June 21, 2023

Progressive

P.O. Box 512929

Los Angeles, CA 90051-0929

Attn: Subrogation Department

Tel.: 888-489-4214; Fax: 1888-781-6947

          Re:             Our Client: Luis Duenas Flores

 Policyholder: Luis Duenas Flores

 Date of Incident: October 17, 2021
                            Your Claim No: 21-8587929

Subrogation Department:

This case is currently in litigation. The third-party carrier, progressive, has offered **$15,000** to settle his bodily injury claim. Mr. Flores is still suffering from his injury sustained in the October 17, 2021 car crash. As you can see, Mr. Flores has not been made whole. We would like to respectfully request Progressive to waive the subrogation claim.

As you are aware, an insurer can only exercise a claim for subrogation after an insured has been fully compensated for his or her loss from a tortfeasor. *See, Thiringer* *v. American Motors Insurance Company*, 91 Wn.2d 215, 588 P.2d 191 (1978). The Washington Supreme Court has continually emphasized the limited nature of an insurer’s right to pursue subrogation against its insured who received PIP benefits and also recovers from a third party. *See Mahler vs. Szucs*, 135 Wn.2d 398, 411-18 (1998). As the *Thiringer* court emphasized: Since the losses covered by the PIP provision may represent only a minor portion of an insured’s total damage, it would be patently unfair to require him to surrender his right of action against a third party in order to receive a payment. Also, it is unrealistic to expect that a third party will accept only a partial release when it settles a claim, under circumstances such as those presented here. *Id.* at 219. *Thiringer* involved an insured seeking PIP benefits following third party litigation. Here, as in *Thiringer*, where PIP benefits are only a small part of the insured’s total damages, the PIP insurer’s interest in obtaining reimbursement cannot overshadow its insured’s right to full compensation in the third party proceedings.

In *Sherry v. Financial Indemnity Co.*, 160 Wn.2d 611, 621-22, 160 P.3d 31 (2007), the Washington Supreme Court recognized that [d]ouble recovery, a prerequisite for the insurer’s offset rights, cannot occur unless an insured has first been fully compensated for the loss. For example, in *Thiringer,* the PIP insurer asserted that a settlement should first be allocated to the special damages already paid under PIP coverage. *Thiringer*, 91 Wash.2d at 217, 588 P.2d 191. This court approved the trial court’s conclusion that to determine if the insured was fully compensated (and thus whether the specter of double recovery hovered over the case): the proceeds of the settlement should be applied first toward the payment of the insured’s general damages and then, if any excess remained, toward the payment of his special damages covered by the PIP provision. The principle upon which this holding was based was that the insured was entitled to be made whole, and that only after he had made a full recovery for his damages did the insurer’s right of subrogation arise. *Thiringer*, 91 Wash.2d at 218, 588 P.2d 191. In so recognizing, the *Sherry* court held that an insurer’s right to reimbursement occurs only when its insured is fully compensated for his or her actual damages, “without reduction to account for the [insured’s] fault.” *Sherry*, 160 Wash.2d at 625.

We therefore respectfully request that Progressive waive its subrogation claim. This request is made pursuant to WAC 284-30-360. Please contact me should you have any questions or concerns. Thank you for your attention to this urgent request.

Sincerely,

Nef Habtemariam Esq.

Habtemariam Law Firm PLLC