

UNITED FOOD AND COMMERCIAL WORKERS LOCAL 1000 AND KROGER DALLAS
HEALTH AND WELFARE PLAN "MED-1000 PLAN"

ASSIGNMENT, SUBROGATION AND RESTITUTION AGREEMENT

DATE: _____

1. The undersigned is a participant, dependent or beneficiary ("Covered Person") in the _____ Med 1000 _____ ("Fund"). The Covered Person suffered and injury on or about _____, 20___. As a result of this injury, the Covered Person has a pending claim for personal injury, worker's compensation or tort against a person, corporation, insurer or other third party ("Third Party").
2. The Covered Person acknowledges that the Fund has no obligation to pay benefits if any Third Party may be financially responsible for any damages arising from the injury, including any medical expenses. The Third Party is withholding payment of the Covered Person's claim pending investigation or legal action. Therefore, the Covered Person requests that the Fund pay the standard benefits to which he/she would be entitled if no Third Party liability existed.
3. In exchange for the Fund's payment of the Covered Person's benefits he/she hereby assigns and transfers to the Fund all his/her rights arising out of the injury against any Third Party. The Covered Person hereby subrogates all such rights to the Fund, meaning that the Fund has the legal right to take his/her place to recover any amounts from the Third Party for the injury.
4. The Covered Person authorizes the Fund or its designees to act as his/her attorney-in-fact, with the full powers of substitution and revocation. These powers include the rights to institute or intervene in lawsuits, assert, demand, collect, receive, compromise and give releases for the amount of its claim. The Covered Person agrees to assist in the prosecution of any such claims.
5. The Covered Person agrees to provide the Fund with all information and documents it requests, and to otherwise assist the Fund in recovering all amounts it paid that are subject to this Agreement. The Covered Person also agrees to execute and deliver all instruments or documents requested by the Fund, and to cooperate fully with any and all other requests made by the Fund's in connection with the injury.
6. The Covered Person confirms that he/she has filed a claim against the Third Party, that he/she has not settled any claims with the Third Party or any other party, and that he/she has not signed any release of liability against the Third Party or any other party. The Covered Person agrees that he/she will not settle the claim or give a release to any party without the Fund's consent. The Covered Person also agrees not to assign or otherwise transfer his/her right to collect from the Third Party to any other party without the written consent of the Fund. The Covered Person agrees to do nothing that would otherwise prejudice the Fund's rights to subrogation and restitution.

7. The Covered Person hereby grants the Fund a first priority lien on any recovery from the Third Party for the injury. The Covered Person agrees that he/she or representative will hold the proceeds of any recovery in trust for the exclusive benefit of the Fund. The value of the lien and the extent of the trust are equivalent to the amount of benefits the Fund paid on the Covered Person's behalf, plus any reasonable costs or attorney's fees incurred by the Fund in enforcing this Agreement. Pursuant to this lien and trust, the Covered Person agrees to pay the Fund the amount of benefits it paid on his/her behalf from the proceeds of any settlement, judgment or award against the Third Party arising out of the injury.
8. The Covered Person agrees that the Fund may notify any Third Party of the subrogation/restitution rights at any time. The Covered Person authorizes all such Third Parties to pay the Fund directly from the proceeds of any recovery on his/her claim. The Covered Person also agrees not to authorize any Third Party to pay proceeds to any individual or entity other than the Covered Person, his/her legal representative (if any) or the Fund. The Covered Person agrees not to release any proceeds from his/her claim to any individual or entity before repaying the Fund the amount of benefits it paid on his/her behalf.
9. The Covered Person also agrees, that, if he/she recovers any damages from an Uninsured/Underinsured Motorist Policy or his/her own homeowner's insurance policy, the proceeds of that policy are subject to the same lien and trust as any proceeds he/she recovered from the Third Party. The Covered Person agrees to the first priority lien on the proceeds from such policy, and agrees to hold such proceeds in trust for the exclusive benefit of the Fund. The Fund's right against said insurer shall be governed by all other provisions of this Agreement. Any recovery shall be presumed to be recovery for medical expenses, regardless of allocation or designation.
10. The Covered Person agrees that, pursuant to the above lien and trust, his/her obligations to repay the Fund for any benefits he/she received takes first priority over his/her other claims against the Third Party. The Covered Person agrees to this first priority regardless of whether the recovery from the Third Party fully compensates him/her for all claims or whether he/she had been "made whole." The "make whole" doctrine shall not apply to any provisions of this Agreement. The Covered Person agrees that his/her obligation to repay the Fund from any recovery also takes first priority over any deduction from the recovery for attorney's fees or costs of litigation.
11. The Covered Person agrees that the Fund has no obligation to pay or reimburse the Covered Person, his/her legal representative or any other party for any costs or attorney's fees arising out his/her claim for personal injury or tort, including the Covered Person's uninsured/underinsured motorist or homeowner's insurance carrier.
12. The Covered Person agrees that the Fund may, in its discretion, elect to resolve any controversy or claim arising out of or relating to this Agreement by binding arbitration. The Fund and the Covered Person will select a neutral arbitrator from a list provided by the Federal Mediation and Conciliation Service ("FMCS"), and judgment on the award rendered by such arbitrator may be entered in any court having competent jurisdiction.

