

OSC 10
Ohio Safety Congress & Expo

Subrogation of Workers' Compensation Claims
565

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Thursday, April 1, 2010 2:15 to 3:15 p.m.

Ohio | Bureau of Workers' Compensation

What is Subrogation?

- It's a process that allows BWC to collect past and future medical and compensation costs paid to or on behalf of injured workers.
- The injury is caused by a third party.

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BWC's Subrogation Unit

- The role of the subrogation unit/fiduciary duty is to protect State Insurance Fund.
- Organization of the subrogation unit
 - Main phone line (614-644-7410)

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Subrogation Referrals

- Statutory duty of injured worker to notify BWC or self-insuring employer
- Insurance Service Office (ISO) claims search
- Sources of referrals: employer, BWC claims service specialist, provider, injured workers' attorney, third-party administrator

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Statistics

- From July 1, 2008, to June 30, 2009:
 - BWC collected \$19,400,037.33;
 - BWC opened 2684 new subrogation claims.
 - - 79% referred internally
 - - 15% from attorneys
 - - 6% from employer representatives

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Common Third-Party Accidents

- Product malfunction
- Faulty design
- Dog Bites
- Inadequate warning / premises liability
- Medical malpractice
- Safety device absent / inadequate
- Motor vehicle accidents

Subrogation Statute

- ORC §4123.93 and 4123.931
 - History: Third statute in Ohio
 - ORC section 4123.93
 - ORC 4123.931
 - Groch V. Gen. Motors Corp., 117 Ohio St. 3d 192 (2008)

Ohio Revised Code (ORC) 4123.93 and 4123.931

- Subrogation statute became effective April 9, 2003.
- Statute gives BWC and self-insuring employers statutory rights to subrogate claims with a date of injury of April 9, 2003, or later. Therefore, referrals should be for claims with a date of injury of April 9, 2003, or later.

What Changed Under the Subrogation Law?

- 100% collection presumption eliminated: BWC and self-insuring employer now entitled to a proportionate share of the third-party settlement where injured workers proves damages beyond what BWC or self-insuring employer has paid.
- The formula is provided in statute.

Future Compensation

- The injured worker may place the amount of agreed upon future compensation into a trust account from which he or she can pay BWC as costs are incurred in the claim.
- BWC bills the injured worker for reimbursement once claim costs are paid (billing twice per year with 30 days to pay BWC).
- If futures are not incurred, they will not be collected.

Notice Requirement

- The injured worker must notify BWC and the attorney general's office of all potential sources of recovery.
- An injured worker from a self-insuring employer must notify only his or her employer, not the attorney general's office.

Joint and Several Liability

- Without notification, settlement can be set aside.

What Is the Subrogation Lien?

- o The subrogation lien equals the amount of medical and compensation costs paid to date plus estimated future values of medical and compensation to be paid in the claim.

Injured Worker's Interest

- o It consists of recovery for pain and suffering, loss of consortium and wages paid over and above workers' compensation benefits.

Example

o PI settlement	\$90,000
o Attorney fees & costs	<u>-\$30,000</u>
o Net amount recovered (NAR)	\$60,000
o Subrogation lien	\$20,000
o Uncompensated damage	\$40,000

BWC's Recovery

$$\frac{\$20,000}{(\$20,000 + \$40,000)} \times \$60,000$$

$$= \$20,000$$

Injured Worker's Recovery

$$\frac{\$40,000}{(\$20,000 + \$40,000)} \times \$60,000$$

$$= \$40,000$$

How Risk Calculates the Subrogation Percentage

<u>Subrogation (collection) amount</u>	=	*Subrogation credit (%)
Total unlimited claim cost		*Percentage of reduction
Example		*20%
<u>\$20,000</u>	=	*Percentage of reduction
\$100,000		

Identifying the Subrogation % On ohiobwc.com

<ul style="list-style-type: none"> Home Ohio Employees Accident/Injury Info Claim Costs/Reserves Claim Info Claim Payment Claim Information Info Communications profile Coverage look up Employer Services Quick Pay Safety Services Self Insured Forms Section Map <p>Live support available Monday through Friday 7:30 a.m. - 5:30 p.m. Click here to get help!</p>	<p>Policy number: Quarter and date: Appealed to: NO</p> <p>Risk cost</p> <table border="1"> <tr><td>Medical</td><td>\$2,269.77</td></tr> <tr><td>Indemnity</td><td>\$0.00</td></tr> <tr><td>Reserves</td><td>\$0.00</td></tr> <tr><td>Total</td><td>\$2,269.77</td></tr> </table> <p>Surplus cost</p> <table border="1"> <tr><td>Medical</td><td>\$451.19</td></tr> <tr><td>Indemnity</td><td>\$0.00</td></tr> <tr><td>Reserves</td><td>\$0.00</td></tr> <tr><td>Total</td><td>\$451.19</td></tr> </table> <p>Miscellaneous cost</p> <table border="1"> <tr><td>Subrogation amount</td><td>\$2,269.77</td></tr> <tr><td>Handicap percentage</td><td>0%</td></tr> </table>	Medical	\$2,269.77	Indemnity	\$0.00	Reserves	\$0.00	Total	\$2,269.77	Medical	\$451.19	Indemnity	\$0.00	Reserves	\$0.00	Total	\$451.19	Subrogation amount	\$2,269.77	Handicap percentage	0%
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Note: ohiobwc.com displays the subrogation collection only (not the %). Claim costs are reduced by the credit % in this screen.

Questions?