Excluding Pain and Suffering – Trending

Description

In the past, we have written about the impact of social and technological trends on the Rhode Island market and economy which eventually influence the law. Indeed, regardless of the form of law—statutory or judicial—neither is immune from these winds of change. In neighboring Massachusetts, a legal development in its workers' compensation law may make its way into Rhode Island.

The workers' compensation system is generally designed to provide an injured employee his/her lost wages and reimbursement of medical costs regardless of whether the employee or the employer was at fault for the injury. The Rhode Island Workers' Compensation Act (the "Act") expressly walled itself off from fault-based, civil tort law, until 1985 when the General Assembly amended the Act, particularly R.I. Gen. Laws § 28-35-58, to allow for an employee to receive workers' compensation benefits and recoup damages from a third party who caused the injury. Prior to 1985, an injured employee had to choose to either be compensated under the workers' compensation system or seek damages from the third party wrongdoer.

While the workers' compensation system is a statutory creation, civil tort law has a long history that has evolved through the courts. Generally, when a person is injured due to the fault of another, the civil tort process provides an opportunity for that injured person to be made "whole" in the form of monetary damages. Those monetary damages are meant to compensate an injured person for such things as medical costs, lost wages, and pain and suffering. In the civil tort context, the wrongful actor is liable for the entire scope of harm he/she has caused the injured party. Despite the injured employee's ability to simultaneously seek compensation (workers' compensation) and redress (civil tort law), a barrier remained between the two systems, mainly, that an injured employee would have to reimburse the workers' compensation insurer for the compensation he/she received out of the employee's tort recoveries to avoid a windfall or "double recovery" to the injured employee. Any excess damages award above the compensation paid by the workers' compensation insurer would be kept by the injured employee.

Similarly, under the Massachusetts Workers' Compensation Act, M.G.L. c. 152, § 1, et seq., particularly § 15, an employee who is injured in a work-related incident due to the acts of an unrelated third party may seek redress of that injury through the civil tort process while also having received benefits afforded through its workers' compensation system. In such a circumstance, the Massachusetts legislature mandated that the sum recovered by the employee in a third party civil tort action "be for the benefit of the insurer, unless such sum is greater than that paid by it to the employee, in which event the excess shall be retained by or paid to the employee." M.G.L. c. 152, §15. The purpose of mandating full reimbursement of the workers' compensation insurer from the civil tort award supports the public policy of avoiding double recovery to the employee.

The practical application of the Massachusetts process is that the workers' compensation insurer is provided a statutory lien that encumbers the entire award an employee is awarded in a third-party tort suit up to the amount the insurer has paid out. Any amount received above the amount paid by the insurer reverts to the employee.

Recently, in DiCarlo v. Suffolk Construction Co., Inc., et al., Docket No. SJC-11854 and Martin, et al. v. Angelini Plastering, Inc., et al., Docket No. SJC-11853, the Massachusetts Supreme Judicial Court (the "SJC") accepted review of two separate injured employees' tests of the extent of the statutory lien as it relates to those damages from third-party civil tort damages labeled "pain and suffering". The SJC accepted review of this question to resolve the issue since it had first come to light in Curry v. Great Am. Ins. Co., 80 Mass.App.Ct. 592, 954N.E.2d 580 (2011). In Curry, the Massachusetts Court of Appeals held that a workers' compensation insurercould not reach "pain and suffering" damages from a third party action and seek reimbursement forcompensation paid to an injured employee. At that time, the SJC did not accept review of the Curry decision.

Positing the following hypothetical to explain the issue, let's assume the civil tort process determines that a third party (wholly unrelated to either the employee or the employer) was at fault for the workplace injury of an employee. A jury concludes that the total award to the employee to rectify his/her injury is $10,000 in damages. Because it was a work-related injury, the employee already received $10,000 in workers' compensation benefits without regard to fault. Thus, the following questions flow: wasn't the employee already made whole by the workers' compensation system, $10,000 paid for a $10,000 injury? Therefore, if any of that $10,000 were not used to reimburse the workers' compensation insurer, would that not result in a double recovery to the employee? The SJC resolved this issue in favor of the employee.

In February 2016, the SJC held that "an insurer's lien does not extend to damages allocated to an employee's pain and suffering." Slip Op. at 4. For the Court, "the nub" of statutory construction came down to the meaning of one particular phrase of Section 15: "gross sum received in payment of the injury" and, particularly, the word "injury". Slip Op. 7-8. Even though the statute states that the statutory lien is upon the "gross sum received in payment for the injury" (emphasis in opinion), "injury" could not have been meant to include all damages that could befall an employee. Such an expansive interpretation "would require the word 'injury' to take on two different meanings within § 15." Id. at 10.

The SJC analyzed the statutory use of the term "injury" in two parts of § 15: "the injury for which [workers'] compensation is payable" and "gross sum received in payment for the injury." Id. Scrutinizing the meaning of this language, the Court ascribed a narrow meaning to the former's use of "injury". In so doing, the SJC believed that broadly interpreting the latter use of "injury" to encompass all harm "would require [the SJC] to attribute different meanings to the same words in the same paragraph." Id. Therefore, in order to maintain statutory consistency of "injury", the insurer's right to reimbursement could only attach to reimbursement for an injury that was compensable under the Workers' Compensation Act. Id. at 11. Consequently, because the insurer "did not compensate the employees for their pain and suffering", the insurer "cannot seek 'reimbursement' from damages paid for those harms." Id. at 16 (citations omitted).
Rationalizing how this is not a "double recovery", the SJC focused on the nature of the injury asserted rather than on the dollar amounts recovered. Id. at 16-17. "In other words, the goal of § 15 is not to return to the insurer the full dollar amount paid to an employee, but, rather, to avoid having an employee collect both benefits and damages from the same harm." Id. at 17. Finally, the SJC expressed consolation to the industry that the Department of Industrial Accidents can act as the guardian to ensure that settlements are not "entirely or in large part [allocated] to pain and suffering." Id. at 18.

Prior to DiCarlo and Martin, the U.S. District Court for the District of Rhode Island came to the same conclusion when applying Rhode Island law. In Vellucci v. Miller, 989 F.Supp.2d 211 (2013), the federal court found Curry persuasive when the question of whether "pain and suffering" damages were required to be used to reimburse a workers' compensation insurer under R.I. Gen. Laws § 28-35-58 was posed to it. Akin to the earlier Curry decision, the Vellucci Court held that since workers' compensation did not pay for "pain and suffering", the workers' compensation insurer could not rightly be "reimbursed" from that portion of the third party award. Vellucci, 989 F.Supp.2d at 215.

The decisions in DiCarlo/Martin and Vellucci fundamentally reframe the questions we posed above. They shift the inquiry from the amount of compensation paid and received to the nature of the harm as resolved in a third party tort action. Indeed, defining the nature of the injury by the third party tort action thrusts the fault-based system upon the workers' compensation system to determine the extent of the workers' compensation system's

ability to obtain full reimbursement when available. Therefore, any sum deemed “pain and suffering” by settlement or jury in a third party tort action places that portion out of the reach of the workers’ compensation insurer to recoup its outlay, at least in Massachusetts for now.

Although the Vellucci decision is only persuasive authority to Rhode Island state courts and does not officially constitute “Rhode Island law”, the effect of thought-trends progressing through and among neighboring states is evident. From Curry in Massachusetts to Vellucci in Rhode Island and back to DiCarlo/Martin in Massachusetts, what was an undercurrent has become law in Massachusetts. Will Rhode Island eventually join the bandwagon?

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