The arbitrator shall be empowered to enjoin any act or practice that violates the terms of this Agreement, and to award any and all relief necessary to redress such violations or to enforce any of the terms of this Agreement, including awarding monetary relief for all losses sustained as a result of such violations. Any monetary award in an arbitration initiated under this provision shall also include pre-award interest from the date of this Agreement at a rate equivalent to post judgment interest on federal judgments. The arbitrator shall also award the prevailing party all reasonable costs and fees. "Costs and fees" means all reasonable pre-award expenses of the arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witnesses fees and attorneys' fees.

13. The Covered Person agrees to accept personal service and jurisdiction of any competent court determined by the Fund by the mailing of a copy of the Compliant brought pursuant to this Agreement to the current address provided to the Fund.
14. The Covered Person agrees to reimburse to the Fund for any attorney's fees and costs it incurs pursuing any administrative action or litigation to enforce the terms of this Agreement.
15. The Covered Person acknowledges that the Fund has the exclusive authority and absolute right to interpret the plan documents, including this Agreement, and to resolve any ambiguities which may be claimed to exist. The Fund's decision shall be final.
16. The Covered Person agrees and understands that in the event he/she fails to fully cooperate with the Fund in accordance with this Agreement, the Fund may cease paying benefits related to the injury until the Fund has been repaid in full, and all amounts previously paid by the Fund shall immediately become due and payable to the Fund. The Covered Person further agrees that a violation of this Agreement constitutes a violation of the Plan documents that govern the Fund, and the Fund has the right to seek equitable relief to enjoin such violation.
17. The Covered Person agrees that this Agreement shall be binding on all his/her agents or representatives, including any attorney representing him/her in the claim against the Third Party.
18. A description of the injury and its surrounding circumstances is as follows (attach additional pages if necessary):

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ATTORNEY AGREEMENT

DATE: _____

1. The undersigned is an attorney ("Attorney") representing _____, who is a participant, dependent or beneficiary ("Client") in the _____ ("Fund"), in a claim for damages, including medical expenses, against _____ ("Third Party").
2. The Attorney certified that he/she has read the Subrogation and Restitution Agreement signed by his/her Client, and acknowledges that the terms of that Agreement are hereby incorporated as if fully set forth herein. The Attorney agrees that the terms of that Agreement apply to him/her as the agent of the Client, and he/she agrees to comply with all provisions of the Agreement.
3. The Attorney specifically agrees to notify the Fund prior to any acceptance of a settlement offer by the Third Party to resolve the Client's claim, and he/she further agrees not to compromise, settle or waive any of the Client's claim against the Third Party without the Fund's consent.
4. The Attorney acknowledges the Fund's first priority lien on the proceeds of the Client's recovery, and agrees to hold all proceeds of the recovery in trust for the exclusive benefit of the Fund. The Attorney will not disburse any of the proceeds to any individual or entity prior to satisfying the Fund's first priority lien on the proceeds.

ATTORNEY SIGNATURE

Name

Street Address

City, State, Zip Code

Telephone Number