



H.B. 555

126th General Assembly
(As Introduced)

Reps. Oelslager, Book, Blessing, DeGeeter, Mason, Willamowski, Harwood, Bubp

BILL SUMMARY

- Specifies that a "subrogee" has the right to recover its "subrogation interest" against a "third party" and is subrogated to the rights of a "claimant" against that third party only pursuant to the following formula: the claimant receives an amount equal to the "uncompensated damages" in a "tort action" divided by the sum of the subrogation interest plus the uncompensated damages, multiplied by the "net amount recovered," and the subrogee receives an amount equal to the subrogation interest divided by the sum of the subrogation interest plus the uncompensated damages in a tort action, multiplied by the net amount recovered (terms in quotation marks are defined in the bill).

CONTENT AND OPERATION

Subrogation rights

The bill provides that, notwithstanding any contract or policy language to the contrary, a "subrogee" has the right to recover its "subrogation interest" against a "third party" and is subrogated to the rights of a "claimant" against that third party only as follows (R.C. 2323.441(B); see "Definitions," below, for definitions of the terms in quotation marks):

(1) The "claimant" receives an amount equal to the "uncompensated damages" divided by the sum of the "subrogation interest" plus the uncompensated damages, multiplied by the "net amount recovered."

(2) The "subrogee" receives an amount equal to the "subrogation interest" divided by the sum of the subrogation interest plus the "uncompensated damages," multiplied by the "net amount recovered."

For example, if a jury awards \$100,000 in compensatory damages to an injured party and the net amount recovered (the award minus attorney fees and other costs) is \$70,000, and if a health insurer paid \$60,000 to the injured party's medical providers (leaving \$40,000 in uncompensated damages), the insurer and the injured party split the \$70,000 on a 60/40 basis. The insurer gets \$42,000 (\$70,000 x .6) and the injured party gets \$28,000 (\$70,000 x .4). The insurer is not entitled to share in any punitive damages.

Definitions

The bill defines the following terms (R.C. 2323.441(A)):

"Asbestos claim" has the same meaning as in R.C. 2307.91 (see **COMMENT 1**).

"Claimant" means a person, or the person's spouse, next of kin, or estate, who is eligible to receive compensation, medical benefits, or lost wage benefits under any health insurance plan, reimbursement plan, or wage continuation plan that is purchased by or on behalf of the claimant or is purchased, paid for, or purchased and paid for by the claimant's employer.

"Medical claim," "dental claim," "optometric claim," and "chiropractic claim" have the same meanings as in R.C. 2305.113 (see **COMMENT 2**).

"Net amount recovered" means the amount of any award, settlement, compromise, or recovery by a claimant against a third party, minus attorney fees, costs, or other expenses incurred by the claimant in securing the award, settlement, compromise, or recovery. "Net amount recovered" does *not* include any punitive damages that may be awarded by a judge or jury.

"Product liability claim" has the same meaning as in R.C. 2307.71 (see **COMMENT 3**).

"Subrogation interest" includes past, present, and estimated future payments of compensation, medical benefits, or lost wage or wage continuation benefits paid or payable to or on behalf of the claimant by the subrogee.

"Subrogee" means the source of payment of compensation, medical benefits, or lost wage benefits payable to or on behalf of a claimant as a result of a health insurance plan, reimbursement plan, or lost wage payment or wage continuation plan that is purchased by or on behalf of a claimant or is purchased, paid for, or purchased and paid for by the claimant's employer.

"Third party" means an individual, private insurer, or public or private entity that is or may be liable to make payments to a claimant as a result of a civil action for damages for injury, death, or loss to person or property.

"Tort action" means a civil action for damages for injury, death, or loss to person or property. "Tort action" includes a civil action upon a product liability claim, a civil action upon a medical claim, dental claim, optometric claim, or chiropractic claim, or an asbestos claim. "Tort action" does *not* include a civil action for damages for a breach of contract or another agreement between persons.

"Uncompensated damages" means the claimant's demonstrated or proven damages as a result of a tort action for injury, death, or loss to person or property minus the subrogee's subrogation interest.

COMMENT

1. R.C. 2307.91(C), not in the bill, defines "asbestos claim" as any claim for damages, losses, indemnification, contribution, or other relief arising out of, based on, or in any way related to asbestos. "Asbestos claim" includes a claim made by or on behalf of any person who has been exposed to asbestos, or any representative, spouse, parent, child, or other relative of that person, for injury, including mental or emotional injury, death, or loss to person, risk of disease or other injury, costs of medical monitoring or surveillance, or any other effects on the person's health that are caused by the person's exposure to asbestos.

2. R.C. 2305.113(E)(3), (6), (9), and (11), not in the bill, define the following terms:

"Medical claim" means any claim that is asserted in any civil action against a physician, podiatrist, hospital, home, or residential facility, against any employee or agent of a physician, podiatrist, hospital, home, or residential facility, or against a licensed practical nurse, registered nurse, advanced practice nurse, physical therapist, physician assistant, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic, and that arises out of the medical diagnosis, care, or treatment of any person. "Medical claim" includes the following: (a) derivative claims for relief that arise from the medical diagnosis, care, or treatment of a person, (b) claims that arise out of the medical diagnosis, care, or treatment of any person and to which either of the following applies: (i) the claim results from acts or omissions in providing medical care or (ii) the claim results from the hiring, training, supervision, retention, or termination of caregivers providing medical diagnosis, care, or treatment, and (c) claims that arise out of the medical diagnosis, care, or treatment of any person and that are brought under R.C. 3721.17.

"Dental claim" means any claim that is asserted in any civil action against a dentist, or against any employee or agent of a dentist, and that arises out of a dental operation or the dental diagnosis, care, or treatment of any person. "Dental claim" includes derivative claims for relief that arise from a dental operation or the dental diagnosis, care, or treatment of a person.

"Chiropractic claim" means any claim that is asserted in any civil action against a chiropractor, or against any employee or agent of a chiropractor, and that arises out of the chiropractic diagnosis, care, or treatment of any person. "Chiropractic claim" includes derivative claims for relief that arise from the chiropractic diagnosis, care, or treatment of a person.

"Optometric claim" means any claim that is asserted in any civil action against an optometrist, or against any employee or agent of an optometrist, and that arises out of the optometric diagnosis, care, or treatment of any person. "Optometric claim" includes derivative claims for relief that arise from the optometric diagnosis, care, or treatment of a person.

3. R.C. 1207.71(A)(13), not in the bill, defines "product liability claim" as a claim that is asserted in a civil action pursuant to R.C. 2307.71 to 2307.80 and that seeks to recover compensatory damages from a manufacturer or supplier for death, physical injury to person, emotional distress, or physical damage to property other than the product in question, that allegedly arose from any of the following: (a) the design, formulation, production, construction, creation, assembly, rebuilding, testing, or marketing of that product, (b) any warning or instruction, or lack of warning or instruction, associated with that product, or (c) any failure of that product to conform to any relevant representation or warranty.

HISTORY

| ACTION | DATE |
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| Introduced | 04-04-06 |

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