

Subrogation of Worker's Compensation Claims in Maryland



Election of Remedies:

- The claimant may pursue a workers' compensation claim against the employer and sue the third party. He does not have to choose, or elect, his remedy, so long as he does not prejudice the employer's right to recover its lien from the third party.
- The co-worker can be sued as a third party as long as he or she is not acting in a supervisory role. The employer, however, cannot be directly sued on that basis. The employer may have separate insurance coverage covering the co-worker. One such example is if the incident arose out of the use of the employer's vehicle, the employer's commercial auto policy may apply, at least up to the mandatory minimum limits.

Statute of Limitations:

- The statute of limitations for tort actions is three years from the date the action accrues, usually the date of the incident.
- The statute of limitations for third party torts by the employer/insurer does not begin until two months after the Workers' Compensation Commission's initial award. Md. Code L&E § 9-902.
- The employer/insurer may institute suit. Their right to do so is exclusive for the first two months following the initial award. Md. Code L&E § 9-902.

Amount of Recovery - Claimant Institutes Third Party Action:

- The employer/insurer receive a credit for the net amount recovered by the claimant in the third-party suit, but must deliver any compensation awarded to the claimant in excess of such credit.
- The employer/insurer has a statutory lien. The employer/insurer, however, must pay a pro-rata share of the costs for the third-party action, and will generally be required to pay a fee to the claimant's attorney for recovery of the lien.
- If the claimant settles a third-party case without the employer/insurer's consent, the employer/insurer must proceed before the Workers' Compensation Commission and establish the extent to which their lien has been prejudiced by such settlement.

Amount of Recovery - Employer/Insurer Institutes Third Party Action:

- From the third party recovery proceeds, the employer/insurer may retain the amount owed pursuant to its lien, less a pro-rata share of expenses, and then must pay the balance of the net recovery to the claimant. The employer/insurer then has a credit in the amount of such a payment to the claimant, against any further payments owed to the claimant in the workers' compensation claim.

Procedure for Workers' Compensation Claims in Maryland

Issues:

- Any party disputing any aspect of the claim, or payments owed, must file Issues with the Maryland Workers' Compensation Commission ("WCC").

Hearing:

- The WCC will schedule a hearing in its ordinary course, at a hearing site based upon the claimant's residence. If the claimant seeks an expedited hearing date on an "Emergency" basis, he or she must petition the WCC for such expedited filing, which may be granted or denied in the WCC's discretion. The WCC generally requires documentation to support a request for an emergency hearing.

- All hearings are scheduled to take place at 9:30 a.m., at each hearing site location, and proceed in order as determined by the Commissioner hearing that docket.

- There is generally no discovery at the WCC level in Maryland, other than the right to advance receipt of a copy of applicable medical records. All medical exhibits must be provided to the opposing party at least 5 days before a hearing. The parties are also permitted to subpoena records once issues are filed.

- Hearings are conducted in a relatively informal manner, with the Commissioner having great discretion over the admission of evidence, etc. Medical records may be submitted contrary to the ordinary rules of hearsay, and expert testimony is generally not permitted.

- The WCC does not ordinarily provide a decision at the time of hearing, but instead subsequently provides the parties with written notice of its decision. The Commissioners do not prepare opinions setting forth the basis for their decisions, and, instead, the decisions are generally rendered on the basis of an applicable form.

- A party dissatisfied with the WCC's decision may file a request for rehearing within fifteen days after the date of the WCC's decision. Such request does not stay the WCC's decision or the right of another party to appeal from such decision. (Md. Code L&E §

Appeals - Circuit Court:

- Any party who disputes the WCC's decision may file an appeal, within thirty days of the WCC's decision, in the Circuit Court where the subject occurrence took place, or where the appellant resides, or where the employer's principal place of business is located.

- If a request for rehearing is filed, the appeals period is extended to 30 days after the order on the request for hearing.

- Full discovery is permitted, and either party may pray a jury.

- Trials are generally de novo, but there is a statutory presumption in favor of the WCC's decision, with the burden of proof to overcome that decision on the appellant.

- Not all appeals may be tried before a jury. Trials on the record of the commission are permitted, but additional presumptions in favor of the decision apply.

- An appeal does not stay the payments owed under the award from which the appeal is taken. (Md. Code L&E § 9-741). Moreover, the employer/insurer cannot recover payments made to claimants whose awards are vacated on appeal. *St. Paul Fire & Marine Ins. Co. v. Treadwell*, 263 Md. 430, 283 A.2d 601 (1971).

Appeals - Appellate Courts

- Any party aggrieved by the Circuit Court's decision, may appeal, as a matter of right, to the Court of Special Appeals of Maryland.

- Any party aggrieved by a decision of the Court of Special Appeals of Maryland may petition the Court of Appeals of Maryland for review of such decision, but the Court of Appeals has the discretion to decide which appeals it will hear.