Subrogation: Whose Money is it, Anyway?



Lenard Cohen, Esq. Lundy Law

Adrienne Breslin, Esq. Lackawanna Insurance Group Daniel Hessel, Esq. Golkow Hessel, LLC

Subrogation: Whose Money is it, Anyway?

- 1. The carrier's absolute right to first dollar subrogation
- 2. The exceptions to the "absolute" right
- 3. When to negotiate the lien
- 4. The carrier's right to bring a direct action where the worker does not

The carrier's "absolute" right to first dollar recovery ... in theory

77 P.S. § 671 (abridged)

Subrogation of employer to rights of employee against third persons.

Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employee ... against such third party to the extent of the compensation payable under this article by the employer.

The employer shall pay that proportion of the attorney's fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement.

Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employee ... and shall be treated as an advance payment by the employer on account of any future instalments of compensation.

LIBC – 380 Worksheet

PENNSYLVANIA DEPARTMENT OF LABOR & INDUSTRY BUREAU OF WORKERS' COMPENSATION EMPLOYEE SOCIAL SECURITY NUMBER OR WC ID NUMBER EMPLOYEE First name Last name	THIRD PARTY SETTLEMENT AGREEMENT DATE OF INJURY WCAIS CLAIM NUMBER Address Address	#1 Enter the total amount of money received by the employee from the third-party litigation. #2 Enter the total amount of indemnity and medical benefits paid by the employer to the employee at the time of third-party recovery. #3 Enter attorney fees and other expenses paid by the employee to obtain recovery in the third-party action. #4 to #8 Perform the calculations in the right column and enter the results into the center column. In accordance with section 319 of the Pennsylvania Workers' Compensation Act, the parties herein have agreed to the following distribution of proceeds received from, third party. BASIC RECOVERY INFORMATION — Complete this section for all third-party settlements. 1. Total amount of third-party recovery
Date of birth If deceased - Dependent/Guardian/Personal Rep First name Last name Address Address City/Town County Telephone NOTICE: Agreement should be clearly complets typed) and uploaded in accordance wi provisions of the EDI implementation must be sent to the employee. EMPLOYEE'S ATTORNEY Name Firm name Address Address Address City/Town State Telephone PA Attorney ID number		1
LIBC-380 REV 05-22 (Page 1)	8. Reimbursement rate on future compensation liability 9. The employer/insurer is responsible for percent (pro rata share of employee's fees and expenses until the sthe employer/insurer is responsible for 100 percent of any	8 = #3 (divided by) #1 x 100 of any future weekly benefits to satisfy its obligation to reimburse its rogation interest is exhausted (#4). Thereafter, ompensation liability.

Exceptions to the "absolute" right of subrogation



When to negotiate the lien...

Carrier's right to bring a direct claim where the worker does not do so.