

S O U T H C A R O L I N A
Workers' Comp
LAW BLOG

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Important Things to Remember About 3rd Party Actions

Basic Principles: The Ultimate Wrongdoer Should Pay.

Where the employee is injured because of the negligence of a stranger, the stranger does not enjoy the protection of the exclusivity doctrine under the Workers' Compensation Act. As professor Lex Larson notes, "The concept underlying third party actions is the moral idea that the ultimate loss from wrongdoing should fall upon the wrongdoer," Larson's Workers' Compensation Law, § 110.01. He states the principal succinctly.

"So, it is elementary that if a stranger's negligence was the cause of an injury to claimant in the course of employment, the stranger should not be in any degree absolved of his normal obligations to pay damages for such injury."

Id. (citing *Smith v. Payne*, 753 P.2d 1162 (Ariz. 1988); *Rigby v. Eastman*, 217 N.W.2d 604 (Iowa 1973); *Nance by Nance v. Westside Hosp.*, 750 S.W.2d 740 (Tenn. 1988)).

Likewise, South Carolina follows the sound principle that every person is legally responsible for the proximate consequences of his or her negligence. *Bennettsville & Cheraw R.R. Co. v. Hickson Lumber Co.*, 93 S.C. 382, 384, 76 S.E.2d 1087, 1088 (1913).

The Injured Worker Should Not Collect Twice. South Carolina has recognized this doctrine and embraced it as its own. *Johnson v. Penn. Millers Mut. Ins. Co.*, 292 S.C. 33, 40-41, 354 S.E.2d 791, 795 (Ct. App. 1987). The doctrine is consistent with the well-settled principle that an injured party may collect only once for a single injury. There can be no double recovery for a single wrong. *Taylor v. Hoppin' Johns, Inc.*, 304 S.C. 471, 475, 405 S.E.2d 410, 412 (Ct. App. 1991)(citing *Inman v. Imperial Chrysler-Plymouth, Inc.*, 303 S.C. 10, 397 S.E.2d 774 (Ct. App. 1990)).

Rights of the Employer/Carrier

When the injured worker elects to seek recovery solely against the third party, he or she waives the right to later collect workers' compensation benefits and the carrier pays nothing. S.C. Code Ann. § 42-1-560 (1976).

If the injured employee seeks recover from both the third party and the insurance carrier, the carrier must pay workers' compensation benefits and is entitled to a lien against any proceeds recovered from the negligent third party. S.C. Code Ann. § 42-1-560(b)(1976 & Supp. 2005).

Where the injured worker elects to limit recovery to available workers' compensation benefits, South Carolina law provides a mechanism by which the insurance carrier may sue the negligent third party in the name of the injured worker. S.C. Code Ann. § 42-1-560(c) (1976 & Supp. 2005).

What is the TRUE Value of a Third Party Lien?

South Carolina's third party statues provide a mechanism for the reduction of the carrier's lien in the same proportion as claimant's third party recovery bears to his total cognizable damages. The theory is to provide balance in the distribution of proceeds where those proceeds do not fully compensate the injured worker for his injuries. In addition, the statute provides a carrier must share in the cost of the third party recovery when it receives proceeds in satisfaction of its lien. The carrier's responsibility for attorney's fees is limited to 1/3 of the amount of the carrier's lien.

After the carrier's lien is reduced and the attorney's fees are paid, the value of the lien is usually about 1/3 of what is was at the onset of the claim. So what is the value of a third party lien? **LEVERAGE FOR SETTLEMENT!!!** Don't forget to use your status as a third party lien holder to get a claim resolved on a full and final clincher basis. This is typically done by waiving your right to a third party lien. While it is essential to pursue subrogation for effective claim management, there is no claim like a clinched claim, and your third party lien may help you get it done!