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## SUBROGATION

### A. PURPOSE

1. The party who causes the injury should bear the cost of the injury.
2. The injured party should not recover twice for the same injuries.
3. Collateral Source Rule.
  - (a) In 2005 as part of the Ohio Tort Reform Act, the General Assembly addressed the collateral source rule.
  - (b) Under the 2005 law it was questionable as to whether a jury could be informed of benefits paid but subject to subrogation.
  - (c) In *Jaques v. Manton*, 125 Ohio St. 3d 342 (2010), the court stated that amounts paid by a subrogee were admissible to establish the actual medical expenses incurred by the plaintiff.

### B. COMMON LAW RECOVERY

1. In *Ledex, Inc. v. Heatbath Corp.*, 10 Ohio St. 3d 126 (1984), court held that an employer could recover its expenses from a third party tortfeasor.
2. In 1988, the Supreme Court limited *Ledex* to situations where there was a contract between the employer and the third party tortfeasor. *Cincinnati Bell Tel. Co. v. Straley*, 40 Ohio St. 3d 372 (1988).

### C. SUBROGATION STATUTE

1. The first attempts at subrogation were declared unconstitutional.
2. The present O.R.C. §4123.93 and §4123.931 became effective April 9, 2003.

3. The Administrator of the BWC and self-insured employers have a right to limited recovery when the claimant's injuries were caused by a third party.
4. The subrogation interest includes past, present and estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits and any other costs or expenses paid by the Administrator or the self-insured employer pursuant to the Workers' Compensation Statutes.
5. The statute anticipates that the parties will negotiate a settlement.
6. In the event the parties are unable to negotiate and agree, then the parties may submit the matter to mediation. In the event that a case proceeds to trial, then a formula is used to determine the amount of subrogation.

See Formula

7. Limited recovery because generally the amount recovered is not sufficient to cover damages.
8. If there is a very deep pocket and clear liability, the employer and BWC are still liable for a share of attorney's fees and costs.
9. In 2016, the General Assembly added O.R.C. §4123.932 to assist state fund employers.

#### **D. PRACTICAL CONSIDERATIONS**

1. There is no need to put the claimant on notice, but it is often wise to do so.
2. A claimant is often anxious to settle the workers' compensation claim in order to establish a limit for the employer's recovery.
3. In negotiating the amount of subrogation, the claimant and the employer find themselves in reversed roles.

FORMULA

UD = Uncompensated Damages = pain and suffering + wages in excess of T.T.  
 SI = Subrogation interest  
 NAR = Net Amount Recovered = Award - Fees/Costs  
 CS = Claimant's Share  
 SS = Subrogee's Share

$$CS = \frac{UD}{SI+UD} \times NAR$$

$$SS = \frac{SI}{SI+UD} \times NAR$$

EXAMPLES:

1. Recovery \$100,000  
 SI \$ 20,000  
 Attorney Fee & Costs \$ 40,000

$$UD = RECOVERY - SI = \$100,000.00 - \$20,000.00 = \$80,000.00$$

$$NAR = RECOVERY - FEES/COSTS = \$100,000.00 - \$40,000.00 = \$60,000.00$$

$$CS = \frac{\$80,000.00}{\$20,000.00 + \$80,000.00} \times \$60,000.00 = \$48,000.00$$

$$SS = \frac{\$20,000.00}{\$20,000.00 + \$80,000.00} \times \$60,000.00 = \$12,000.00$$

2. Assume serious injury where only \$100,000.00 in limits with SI = \$50,000.00, and case is settled for limits of coverage, but parties agree proven damages = \$500,000.00.

$$CS = \frac{UD (\$450,000.00)}{SI(\$50,000.00)+UD (\$450,000.00)} \times \$60,000.00 = \$54,000.00$$

$$SS = \frac{SI (\$50,000.00)}{SI (\$50,000.00)+UD(\$450,000.00)} \times \$60,000.00 = \$6,000.00$$