

## Subrogation Lien Rights Upheld Once Again

In the recent decision of *Psiuk v Jen Electric* (decided January 29, 2020), the Appellate Division upheld the Workers' Compensation Judge's (WCJ) opinion, which enforced the Section 40 Subrogation Lien Rights of the workers' compensation carrier.

In the underlying workers' compensation case, the petitioner was injured while working for Jen Electric on a municipal traffic signal when he was struck by a truck operated by an employee of a private entity. The petitioner filed a workers' compensation claim and received benefits. He also filed a third-party action against both the private entity as well as the municipality. Before trial, the petitioner settled his third-party action for a total of \$1,000,000.00; the private entity paid \$575,000.00 while the municipality paid \$425,000.00.

Jen Electric filed a notice of lien against the petitioner's settlement, with the private tortfeasor seeking reimbursement from the \$575,000.00 settlement. They did not seek subrogation lien reimbursement from the municipality since the municipality is immune from a Section 40 lien reimbursement obligation. (See *Travelers Insurance Company, Colella*, 169 NJ Supra 412 4:15-16 Appellate Division 1979 and N.J.S.A section 59:1-3).

The petitioner took what appeared to be a bizarre and unsupported position objecting to Jen Electric's lien against the settlement with a private entity. The plaintiff argued that the lien should be reduced by the percentage of the settlement paid by the public entity. The Court did not go into detail regarding this mathematical calculation. Still, it appears that the plaintiff was arguing that the carrier's lien should be reduced by 42.5% ( $\$425,000.00 / \$1,000,000.00$ ) such that the lien against the private entity would be \$244,375.00 and not the amount paid of \$575,000.00. The Judge and the Appellate Division quickly dismissed this position, noting that the lien amount applies to the gross settlement paid by the private entity.

**Comment:** This decision once again confirms and strengthens the employer's entitlement to Section 40 lien reimbursement. Of course, lien reimbursement is still unavailable concerning the proceeds paid by a public entity. However, all amounts paid by private entities are fully subject to the lien reimbursement rights.

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