

# PROTECTING WORKER'S COMPENSATION SUBROGATION RECOVERY RIGHTS

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GREG PLANK

RAY LEGO & ASSOCIATES

## STATUTORY NOTICE C.R.S. § 8-41-203

- Must be sent within 10 days of demand for carrier's lien (does not apply to medical only claims)
- Penalties may apply if not sent timely (lien reduced by \$50 per day up to 20% of the lien)
- Statutory Notice goes to the Division of WC
- Need to copy all other parties

# STATUTORY EMPLOYER – EXCLUSIVE REMEDY PROTECTION

- Common in Construction Accounts – chain of hiring
- General contractor is “statutory employer” of subcontractor’s employee within meaning of workers’ compensation act, and thus was immune under act from liability for personal injuries suffered by employee on the job, and this conclusion was separate and apart from determination as to whether general contractor was statutory employer of independent subcontractor himself.
- *Frank M. Hall & Co., Inc. v. Newsom*, 125 P.3d 444 (Colo. 2005).

## NO RECOVERY FOR UM/UIM CLAIMS

A worker's compensation carrier does not have subrogation rights against an uninsured/underinsured motorist insurer, because that insurer does not step into the shoes of the tortfeasor.

*Colorado Ins. Guaranty Assoc. v. Menor*, 166 P.3d 205 (Colo. App. 2007).

# DIRECT PURSUIT AND/OR INTERVENTION

- No reduction for attorney fees for Direct pursuit
- No reduction for attorney fees if we intervene within 90 days of filing.
- Intervention is not required, but we must reduce lien for attorney fees
- If intervention filed after 90 days, we must reduce lien for attorney fees
- 20-day notice required to all parties prior to filing suit



# SETTLEMENTS

Lien is statutorily protected, so the injured worker's attorney and responsible party carrier cannot settle around the lien. They must first obtain written consent from the WC carrier to finalize the settlement.

# JORGENSEN HEARING

If the parties cannot agree on allocation of the settlement to each party, or how much of the settlement is economic vs. non-economic, either party can request a Jorgenson hearing. A District Judge will then determine the allocation.

*Colorado Compensation Ins. Authority v. Jorgensen*, 992 P.2d 1156 (Colo. 2000).

# DIRECT SETTLEMENT WITH DEFENDANT/RESPONSIBLE PARTY CARRIER

- Under the Workers' Compensation Act (WCA), a workers' compensation insurer may settle its subrogation claim with a third-party tortfeasor before the employee seeks or receives any compensation from the same tortfeasor.

*Delta Air Lines v. Scholle*, 484 P.3d 695 (Colo. 2021).

- Advantages the defendant because injured worker's attorney is not able to assert medical or indemnity benefits paid by workers' compensation insurer.
- Any direct settlement eliminates any future credit rights





QUESTIONS???