



YUKON WORKERS'
COMPENSATION
HEALTH AND
SAFETY BOARD

SUBJECT: GENERAL AND CORPORATE

POLICY NO.: GC-01

BOARD APPROVAL:

APPROVAL DATE: November 22, 2005

BOARD ORDER NO.:

EFFECTIVE DATE: November 22, 2005

POLICY STATEMENT

POLICY: **SUBROGATED CLAIMS**

Application

This policy applies to the Board of Directors, President and staff of the Workers' Compensation Health and Safety Board ('the board').

Section Reference

Section 55 of the *Workers Compensation Act R.S.Y. 2002* ('the Act') provides that if a worker suffers a work-related disability because of the conduct of an employer who is not the worker's employer, or a worker of an employer who is not the worker's employer, neither the worker who suffered the disability nor the personal representative, dependant or employer has any cause of action against the other worker or employer. This does not apply if the disability arose from the use or operation of a vehicle, which includes any form of transportation where there is insurance.

Section 56 (1) provides that if there is a cause of action with respect to a disability, the board is the assignee of the cause of action and the board has all rights to any cause of action.

General Information

The Act authorizes the board to recover monies through the pursuit of third party (subrogated) action.

In return for the guaranteed benefits provided an injured worker through the Act, a worker is prohibited, under normal circumstances, from suing an employer or other worker for work-related disabilities. The exception to this is when the disability arises from the use or operation of a vehicle.

Under the Act, the board's right to sue is discretionary. There is no obligation to sue on the worker's behalf. The board should proceed in the name of the worker when there is a reasonable chance of success, and there is a net gain for the worker and recovery of costs of the disability by the board.

Policy Statement

Adjudicators and Case Managers shall identify potential third party actions to the Manager of Claimant Services, who will report this information to General Counsel. The President, shall inform the Board of Directors of the initiation of any third party actions and the subsequent conclusion of those actions. Any settlement or payment to a worker or dependant of a deceased worker in third party actions must be approved by the President or delegate.

A. Pursuit of A Subrogated Claim

The board shall proceed with a civil suit when there is a reasonable chance of success in cases such as negligence, assault, occupier's liability, products liability and vehicle accidents.

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

Negligence & Assaults

When a claim for the injured worker is \$5,000 or greater and a credit check of the third party reveals he or she is solvent, (i.e. is gainfully employed or has assets), legal counsel should review the claim for possible action.

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

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insurance; therefore, the question of solvency will not normally apply.

When a claim for the injured worker is \$5,000 or greater, it should be reviewed by legal counsel for possible action.

Products Liability

Products liability will usually require the testimony of an expert witness. Generally, the manufacturer of the product will be found liable by the court. Legal counsel should review such cases for possible action.

Vehicle Accidents and Collisions

If the insurer and the board 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 claim is greater than \$5,000, legal counsel should commence action.

After preparing and serving the Statement of Claim, legal counsel should conduct examinations for discovery. At this point, the claim should be reassessed with respect to liability and amount before proceeding to the more expensive trial stage.

B. Subrogated Recoveries

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

C. Disbursements

Disbursements are legal expenses over and above legal fees.

The Manager of Claimant Services may authorize disbursements up to \$10,000.

The President may authorize disbursements up to \$20,000.

Disbursements over \$20,000 shall be approved by the Board of Directors.

D. Retainer Agreements

The board has one retainer agreement for pursuit of third party action by legal counsel.

As a guideline, the following schedule for legal fees has been established:

1. taxable costs, if recovered as part of the gross recovery;

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2. 25 percent of any gross recovery.

The board may negotiate this amount and opt for an hourly rate or some other fee arrangement depending on the circumstances of the case.

The President, with General Counsel, shall decide the fee schedule to be established for each case. The President shall notify the Board of Directors of all exceptions to the fee schedule guideline.

E. Counsel Qualifications

In normal circumstances external legal counsel shall be retained. To ensure that all cases are properly defended, any legal counsel retained for the purposes of pursuing a subrogated claim shall:

1. have at least five years in relevant experience;
2. be a member in good standing of the Yukon Bar when pursuing action in the Yukon or have a certificate of permission to act;
3. be a member in good standing of a jurisdiction outside the Yukon, when pursuing action in that jurisdiction; and
4. be free from any conflict of interest with the board.

F. Subrogated Claim Files

The subrogation file shall be kept in the custody of General Counsel, separate from the worker's claim file, until the matter is resolved.

Reference

FN – 07 Funding Policy, effective September 27, 2005.

History

Policy, Subrogated Claims, effective August 17, 1994, amended June 28, 2005, effective June 28, 2005.

Policy, Subrogated Claims, effective June 28, 2005, amended November 22, 2005, effective November 22, 2005.

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