks to Budd-Kazan Attorney Matthew Wessler and Senior Attorney Leslie Brueckner, who have taken the lead for Public Justice on both cases. Thanks, too, to our co-counsel in *CGI v. Rose* -- Paul Stritmatter, Mike Nelson, and Mike Withey of Seattle and Caitlin Palacios of Washington D.C. - and to our co-counsel in *O'Hara*, Charles M. Cork III of Macon, Georgia.

And, as always, thanks to you for your generous contributions and support. We must keep the courthouse doors open for all.

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