

a loss of consortium claim. On October 30, 2002, plaintiff settled her claims against defendants in exchange for reimbursement to American for a \$25,000.00 subrogation payment it made under an underinsured carrier provision of plaintiff's policy and an additional \$10,000.00 in damages. The settlement resolved all of plaintiff's claims against defendants. After the settlement, defendants forwarded to plaintiff two checks: one in the amount of \$3,533.98 made payable to plaintiff and her attorney; the other in the amount of \$6,466.02, made payable to plaintiff, her attorney, and American. American has refused to endorse the \$6,466.02 check and waive its lien with regard to the money.

On May 30, 2003, plaintiff filed this Motion requesting that the court enter an order determining that the additional \$10,000.00 that plaintiff received in settlement of her claims is a non-duplicative payment under Kan. Stat. Ann. § 40-3113a, and ordering American to endorse the \$6,466.02 check and release its statutory lien on the monies paid to her by defendants.

American subsequently intervened in the case and has opposed plaintiff's Motion. American has further requested that plaintiff be ordered to reimburse American for the full amount of its lien as a result of the \$9,701.80 in PIP benefits it paid to plaintiff.

II. Analysis

The issue before this court is whether American is entitled to reimbursement for the amount of PIP benefits it paid to plaintiff. The law on this issue is well settled in Kansas. Kan. Stat. Ann. § 40-3113a provides that:

(a) When the injury for which personal injury protection benefits are payable under this act are caused under circumstances creating a legal liability against a tortfeasor pursuant to K.S.A. 40-3117, the injured person . . . shall have the right to pursue his . . . remedy by proper action in a court of competent jurisdiction against such tortfeasor.

(b) In the event of recovery from such tortfeasor by the injured person, . . . by judgment, settlement or otherwise, the insurer or self-insurer shall be subrogated to the extent of duplicative personal injury protection benefits provided to date of such recovery and shall have a lien therefor against such recovery and the insurer or self-insurer may intervene in any action to protect and enforce such lien.

The question regarding a PIP carrier's right to reimbursement has been addressed by Kansas courts in *Easom v. Farmers Insurance Company*, 221 Kan. 415, 560 P. 2d 117 (1977); *Russell v. Mackey*, 225 Kan. 588, 592 P. 2d 902 (1979); and *State Farm Mutual Automobile Insurance Company v. Kroeker*, 234 Kan. 636, 676 P. 2d 66 (1984). The relevant standards that have come out of those cases are that: 1) an injured insured, by settling *all* of his claims with a tortfeasor effectively destroys the right of the insurer to bring an action against the tortfeasor to recover the PIP benefits paid to the injured insured; *see Russell*, 225 Kan. 588, 592 P. 2d 902; and 2) if an injured insured settles *all* of his claims with a tortfeasor and releases the tortfeasor from all further liability, the recovery is duplicative as a matter of law, and the PIP carrier has a lien and is entitled to reimbursement for the total amount of PIP benefits out of the recovery made by the insured, less a reduction for a proportionate share of attorneys' fees as determined by the court. *Kroeker*, 234 Kan. at 645-46, 676 P. 2d 66; *see also* Kan. Stat. Ann. § 40-3113a(e).

Applying those standards to this case, the court finds that because plaintiff has settled all of her claims¹ with defendants, American is barred from bringing an action against defendants to recover the PIP benefits it paid to plaintiff. Therefore, the court finds that plaintiff's recovery in the settlement is duplicative

¹ If plaintiff had entered into only a partial settlement of her claims against defendants, plaintiff could argue that American does not have a lien against the settlement in reimbursement for the PIP benefits paid. *See Kroeker*, 234 Kan. at 646, 676 P.2d 66. Plaintiff does not argue that any claims remain to be settled; rather, she argues that she settled for less than her claimed damages were worth. Plaintiff's argument does not change the status of Kansas law on this issue, or the court's findings with regard to this case.

as a matter of law, and, pursuant to Kan. Stat. Ann. § 40-3113a, American has a lien on the settlement plaintiff received. American is thus entitled to reimbursement for the \$9,701.80 in PIP benefits it paid to plaintiff, less attorneys' fees as determined by the court.

IT IS THEREFORE ORDERED that plaintiff Teresa Edwards' Motion for Court Determination of Non-Duplicative Damages with Respect to PIP Lien (Doc. 19) is denied.

IT IS FURTHER ORDERED that plaintiff Teresa Edwards reimburse Intervenor American for the full amount of its PIP lien, \$9,701.80, less attorneys' fees in the amount of \$3,201.60², for a total of \$6,500.02.

SO ORDERED.

Dated this 24th day of February 2004, at Kansas City, Kansas.

s/ Carlos Murguia _____
CARLOS MURGUIA
United States District Judge

² Plaintiff Teresa Edwards, as the injured party, is entitled to recover attorneys' fees incurred in securing the settlement against the tortfeasor out of the PIP benefits repaid to American. *See Jackson ex rel. Warren v. Browning*, 21 Kan. App. 2d 845, 908 P. 2d 641 (1995). Plaintiff's attorney agreed to a fee of one-third of the \$10,000.00 recovery, which the court finds appropriate. The court thus allocates one-third of the reimbursed PIP benefits to plaintiff's attorney.

