

Original Article



How Attorneys Abscond Money from Clients

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We hope to explain the process of how lawyers manipulate trust fund payments by insurance carriers to clients who settle their law cases.

Surrounding the question of how Alex Murdaugh did this is the fact that he set up a company called 'Forge Consulting', an alleged annuity company, in cahoots with Richard Lafitte, a local banker vice president who, together with Murdaugh, was able to confiscate at least millions of client funds.

This company called Forge Consulting is just one of a number of methods utilized by attorneys to accomplish the crime of stealing money from clients. To accomplish such a feat, it is necessary to overcome numerous safeguards which include the fact that before any settlement can occur, the parties involved must resort to either a settlement conference, or a mediation, or both, in which details of the settlement agreement are hammered out by the parties. Insurance companies are represented either in person or through their attorneys and, because of Covid, many were forced to appear by phone. If multiple defendants are involved, there are attorneys for each defendant that must be present at the settlement conference or mediation.

At this meeting, clients learn which defendants may be offering money. The liability is oftentimes established at the conference, and clients or their guardians get to interact with the insurance representatives. Following the meeting, insurance

companies mail checks to the attorney's office. Usually, the checks are distributed to the attorneys, the clients, or the guardians ad litem of the clients. The checks are accompanied by closing documents which must be signed and notarized. These documents spell out the individual terms of settlement and percentage of alleged liability contested.

In point of fact, too often, insurance companies are reluctant to send checks prior to receiving closing documents because attorneys put off finalizing closing documents if they have already received money in hand, which leaves them with no incentive to close out the details of each case. Attorneys have little or no incentive to complete the closing documents.

Trust fund money is never commingled; but if attorneys shift money from one client to another, or misappropriate funds on which to pay their clients, this is fraud. Every individual bill that is produced by the attorney as the case gets closer to settlement is sent to the client and the client has ten days on which to dispute any bill that will eventually be part of the trust fund payout. The state bar rules ensure that the attorneys accept total personal fiduciary responsibility and obligates the attorneys to account for every dollar that is charged to the account. The attorney has a statutory obligation to fulfill when trust documents are involved and settlement is eventually reached and money paid out.

Normally, funds are distributed according to a standard formula: 66%/33% for cases that do not go to trial; a 60%/40% split results when cases are pushed to the max, and arbitration or trial results. This split is reconciled only after all costs expended by the attorney are reimbursed. In small cases in which minimal sums of money are to be distributed, lawyers often waive their fees or reduce their fees to a small fraction of settlement. Copies are often charged at an exorbitant rate of \$2.00 per page; faxes at \$3.00 per page. Trips to the courthouse and anything that must be filed are often expended at a cost of \$10.00 per document. As a result, it does not take long to burn up \$10,000.00 of a client's money as it relates to expenses tied to a case.

When the checks have cleared the bank and the funds are ready for disbursements, the share of the check that is apportioned to the client is established, and closing details which explain every single deduction from the top line payment are stated in writing. The closing statement becomes an accounting sheet, normally 1-5 pages long, spelling out each and every expense, fee, cost, etc. so that the bottom line is what the client gets and, finally, everyone signs off with a notary present and a copy sent to the State Bar Association in many states. There is always pressure on the attorneys to perform honorably, and big firms would always have someone with an accounting background and training to prepare the final disbursements.

Partnership accounts are never commingled and money for one attorney paid out to another attorney, or money for one client paid to another client is considered illegal. It is almost impossible to understand how Alex Murdaugh was able to accomplish this feat of 4 fleecing twenty plus clients out of over \$20 million over the years in which he was actively trying personal injury cases.

One Method Attorneys May Employ to Ingratiate Themselves

When health insurance companies place a "medical lien" on accounts of claimants who may recover personal injury settlements or verdicts, this becomes another safeguard, namely an often lengthy, tiring and complex process for accident victims waiting to recover money for their injuries. The lawyer will represent the claimant on

what is commonly referred to as "contingency," which involves payment for their services from the potential insurance settlement. It is difficult to understand all the implications of health insurance liens and how a lien might affect a settlement regarding the different ways that medical bills are paid. Health insurance companies have liens on settlements to ensure that they are reimbursed for their medical expenses paid on behalf of the injured person. Money from settlements from a personal injury claim, judgments, or awards, are ultimately in the hands of the attorney of record.

Given the fact that hospitals are often required to treat injured persons even if no insurance is available from any source, when medical bills total \$50,000 or more, the health insurance companies can put a lien on the settlement for the full amount of the bills. If there is no health insurance, the hospital or government agency handling the claim for the hospital may step in to pay for the care received. Therefore, payments on medical liens are entirely dependent on the particular situation and the health insurance provider for reimbursement. In some cases, victims of serious injuries who incur thousands of dollars in medical care may be required to pay the full amount of the lien.

In other cases, payment may only result in a fraction of the lien. The decisions are generally based on the terms of the health insurance policy in question. It is not safe to assume that all health insurance companies have a health insurance lien. Oftentimes insurance companies claim to have a health insurance lien even when the health insurance policy did not provide for that right. In many instances, lien holders are willing to accept less than the full value of the lien. Attorneys may spend days, if not weeks, negotiating with insurance companies regarding liens, especially in hardship cases.

Reading an insurance policy is difficult, but the policy language will outline exactly what, if any, health insurance liens the health insurance companies may have on final settlement proceeds.

When the insurance company accepts a medical lien, it is providing healthcare on credit. By perfecting the lien, the healthcare provider guarantees that they will be paid from the verdict or settlement first. The goal of negotiating the medical lien is an attempt to reach a compromise

with the lien holder for a reduced payout to the provider or insurance company. The majority of the lien holders are willing to consider a lesser amount. As stated above, negotiating a medical lien can be extremely technical. Unfortunately, the client is generally unaware of the negotiation process and may not be aware of the actual recovery after expenses. Lawyers have a great amount of leeway and knowledge about resolving liens and exactly what amount they have to reimburse the lien holder. This process can also create delays in settlement and final disbursements. Some insurance companies will waive the entire lien based on financial hardship. Plaintiff lawyers in many injury claims seek a payment reduction for medical bills or medical liens because that can make all the difference in the world in their final compensation payout.

Misrepresentations occur by stating partially true but misleading statements or omissions that are

the equivalent to false statements. Under generally accepted conventions in negotiation, certain types of statements are not provided. For example, the fact that a lien may be waived completely, but the client is under the false impression that a significant part of the proceeds must be paid to the insurance company, thus reducing the monies to the client. This nondisclosure is simply stated 'fraud'. Not sharing details of the transaction with the client is considered tortious misrepresentation. Unfortunately, this happens often and results in the money being held in the hands of an attorney who, when dishonest, has "carte blanche" with the proceeds of the settlement.

By being made aware of these methods of deception, innocent victims of serious accidents and incidents are in a better position to work with their attorneys to establish fair and honest settlements.