 Yukon Workers' Compensation Health and Safety Board	Part:	General and Corporate		
	Board Approval:	<i>Original Signed by Chair</i>	Effective Date:	July 1, 2008
	Number:	GN-06	Last Revised:	
	Board Order:		Review Date:	

## SUBROGATED CLAIMS

### GENERAL INFORMATION

A worker who suffers a work-related injury may, in certain circumstances, have a claim against a person who caused the injury. Under subsection 51(1) of the *Workers' Compensation Act* S.Y. 2008 (the "Act"), the Yukon Workers' Compensation Health and Safety Board (YWCHSB) is assigned the right to sue and recover, on behalf of the injured worker. This assignment can be either a subrogated claim or a subrogated lawsuit ("subrogated lawsuit").

### PURPOSE

This policy explains when the YWCHSB would proceed in a subrogated lawsuit and how the funds would be apportioned when the case is either settled, or a court makes a decision favourable to the YWCHSB.

### POLICY STATEMENT

Funds recovered by either a settlement or court decision in a subrogated lawsuit must be paid to the YWCHSB.

These funds will be applied to pay legal costs, disbursements incurred in the subrogated lawsuit, and all current and estimated future costs of the YWCHSB for all compensation payments made on behalf of the injured worker, such as medical or earnings loss.

Funds left over, after payment of legal fees, disbursements and all current and estimated future costs of the YWCHSB, will be paid to the worker, the worker's personal representative or the worker's dependents.

#### 1. Determination, Potential Lawsuits

Decision-makers shall identify potential subrogated lawsuits to the Manager of Claimant Services, who will report this information to internal counsel.

The YWCHSB may proceed with a subrogated lawsuit when there is a reasonable expectation of success in cases such as negligence, assault, occupier's liability, products liability and vehicle collisions.

Third party insurers and the YWCHSB will attempt to agree on liability and/or dollar amounts prior to commencing a subrogated lawsuit. All reasonable efforts should be made to resolve the matter prior to taking court action.

When the total compensation claim is estimated at five thousand dollars (\$5,000.00) or greater, internal counsel should review the claim for possible action and may, under subsection 51(2), commence a subrogated lawsuit.

## **2. Occupiers Liability**

An example of occupier's liability would be where a worker has slipped and fallen on premises owned by a third party who is neither a Yukon worker nor a Yukon employer. Most owners have insurance; therefore, the question of the ability of the owner to pay any judgment will not normally be a limiting factor.

## **3. Products Liability**

Products liability will usually require the testimony of an expert witness. Generally, the manufacturer of the product may be found liable by the Court. Internal counsel should review such cases.

## **4. Vehicle Collisions**

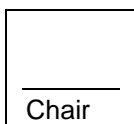
If the insurer and the YWCHSB cannot agree on liability and/or dollar amounts, but liability looks to be 50/50 or better in favour of the injured worker and the total compensation claim is greater than five thousand dollars (\$5,000.00), a subrogated lawsuit may be initiated.

## **5. Subrogated Lawsuit Recoveries**

If the claims costs related to a subrogated lawsuit have been charged to the Adverse Events Reserve, the recoveries for the claim shall be credited back to the Adverse Events Reserve.

## **6. Disbursements**

Disbursements are legal expenses such as registry fees or expert reports, over and above legal fees incurred in a subrogated lawsuit. Any settlement or payment to a worker or dependent of a deceased worker in a subrogated lawsuit must be approved by the President/CEO or delegate.

  
Chair

## Subrogated Claims

The Manager of Claimant Services may authorize disbursements up to twenty five thousand dollars (\$25,000.00).

The Director of Claimant Services may authorize disbursements up to one hundred thousand dollars (\$100,000.00).

The President may authorize disbursements over one hundred thousand dollars (\$100,000.00).

### 7. External Counsel

If external counsel is required, contractual arrangements will be entered into between the YWCHSB and external counsel.

### 8. Subrogated Claim Files

The subrogation file, including medical or other reports, shall be kept in the custody of internal counsel, separate from the worker's claim file, until the matter is resolved.

## ACT REFERENCES

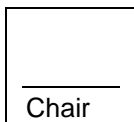
Sections 50 and 51

## HISTORY

GC-01, "Subrogated Claims", effective June 28, 2005, revoked July 1, 2008.

GC-01, "Subrogated Claims", effective August 17, 1994, amended June 28, 2005, effective June 28, 2005.

GC-01, "Subrogated Claims", effective June 28, 2005, amended November 22, 2005, effective November 22, 2005.

  
Chair