

INDIANA COURT CLARIFIES WORKERS' COMPENSATION FUTURE CREDIT

***Smith v. Champion Trucking Co., Inc.* 901 N.E.2d 620 (Ind. App. 2009)**

The Indiana Court of Appeals has clarified a nagging area of ambiguity in the Indiana workers' compensation subrogation statute. That statute specifically provides that the liability of the workers' compensation carrier to pay further compensation benefits shall terminate upon third-party recovery, regardless of whether all of the dependents are entitled to share in the proceeds. I.C. § 22-3-2-13 (2000). In fact, it states the following when a judgment in or settlement occurs in a third-party case:

...the liability of the employer or the employer's compensation insurance carrier to pay further compensation or other expenses shall thereupon terminate, whether or not one (1) or all of the dependents are entitled to share in the proceeds of the settlement or recovery and whether or not one (1) or all of the dependents could have maintained the action or claim for wrongful death. Id.

For years, this was interpreted to mean that where an injured worker settled a claim with the third party, the liability of the employer to pay further compensation benefits was terminated. *McCammon v. Youngstown Sheet & Tube Co.*, 426 N.E.2d 1360 (Ind. App. 1981). This was justified because § 22-3-2-13 gave the employee an option of either collecting a judgment and repaying the employer for compensation previously drawn, or assigning all rights under the judgment to the employer and thereafter receiving from the employers' compensation to which he is entitled. I.C. § 22-3-2-13 (2000).

On February 25, 2009, however, the Indiana Court of Appeals held for the first time that a third-party settlement does *not* bar additional workers' compensation benefits after a third-party recovery where the recovery is obtained before a worker's compensation award has been resolved, and is in an amount less than the anticipated worker's compensation benefit. *Smith v. Champion Trucking, Inc.*, 901 N.E.2d 260 (Ind. App. 2009). The *Smith* court held for the first time the bar against receiving future benefits when a third-party case was settled does not apply where the settlement is obtained before a worker's compensation award has been resolved, and is in an amount less than the anticipated worker's compensation benefits.

We have made changes in our book, *Workers' Compensation Subrogation In All 50 States* (www.jurispub.com), as well as our workers' compensation subrogation summary chart to reflect the clarification in Indiana law.