
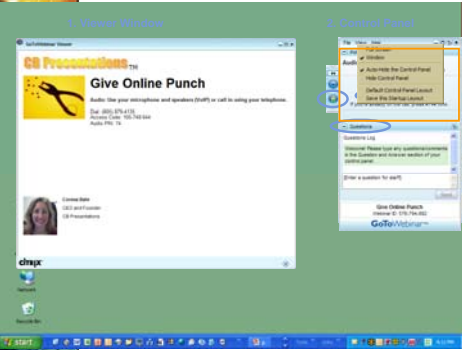


DOCUMENTING FUTURE WORKERS' COMPENSATION CREDITS




Presented By:
MATTHIESEN, WICKERT & LEHRER, S.C.

GOTOWEBINAR ATTENDEE INTERFACE






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DOCUMENTING FUTURE WORKERS' COMPENSATION CREDITS





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IMPORTANCE OF WORKERS' COMPENSATION SUBROGATION

- Historical Significance
- Purposes
- Social Benefits
- Anti-Subrogation Movement
- Not True Subrogation
 - *Campion v. Montgomery Elevator*, 493 N.W.2d 244 (Wis. App. 1992)





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CREDITS/ADVANCES

- Purpose and Function Generally
- Often More Important Than Lien
- Failure To Properly Document
- Every State Applies Credit Differently
- Waiver
- Settlement of Third-Party Cases
 - Allocation of Damages
 - Proper Retention of Future Credit
 - Proper Documentation/Forms





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CALCULATING FUTURE CREDITS

- Typical Calculation

\$120,000	3P Settlement
Less <u>40,000</u>	Attorneys' Fees/Costs
	80,000 Net Recovery
Less <u>30,000</u>	Lien Reimbursement
\$ 50,000	Worker's Net Recovery (Credit)

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FUTURE CREDIT TIPS

- Do **NOT** Sign Release Unless It Preserves Future Credit
- Be Careful When Settling W/C Claims
- Be Specific About Past Liens/Future Credit Totals and Outstanding Bills
- Watch Out for Gerrymandering
- Always Document Your Credit With Appropriate Commission/Agency

BE CAREFUL
 THINK BEFORE YOU ACT


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ALABAMA

- **Miller Formula (Elements of Damages Allocated By Court)**
 1. Calculate "Net Recovery"
 2. Divide "Net Recovery" by Value of 3P Case
 3. Multiply Actual Future Benefits by Fraction = "Gross Future Medical Expense Credit"
 4. Reduce This By Carrier's Pro Rata Share of Attorneys' Fees (*Fitch* Formula) = "Net Future Medical Expense Credit"
 5. Must Document on Form WC-4


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WISCONSIN

	\$900,000	3P Settlement
Less	300,000	Attorneys' Fees/Costs
	600,000	Recovery
Less	200,000	1/3 to Worker (No Credit)
	\$ 400,000	Net Recovery
	250,000	Past Lien Reimbursement
	150,000	Net to Worker (Credit)

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**Must File Form WKC-170




FLORIDA

- **Manfredo Formula**
 1. Applies When No Full Recovery By P
 2. Ratio Of Net Settlement To Full Value
 3. Court Determines Full Value Of Case
 4. Carrier Reduces Future Benefits By This Percentage


**File Form DFS-F2-DWC-4 If No Court Approval


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GEORGIA

- **Statute Reads:**
"Insurer's recovery under this section shall be limited to the recovery of the amount of benefits paid under this chapter..."
 O.C.G.A. § 34-9-11.1
- **No Future Credit**
- **"Payable Under This Chapter" Issue**



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ILLINOIS

- **Employer Liability for Contribution**
 - Limited to Past Lien & Future Liability (*Kotecki* Cap)
 - *Baltzell v. R&R Trucking*, 554 F.3d 1124 (7th Cir. 2009)
 - Waiver of *Kotecki* Cap
 - Def. Pays Verdict - Seeks Contribution From Employer
 - Employer Contributes Pro Rata To Defendant
 - "Fresh Money" Liability or Credit To Defendant?
 - Contribution Liability vs. Reimbursement Less 25%
 - *LaFever v. Kemlite Co.*, 706 N.E.2d 441 (Ill. 1998)
 - Need For Separate Subro & Employer Defense Counsel
- **Future Credit – 75% of PCV Paid to Carrier**
 - Future Benefits Paid at 25%



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INDIANA

- **Statute Reads:**
“When there is third-party settlement the liability of the carrier to pay further compensation shall terminate...”
- **But It Doesn't Mean What It Says**
 - *Smith v. Champion Trucking*, 901 N.E.2d 260 (Ind. App. 2009)
 - No Credit When Recovery Is Before Award and Is Less Than Anticipated Benefits



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IOWA

- § 85.22(1) Does Not Provide For Credit When Worker Prosecutes 3P Action
- § 85.22(2) Allows Carrier To Take Credit When Carrier Prosecutes 3P Action
- Courts Read Credit Rights Into § 85.22(1)
- **WARNING:** Carrier Must File Notice of Lien
- **WARNING:** § 85.35 Settlement Of A Contested Work Comp Claim Bars § 85.22(1) Subrogation And Credit Rights



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SUMMARY

- ✓ Credit Rights Vary Greatly Among States
- ✓ Know The Law
- ✓ When In Doubt – Document Your Credit
- ✓ Know When Subro Counsel Involvement Will Save/Increase Recovery
- ✓ Be Aware Of Problem States
 - Illinois, Minnesota, California, Etc.
- ✓ Beware Of Waiver of Past Lien To Close Out Pending Compensation Claim
 - Stepping Over Dollars To Pick Up Dimes


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THINK SUBROGATION!

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