

SENATE BILL REPORT

SB 5747

AS REPORTED BY COMMITTEE ON COMMERCE & LABOR, MARCH 6, 1991

Brief Description: Revising provisions for compromise of industrial insurance liens in actions against third parties.

SPONSORS: Senators McMullen, Anderson and Talmadge.

SENATE COMMITTEE ON COMMERCE & LABOR

Majority Report: That Substitute Senate Bill No. 5747 be substituted therefor, and the substitute bill do pass.

Signed by Senators Anderson, Vice Chairman; McMullen, Moore, Murray, and Skratek.

Staff: Dave Cheal (786-7576)

Hearing Dates: March 4, 1991; March 6, 1991

BACKGROUND:

Some industrial insurance claims involve the liability of a third party who is not insulated from tort liability by the industrial insurance laws. When a recovery is made from a third party, the department or self insurer has a lien against that recovery for any benefits that have been paid to the injured worker prior to the third party recovery.

The department has consistently taken the position that it has no authority to compromise its lien, even if an injured worker accepts a compromise settlement with the third party that is significantly less than the damages sustained.

In similar situations involving other kinds of third party claims, private insurers frequently compromise their subrogation rights in order to make an overall settlement more attractive to the claimant. In effect, Washington case law may require such a compromise.

SUMMARY:

In the event of a compromise and settlement between an injured worker and a third party, the lien that the department or self insurer has against benefits already paid must be compromised.

If the injured worker and the department or self insurer cannot agree on the amount that the lien should be compromised, either party may appeal to the Board of Industrial Insurance Appeals for a determination of an equitable compromise. The board is instructed to consider: (a) the extent to which the compromise and settlement falls short of paying for the injured worker's actual damages; (b) the difficulties of collection of the settlement amount based

on the facts of the particular case; (c) factual and legal issues of liability; (d) the investment the injured worker must make in pursuing the third party claim; and (e) problems of proof in obtaining the settlement.

Appeals are to be decided within 30 days after filing.

EFFECT OF PROPOSED SUBSTITUTE:

The nature of the board's review is clarified to preclude the introduction of new evidence. An expedited briefing schedule is provided. Reassumption of jurisdiction by the department is expressly prohibited. Decision by the board is required within 45 days instead of 30. The bill is made applicable to compromised settlements for an amount which is less than the lien of the department or self-insurer.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

The principles of compromise of subrogation rights apply to other insurers in the state, and there are no policy reasons not to apply them to workers' compensation settlements in third party claims. Without a compromise of the insurer's lien, settlements would sometimes not occur because the worker would gain nothing from the settlement. In that case the entire claim might be lost, resulting in no income at all to the insurer.

TESTIMONY AGAINST:

Self-insurers and the department should not be forced to compromise their lien in every case, but should be given guidelines and discretion as in current law. Injured workers are guaranteed at least 25 percent of third party settlements under current law.

TESTIFIED: Mike Watson, L&I (con); Dennis Martin, WSTLA (pro); Robert Dilger, WSBLTC (pro); Melanie Stewart, WA Self-Insurers Assn. (con); Clif Finch, AWB (con)