

OHIO SUPREME COURT FINALLY GETS IT RIGHT

Workers' Compensation Statute Declared Constitutional: *Groch v. General Motors Corp.*, 883 N.E.2d 377 (Ohio 2008)

By Dan Borck



An unpredictable Ohio Supreme Court and a newly rewritten workers' compensation subrogation statute, combined to form a climate in which possible attacks on the statute are almost certain to occur. It didn't take long for Ohio trial lawyers to take another stab at getting the entire workers' compensation subrogation scheme in Ohio overturned. In *Groch v. General Motors Corp.*, 883 N.E.2d 377 (Ohio 2008), the Ohio Supreme Court once again reviewed the trial lawyers' challenge to that state's statute. Surprisingly, the Supreme Court got it right this time. Ohio Rev. Code Ann. § 4123.931, the statute which gives a workers' compensation carrier a right of reimbursement and sets forth the scheme for doing so, was upheld as constitutional.



In *Groch*, Douglas Groch, an employee of General Motors, was injured while working and brought a third-party action against both his employer, General Motors Corporation and other third-party defendants, premised on a defective product. Groch received workers' compensation benefits from his employer, and General Motors sought reimbursement of those benefits in that case. Groch asserted that §§ 4123.93 and 4123.931 of the Ohio statutes, which grant workers' compensation carriers rights of subrogation and reimbursement were unconstitutional as a violation of the takings clause (Art. I, § 19), due process and remedies clause (Art. I, § 16), and equal protection clause (Art. I, § 2) of the Ohio Constitution.

In June of 2001, the entire Ohio workers' compensation subrogation statute was struck down by the Ohio Supreme Court on state constitutional grounds. In *Holeton v. Crouse Cartage Co.*, 748 N.E.2d 1111 (Ohio 2001), the Ohio Supreme Court held that the provisions of the old workers' compensation subrogation statute which gave workers' compensation carriers a current collectible interest in estimated future benefits were unconstitutional as violating a workers' guarantee to due process and right to private property. The court upheld the workers' compensation system in general, but declared the workers' compensation subrogation statute to be unconstitutional.

In April of 2003, the Ohio legislature enacted Senate Bill 227, which revamped the subrogation provisions in §§ 4123.93 and 4123.931, which had previously been ruled unconstitutional in *Holeton*. The new statute set forth an entirely new settlement procedure in which the claimant would receive "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." Ohio Rev. Code Ann. Stat. § 4123.931(B). The statutory subrogee would receive "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." The new statute also permits workers to establish an interest-bearing trust account for the full amount of the subrogation interest which represents estimated future payments of compensation, medical benefits, rehabilitation costs, or death benefits, reduced to present value, for which the claimant makes reimbursement payments to the carrier for the future payments of compensation, medical benefits, rehabilitation costs, or death benefits. Ohio Rev. Code Ann. Stat. §4123.931(E)(1).



Ohio Supreme Court

In *Groch*, the trial lawyers argued that the current subrogation statute violated the same constitutional provisions as were found to be violated in *Holeton*. The trial lawyers argued that the statute still authorizes an unconstitutional taking because the interest-bearing trust account is not realistic, because most of the principal will be eaten up by fees and expenses, and those who do not set up a trust account will be forced to fully reimburse the carrier for estimated future payments just as under the prior statute which was held unconstitutional in *Holeton*.



The Ohio Supreme Court disagreed, and declared that the trust option affords the worker an opportunity to avoid the consequences of overestimating future benefit values. The court stated that the claimant who invokes the trust option is no longer required to reimburse the carrier up front for future estimated payments that may never be made. The former statute allowed the carrier to retain any overpayment, but the current statute and its trust option ensures the return to the worker all funds remaining after the “final reimbursement” of the carrier.

The Ohio Supreme Court’s complicated 43-page opinion does not make for light reading, but it does signal a victory for the insurance industry and subrogation in general. All seven members of the Ohio Supreme Court are Republicans - traditionally viewed as conservative and sympathetic to the insurance industry. However, subrogation and politics makes for strange bed fellows, and even some conservative judges and legislatures wrongfully view subrogation as “just another unnecessary lawsuit.” The Ohio workers’ compensation subrogation statute was actually a compromised bill and a bipartisan effort of the Ohio legislature. The former Republican governor Robert Taft signed the bill and it was thought the bill would be free from constitutional attacks. However, never underestimate trial lawyers, who may attempt to mount another attack on the statute in the coming years.

