

## Pennsylvania Supreme Court Deciding Case to Determine if Workers' Compensation Insurer May Sue a Negligent Third Party

Subrogation is a basic tenet of nearly every area of insurance law. When an insured suffers a loss as the result of the actions of a third party, and an insurer covers that loss, the insurer then has the right to seek redress from the third party. The insurer's action against a third party in nearly all circumstances is independent of the insured's decision to bring an action, and can even be pursued without the consent of the insured. In other words, the insured's right to seek recovery for a third-party's negligence is transferred to the insurer when the insurer covers the loss.

It seems obvious under the language of the Pennsylvania Workers' Compensation Act that a workers' compensation insurer would have that same subrogation right. It is the same right enjoyed by automobile insurers and homeowner's insurers, but so far, this is not the case.

As a result of case law dating back to the 1930s, a workers' compensation insurer can only assert its claims against a negligent third party when the injured worker files suit against that third-party. This has resulted in the lien system against third party actions that we use today. In a situation where a third party's actions are the cause of the injury, and the injured worker opts not to pursue a claim against the third party, the insurer is barred from seeking reimbursement from the individual who caused the injury. While this has been the law in Pennsylvania for over 80 years, this may soon change.

The Pennsylvania Supreme Court is currently deciding a case that would again determine whether a workers' compensation insurer has the independent right to sue a negligent third-party. Oral arguments were heard on the issues back in October, and a decision is expected within the next few months. If the Court rules in favor of the insurer, there will be a drastic shift in litigation strategy and case management. An entirely new area of funds and litigation would open up for workers' compensation insurers.

Some avenues of recovery seem obvious. For example, an insurer could seek recovery from a property owner when the owner's lack of care for the property has caused injury to a worker, or recovery from a negligent driver who causes an accident. Other areas are less obvious. For example, an insurer could seek recovery from a product manufacturer whose product caused a worker to sustain a pulmonary injury, or directly from an injured workers' coworker whose negligence caused the work injury.

An insurer's right to bring suit independent of the injured party is common in nearly every other area of insurance law. The Act is similarly clear that an insurer has an absolute right to subrogation against a negligent third party. There is simply no reason that a workers' compensation insurer should not have that independent right. We will keep an eye out for the Pennsylvania Supreme Court's decision in Liberty Mutual v. Domtar Paper Co., because that decision could change everything.

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