

Using Arbitration Forum's *Special Arbitration Agreement* to Efficiently Pursue Statutory Right to Reimbursement of Workers' Compensation Benefits

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In cases where a worker is injured by a third party's wrongdoing the workers' compensation insurance carrier is entitled to recover the benefits it pays out to the worker from the responsible third party. For example, if a delivery worker injures himself during the course of a delivery on a third party's property because of the third party's negligence, the worker will have a workers' compensation claim and a claim against the third party pursuant to *Alabama Code* § 25-5-11. The workers' compensation carrier has a statutory right to reimbursement of all indemnity and medical benefits paid to the worker in the event of a recovery against a third party.

There are many occasions where the cost of litigation makes it inefficient for the WC carrier to pursue this lien, especially in cases involving small compensatory medical benefits and no lost time at work. Arbitration Forums' *Special Arbitration Agreement*, however, provides a cost-effective avenue for subrogation of these smaller claims. Arbitration Forums (AF) has hundreds of members nationally that are either self-insured businesses or insurance carriers. If the WC carrier and the third party's insurance company are both AF members, and both are signatories to AF's *Special Arbitration Agreement*, then the WC carrier will be able to compel arbitration for their subrogation lien. This ability to compel arbitration greatly reduces the cost of pursuing payment from the third party's insurance carrier.

AF will not be able to arbitrate cases where the worker is pursuing his or her own claim against the third party. In Alabama, the worker has an exclusive right to pursue his or her claim until the statute of limitations has lapsed. Once the statute of limitations has lapsed the workers' compensation insurer has a six month window to pursue its subrogation claim. When the six month window opens, the AF member insurer should check to see if the third party's insurer is also a signatory to the *Special Arbitration Agreement*. If both insurers are members then arbitration can and should be used to settle the subrogation claim.

For more information about this subject be sure to check out Arbitration Forums website at www.arbfile.org and for regularly updated information about national and state developments in the world of workers' compensation take a look at Fish Nelson LLC's workers' compensation blawg at www.alabamaworkerscompblawg.com.