Subrogation Basics for Workers' Compensation Professionals

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Speakers



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- Workers Compensation Negotiation Strategies
- Employment Law Issues Every Workers' Compensation Professional Needs To Know About
- I0 Illinois Workers' Compensation Cases You Need To Know
- Ask an Attorney Anything: Your Most Pressing Workers' Compensation Questions ANSWERED
- Defending Workers' Compensation Psychiatric Claims
- Defending Wage Differentials and PTD Awards
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- Defending Repetitive Trauma Claims In Illinois Workers' Compensation
- Traveling Employees in Illinois Workers' Compensation
- o Illinois vs. Indiana: 5 Key Issues & How Each State Deals With Them
- AMA Guidelines: A Legal and Medical Perspective
- Preferred Provider Programs

Upcoming Webinars

- 7/17/14 @ 10:00 AM CST: "Defending Pain Claims: A Medical & Legal Perspective"
 Click Here to Register
- June Workers' Compensation Newsletter
- Today's session
 - Interactive Please ask questions
 - Special surprise giveaway at the end of the presentation

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Illinois workers' compensation lien/subrogation statute

- This controls your potential workers' compensation lien recovery
- Chapter 820 ILCS 305/5





Provides for

- Right to lien recovery
- Plaintiff obligation to cooperate
- Maximum potential recovery
- Offset for pro rata plaintiff civil expenses





Subrogation assessment

Analysis for every claim

- Is there a third party?
- How much workers' compensation money is involved?
- Who is at fault?
- Potential allocation of fault?
- What is potential maximum economic recovery of lienholder?





Types of accidents to look out for

- Highly probability of a third party action:
 - Construction
 - Vehicle (insured driver at fault)
- Medium/low probability of a third party action:
 - Product
 - Slip and falls (on third party's premises)





Types of accidents to look out for (cont'd)

- Low probability of a third party action:
 - Lifting episodes and similar work activities (but increasing number of suits being filed)
 - Slip and falls on employer premises
 - Repetitive trauma





Components of recoverable workers' compensation lien and maximum recovery

- Temporary total or partial disability
- Medical bills
- Permanency





Not included

- IMEs
- Medical bills audits
- Medical management
- Any other expenses





How much can you recover?

- No Plaintiff attorney involved
 - 100% of lien if no Plaintiff's attorney
- Plaintiff attorney involved
 - 75% of lien if Plaintiff's attorney involved
 - Pro rata reduction for Plaintiff





Preservation of evidence

- For use in civil suit
- Necessary to prove case
- To avoid spoliation claim
- Potential spoliation suit v.
 employer or carrier for destruction of necessary evidence





Retention of attorney

- When necessary?
- What stage?





Whom?

- Attorneys skilled in:
 - Defending workers' compensation case
 - Pursuing lien recovery
 - Defending third-party cases





Case study

- Ronald is a 42 year old Hispanic male machine operator for One Way Company
- He has limited English and an 8th grade education
- He got his right hand caught in machinery on 2/22/13, resulting in an amputation of two fingers and multiple fractures to his hand
- An outside vendor had recently inspected and made some minor repairs to the machinery. It was discovered after the accident that a safety guard had apparently been removed from the machinery sometime prior to the accident
- The equipment was manufactured in 2002 and later sold to One Way Company in 2004
- The employee has retained counsel who wants to inspect the machinery now





Poll #1

What should you do first in your subrogation investigation?

- A. Inspect accident scene
- B. Secure witness statements
- C. Obtain photos
- D. Obtain records on inspection, maintenance and repair of machine





Initiation of civil suit and protection of lien

- Statute of Limitations
 - Two years for plaintiff
 - Last 90 days from Statute of Limitations
- Methods of protecting lien
 - Lien letters
 - Petition to Intervene





Lien letter example

January 27, 2006

Joan Smith, Esq. 123 Law Firm Drive Chicago, IL 60601

Re: Jay Smith v. ABC Corporation

Case #:04 WC 0000 Date of Loss: 1/1/04 File #: 009000.0002

Dear Ms. Smith:

I represent Respondent, ABC Corporation, in the above-captioned workers' compensation cases. I understand that your client has filed a civil lawsuit against a third party.

