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# Handling Third Party Claims That Arise Out of Work Injuries

Often times, a third party, or someone other than the employee or employer, will cause a work injury. For example, often times, a third party will negligently collide with a motor vehicle driven by an employee for an employer and cause a work injury. In these circumstances, the employee has a claim against the employer under the workers' compensation law. And, the employee has a claim against the third party under tort law.

If the employee makes both a workers' compensation claim and a tort claim, to prevent a double recovery, the employer is given a subrogation lien on the employee's recovery from the third person. In other words, if the employee makes both a workers' compensation claim and a tort claim, to prevent a recovery under both the workers' compensation law and the tort law, the employee must reimburse the employer for any monies that it paid out under workers' compensation from any recovery from a third person for the tort claim. The employee is entitled to deduct the expenses necessary to achieve the recovery from the third person before reimbursing the employer. Also, if the employee is represented by an attorney, then the employee's attorney is entitled to deduct his fee before reimbursing the employer. In addition to the subrogation lien, if the employee's recovery from a third person under tort law is greater than his recovery from an employer under workers' compensation law, then the employer is entitled to a credit for any future liabilities under the workers' compensation law.

Generally, an employee is represented by an attorney in the tort claim against the third party. In these circumstances, the employee's attorney has an implied duty to recognize and protect the employer's subrogation lien. The rationale behind this rule seems to be that if the employee's attorney is entitled to a fee on the entire tort recovery, and if the employer is entitled to some or all of the tort recovery, then the employee's attorney must recognize and protect the

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employer's subrogation lien to justify the fee. The employer may also retain its own attorney and intervene in any tort action to protect its lien. If the employee retains an attorney, the employer retains an attorney, and there is a dispute over attorney's fees, then the court, on application, may apportion the fee based on the services provided.

In Tennessee, the employee has one year from the injury to make a workers' compensation claim against the employer and a tort claim against the third party. If an employee makes a workers' compensation claim within one year, but does not make a tort claim within one year, then the employee's cause of action for the tort claim is automatically assigned to the employer. The employer then has six months from the date of the assignment to make a tort claim against the third party for reimbursement of monies it paid to the employee through workers' compensation. Significantly, if the employee's tort claim arose in another state, and is governed by a longer statute of limitations, then the employee may have longer than one year to assert his tort claim. Also, significantly, the employer may prosecute the tort action against the third party in either its name or the employee's name.

**Submitted by:**

**Ronald L. Harper, Esq.**

254 Court Avenue, 2nd Floor

Data Company Building

Memphis, Tennessee 38103

901.527.0214 phone/ 901.527.8224 fax

mailto: [ron.harper@leitnerfirm.com](mailto:ron.harper@leitnerfirm.com)

**Asa W. Baker, Esq.**

254 Court Avenue, 2nd Floor

Data Company Building

Memphis, Tennessee 38103

901.527.0214 phone/ 901.527.8224 fax

mailto: [asa.baker@leitnerfirm.com](mailto:asa.baker@leitnerfirm.com)

[www.leitnerfirm.com](http://www.leitnerfirm.com)

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