



**YUKON WORKERS'
COMPENSATION
HEALTH AND
SAFETY BOARD**

SUBJECT: SUBROGATED CLAIMS POLICY NO.: GC - 01
BOARD APPROVAL: *[Signature]*
APPROVAL DATE: 95-03-07
BOARD ORDER NO.: _____
EFFECTIVE DATE: 94-08-17

REVOKED

[Signature] JUN 28 2005

POLICY STATEMENT

SECTION
REFERENCE: **41, 42**

AMENDED 95/03/07

POLICY: **SUBROGATED CLAIMS**

GENERAL INFORMATION

Workers' Compensation legislation 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 WCA, a worker is prohibited, under normal circumstances, from suing an employer or other worker for work-related disabilities.

The worker's entitlement to sue a third party is subrogated or assigned to the board. This means the board can sue in the worker's name to recover any costs it has paid out to the worker from the negligent party. The board may in some circumstances give its consent to a worker to commence a suit.

Under the WCA 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, a net gain for the client and/or recovery of costs by the board.

POLICY

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.

The President, at the next Board meeting, shall inform the Board of the initiation of any third party actions and the subsequent conclusion of those actions.

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, occupiers liability, products liability and motor vehicle accidents.

Third party insurers and the board should attempt to agree on liability and/or quantum prior to commencing 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 they are solvent, i.e. they are gainfully employed or have 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 worker nor an employer. Most owners have 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.

Motor Vehicle Accidents

If the insurer and the board cannot agree on liability and/quantum, 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 completion of preparation and service of Statement of Claim, counsel should conduct examinations for discovery. At this point, the claim should be reassessed with respect to liability and quantum before proceeding to the more expensive trial stage.

B. DISBURSEMENTS

Disbursements are essentially all costs over and above legal fees.

The Director of Claims may authorize disbursements up to \$5,000.

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

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

C. RETAINER AGREEMENTS

The board has two retainer agreements for pursuit of third party action by legal counsel; one for actions taken pursuant to the WCA (1992) and another for actions taken pursuant to predecessor legislation.

As a guideline, the following fee schedule has been established:

1. taxable costs if recovered;
2. pursuant to a Retainer Agreement a legal fee of 25 percent of the first \$20,000 of any gross recovery (less taxable costs if recovered and disbursements); 20 percent of the balance to \$50,000; and 10 percent of any recovery thereafter.

However 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 board counsel, shall decide the fee schedule to be established for each case. The President shall notify the Board of all exceptions to the fee schedule guideline.

D. COUNSEL QUALIFICATIONS

To ensure that all cases are properly defended, any counsel retained for the purposes of pursuing a subrogated claim shall:

1. have at least two years experience in negligence cases;
2. have five years experience for all other cases;
3. be a member in good standing of the Yukon Bar when pursuing action in the Yukon;
4. when pursuing action in another jurisdiction, be a member in good standing of that jurisdiction; and
5. be free from any conflict of interest with the Yukon WCHSB.