My client, ABC Corporation, hereby asserts its lien according to Section 5(b) of the Illinois Workers' Compensation Act on any recovery that this petitioner has received. As you know, Section 5(b) of the Act states that no settlement, release or satisfaction of judgment shall be valid without the written approval of the employer unless the employer is fully indemnified or is protected by court order. As that has not occurred in this case, my client's lien must be satisfied prior to disbursement of any funds in this case.

My client has paid \$2,524.27 in permanent partial disability benefits. My client's recoverable lien is \$1,893.20. We expect that before any civil monies are disbursed to your client, you place \$1,893.20 of this amount in escrow to protect ABC's lien interest.

Please contact me upon receipt of this letter to confirm that Respondent will be compensated consistent with the amount referenced above. I look forward to hearing from you soon.

Sincerely,

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Petition to Intervene example

`IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, LAW DIVISION

JAY SMITH,)
Plaintiff,)
vs.) No. 2005 L 00000
ABC CORPORATION,)
Defendant.)

PETITION TO INTERVENE

NOW COMES Intervenor, ABC CORPORATION, by its attorneys, ______ and ______, and pursuant to 735 ILCS5/2-408, petitions this Honorable Court to enter an order permitting it to intervene in the above-entitled cause, and in support of its petition, states as follows:

1. That JAY SMITH, plaintiff in the above-captioned case, has alleged that he sustained injuries arising out of and in the course of his employment by ABC CORPORATION, on November 20, 2001, and has filed an Illinois Workers' Compensation action, against ABC CORPORATION(03 WC 00000).

2. That JAY SMITH has incurred medical expenses and temporary total disability benefits, which the Intervenor has been called upon to pay and has paid.

3. That pursuant to the provisions of Chapter 48, Section 138.5 (820 ILCS 305/5) of the Workers' Compensation Act of Illinois, this Petitioner/Intervenor has a lien or subrogation right upon any sum recovered by settlement or judgment by the plaintiff from the defendant(s) to the extent and in the amount for which it has paid monies, or might be obligated to pay in the future, and is given the right to intervene in this cause and to have all orders of the court made for its protection.

WHEREFORE, Petitioner/Intervenor, ABC CORPORATION, prays for the entry of an order granting its Petition to Intervene as a party in this case and requiring the service of notice of all proceedings and copies of all pleadings and discovery upon them through their attorneys.

By: ____

Reasons to file intervening petition

- Ensure lien protection
- Obtain helpful civil discovery for use in workers' compensation case
- Protect employer
 - Ensure records and witnesses not produced/deposed without attorney protection





Potential employer third party liability

- Exclusive remedy
 - No direct actions vs. employer
 - But, third party actions in Illinois for contribution
 - Cap per Kotecki v. Cyclops Weldings Corp., 585 N.E.2d 1023 (III. 1991)
 - Waiver of Kotecki cap per written indemnity



Potential employer third party liability (cont'd)

- Contracts and additional insured provisions
 - Any contract?
 - Agreement to procure additional insured insurance
 - Certificate of Insurance
 - Written indemnification





Poll #2

Who are the potential parties at fault for this accident?

- A. Manufacturer
- B. Outside vendor
- C. Plaintiff
- D. Employer





Settlement Strategies

- Settle workers' compensation case first and then address lien recovery when:
 - Best opportunity to achieve best results for employer
 - Civil case not close to resolution





Settlement strategies (cont'd)

- Settle workers' compensation and civil cases together entailing:
 - \$1 workers' compensation and lien waiver
 - Settle workers' compensation case at a discount for potential lien waiver
 - Settle workers' compensation case for regular value in exchange for 75% or even greater lien recovery



Questions & Answers



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Special giveaway

- Type your answers into the question box
- First person to answer correctly wins:





Special giveaway

- Today is the first day of the World Cup
- What's the highest place the USA ever finished?





Answer

3rd place (1930)





Bonus Question!

- Rodney Dangerfield and Will Ferrell both played soccer coaches in separate comedies
- Name either one



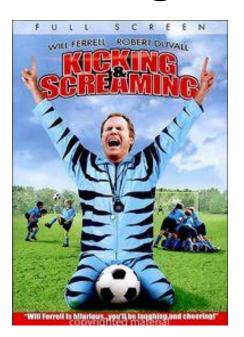




Answer

- Ladybugs
- Kicking & Screaming







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