

Carriers Need to Consider Pursuing Third Party Claims to Collect Section 40 Liens

Carriers have every right to step into the shoes of the petitioner to protect and pursue Section 40 lien rights. There has been a change in cases that give the carrier a reasonable argument that the previously defined "verbal threshold" no longer bars the workers' compensation carrier from asserting Section 40 lien rights against a tortfeasor even when the injured worker has chosen the limitation on liability under his or her automobile insurance carrier.

In the cases of *Lambert* and *Talmadge*, the argument presented was that the verbal threshold and/or AICRA NJSA 39: 6A -1-35, which limits a third-party plaintiff/employee from recovering non-economic damages (pain and suffering) does not apply to the workers' compensation lien. The benefits provided under the Workers' Compensation Act (temporary disability as partial wage replacement, medical benefits and permanency as compensation for loss of potential future earnings) should be considered economic damages and therefore, the limit placed on the injured employee under verbal threshold and/or AICRA NJSA 39: 6A -1-35, does not apply. The argument is that while the PIP Statute exclusively bars the injured party from recovering for medical expenses in a tort claim, there is no such language in Section 40 of the Workers' Compensation Statute. This argument has been successful in allowing carriers to recover Section 40 lien rights when it was previously thought there would little chance for recovery.

Therefore, when counsel or the injured employee advises that they are not pursuing the third party claim because of the verbal threshold, don't give up. Consult an attorney for the potential recovery of a Workers' Compensation Section 40 lien.

For additional information about Section 40 Liens you can view our informative webinar here:
<https://www.wglaw.com/WG-University/144102/Section-40-Lien-Rights>

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