

Mahler Money

BY PERSONAL INJURY ATTORNEY

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What is *Mahler* money, and whose money is it?

Don't know what *Mahler* money is? That's OK. It is the attorney's role to explain this to you – and to answer any question you may have about where the money goes. But, you need to ask.

It is our firm's legal interpretation and policy that this money belongs to the client. It is an unsettled legal issue, and not all attorneys read the case law this way.

Explaining *Mahler* can be a bit involved and is best done in person, but here is a short primer:

Each side pays its own attorney. That is the general rule. There are exceptions.

If an injured person collects from an at-fault party, then the injured person must reimburse his or her own insurance company for related medical expenses paid by the injured person's insurance. This is called subrogation.¹

If the injured person hires an attorney, the attorney's efforts benefit the insurance company that is getting reimbursed. Because both the injured person and the injured person's insurance company both benefit from the attorney's efforts, in fairness both should pay a share of the attorney fees. This is the rule in Washington under a case called *Mahler*.²

¹ See, for example, *Hamm v. State Farm Mut. Auto. Ins. Co.*, 151 Wn.2d 303(2004). "If the insured subsequently recovers the total amount of her damages from another source (the tortfeasor, her UIM carrier, or both), the PIP coverage becomes redundant. Therefore, when the insured receives full recovery, the PIP carrier may seek reimbursement from its insured for the PIP benefits it previously paid." *Hamm* at 309.

² *Mahler v. Szucs*, 135 Wn.2d 398, 434, 957 P.2d 632 (1998).

Be sure to ask any Washington state personal injury attorney whether *Mahler* applies to your case, and under their fee agreement, what happens to *Mahler* funds.

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The point of *Mahler* is that it is unfair for the client's insurance company to benefit from the personal injury settlement without paying a share of the attorney fees and costs.

Mahler requires the injured person's insurance company to share in paying the attorney fee. This is done by reducing the reimbursement to the insurance company.³

This *Mahler* reduction may result in more money in the client's pocket, depending on the terms of the attorney fee agreement.

Never be reluctant to ask about *Mahler* and subrogation, even if you do not understand all the nuances. The attorney's role, after all, is to explain the law. Also, the attorney should not be reluctant to explain the attorney fee and how it is calculated.

What if the court awards attorney fees? Who gets the money?

As noted above, generally each side pays its own attorney. And most cases settle out-of-court, anyway. Some cases go all the way through the court process. Depending on the particulars of your case, the other side may be responsible for some or all of the attorney fees you incur.

This is not the general rule. Nevertheless, if it does come up you should know who gets the benefit of any court awarded attorney fees and how that is calculated under the fee agreement with the attorney.

³ There are some situations in which the *Mahler* line of cases may not apply, such as health insurance provided through employment. See "Equitable Relief Claims Under ERISA Section 502(a)(3)", *Benefits Law Journal* (Spring 2007); Harmon, "Settling Personal Injury Claims After *Sereboff v. Mid-Atlantic*", *The South Carolina Lawyer* (2006); *Sereboff v. Mid Atl. Med. Servs.*, 547 U.S. 356 (U.S. 2006).

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The Bottom Line

There is no “standard” contract to hire a personal injury attorney. Personal injury attorneys each draft their own contract. Find out how a fee agreement deals with *Mahler* and attorney fees before you sign it.

Before you sign on the dotted line:

No two attorney fee agreements are exactly alike. Do not be afraid to ask questions about the terms of the fee agreement.



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