The Nature of Workers' Compensation as Affected by Pain and Suffering

Description

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 the 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.

Recently, injured employees tested the extent of the insurer's reimbursement claiming that damages from third-party civil tort damages labeled "pain and suffering" are not recoupable by the insurer. The Massachusetts Supreme Judicial Court (the "SJC") resolved this issue 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.

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 § 15: "gross sum received in payment of the injury" and, particularly, the word "injury". Slip Op. 7-8. According to the SJC, even though 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).

The decision in *DiCarlo* and *Martin* fundamentally reframed the issue. It shifted the inquiry from the amount of compensation paid and received to the nature of the harm as resolved in the 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 statutory lien. 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 carrier to recoup its outlay.

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