

Subrogation: Whose Money is it, Anyway?



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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.

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.