Delaware Supreme Court Overturns Precedent, Limits Double Recovery for Injured Employees

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The Delaware Supreme Court recently reinterpreted a section of the state's Workers' Compensation Act (WCA) (19 Del. C. § 2301 *et seq*.) to allow employers and insurance providers to pursue liens on certain excess benefits recovered by injured employees. This rare reversal of precedent will effectively end a legal regime, which permitted some employees to enjoy "double recovery" following a workplace injury. Instead of workers obtaining claim benefits under multiple insurance policies paid for by their employers with no recourse for the employer, now employers and their insurance providers may file subrogation liens to limit the recovery.

In *Horizon Servs., Inc. v. Henry*, No. 172, 2022 (Del. 2023), the plaintiff received workers' compensation benefits in addition to benefits he received from the policy of the motorist who caused the accident. The employee then sued to recover even more benefits under the uninsured motorist (UIM) policies of his employer's car insurance and his own personal car insurance.

The suit arose when his employer and workers' compensation carrier moved to place liens on the benefits recovered from the two UIM policies under the theory that the employee had already been compensated for his injury and that any additional funds received would constitute a "double recovery" by the employee. The Superior Court dismissed the action based on the Supreme Court's prior interpretation of WCA § 2363(e) which explicitly barred employers and carriers from pursuing liens on recovered funds. *See Simendinger v. National Union Fire Insurance Co*., 74 A.3d 609 (Del. 2013).

On appeal, the Supreme Court overturned that precedent. Instead of placing a blanket restriction on carriers from pursuing liens on excess recovery, the court explained, the statute permits such suits but is careful to exclude from reaching any personal injury protection (PIP) expenses, which the employee may have recovered. This specific carve-out was the source of the Supreme Court's prior ruling and the focus of its statutory investigation in *Henry*.

The *Henry* court had to balance competing policies and principles. It asserted that the state had an interest in preventing injured employees from recovering twice for the same injury, yet also recognized that the WCA was enacted in the first place to assist with medical expenses and to replace lost wages following a workplace accident.

To decide *Henry*, the court turned to contract theory. The court determined that no contractual obligation exists between an employer-purchased insurance plan and an injured employee, who has already recovered from other sources. The court reasoned that the employee, having not paid any consideration for the policy and having already recovered from other sources, "has no loss for which the insurer should provide compensation." *Henry* at 20, quoting *State Farm Mut. Auto. Ins. Co. v. Nalbone*¸ 569 A.2d 71, 75 (Del. 1989).

Furthermore, should that employee recover under those plans, a subrogation lien on the funds recovered would be proper:

"[A]n employer who purchases UIM coverage for its vehicles…should be entitled to assert a subrogation lien when that UIM policy reimburses the employee for injuries already compensated under the WCA." *Henry* at 20.

Thus, appealing to legislative history, contract theory and Delaware public policy, the Supreme Court reversed:

"We therefore overrule *Simendinger* and hold that…Section 2363(e) gives an employer and its workers' compensation insurer a right to assert a subrogation lien against an employee's recovery of benefits under an employer-purchased UIM policy." *Henry* at 18.

While it is too soon to know completely the impact of the *Henry* decision, it may deter injured plaintiffs from seeking additional recoveries. If they do, employers and insurers will almost certainly increase the use of subrogation liens. As we look towards future litigation, *Henry* may very well inform cases and claims involving "double recovery" situations in Delaware and beyond.

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