

SUBROGATION: MARYLAND WORKERS' COMPENSATION LIEN

In Maryland, an employer/insurer may recover reimbursement of workers' compensation benefits paid in cases where a third party is liable for the employee's injury. This is an overview of certain statutory provisions and legal doctrines that may have a bearing on such claims. We hope you find it useful.

Statute of Limitations (Personal Injuries and Wrongful Death): The statute of limitations for negligence claims is three years.

Statute of Limitations Government Entities: The action must be filed within three years after the cause of action arises. In addition, Md. Code Ann., State Government § 12-106 requires written notice of a claim against the State and its units be served on the State Treasurer within one year after the incident. This does not apply to cross-claims, counter-claims, or third-party claims.

Statute of Repose: Twenty years for injuries resulting from the defective or unsafe condition of an improvement to real property, unless the defendant was in actual possession or control of the property when the injury occurred. Ten years for claims against architects, professional engineers, or contractors. Special rules apply to claims resulting from exposure to asbestos. *See* Md. Code Ann., Cts. and Jud. Proc. § 5-108.

Contributory/Comparative Negligence: Maryland is a contributory negligence state. If the plaintiff is one-percent negligent, recovery is barred.

Statutory Recovery Rights: Md. Code Ann., Lab and Empl. § 9-902 gives the insurer the exclusive right to sue a responsible third party for two months following a compensation award. After that, either the insurer or the injured employee may bring suit. If the injured employee initiates the action, the employer retains a statutory lien on any recovery obtained from a third party. The insurer is not required to intervene in the employee's action. Employer and co-employee negligence does not reduce the lien, but contributory negligence will bar the plaintiff-employee's claim, and as a practical matter will reduce the settlement value.

Attorney's Fees and Expenses: Attorney's fees and expenses are shared by the employee and the insurer in the proportion that the amount received by each bears to the whole amount paid in settlement of any claim or satisfaction of any judgment obtained.

Future Credit Rights: After deducting fees and expenses, the proceeds are to be distributed as of the time of settlement or payment of judgment. The insurer is entitled to reimbursement of all medical and indemnity payments made or awarded. Future payments by the insurer are suspended until such time, if it occurs, that the net amount received by the injured employee from the negligent third party is exceeded by the benefits to which the injured employee would have been entitled in the absence of third party liability. At that point, the employee may reopen the claim for compensation to recover the difference.

Additional Information

Self Employment: When an injured worker's earnings in self-employment are excluded from the calculation of benefits to be paid by the compensation insurer, third-party recoveries for those losses cannot be considered as part of the insurer's subrogation interest.

Uninsured and Underinsured Motorists: UIM coverage overlaps with workers' compensation benefits when an employee is injured at work in a collision with an uninsured motorist. When that happens, the employee can file a workers' compensation claim and seek benefits from the UIM carrier, even under a policy purchased by the employer. But the employee does not get a double recovery. Any UIM recovery is reduced by the amount of workers' compensation benefits already received. Likewise, workers' compensation benefits are reduced by the amount the claimant has recovered as uninsured motorist benefits. Thus, if workers' compensation benefits are paid first, the UIM carrier takes the credit. If UIM benefits are paid first, the workers' compensation carrier takes the credit. Accordingly, the workers' compensation insurer cannot file a subrogation claim against a UIM carrier.

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