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RECOVERY OF INCREASED WORKERS' COMPENSATION PREMIUMS BY EMPLOYER

It is said that good judgment comes from experience, but experience comes from bad judgment. That pithy aphorism is generally true in life but is particularly true when a company sees significantly increased workers' compensation insurance premiums following a serious workers' compensation claim. The same is true even if the claim was not the employer's fault. Is it fair? Of course not, but neither is workers' compensation. Over a century ago, our society and the legislatures which reflect it determined that the risk of employee injuries and deaths should fall on the shoulders of small businesses struggling to make a profit. The great social bargain we made over 100 years ago saddles American employers with potentially unlimited strict liability exposure for medical expenses and lost wage replacement benefits when an employee is injured on the job. In exchange we gave these employers immunity from suit by the employee and granted the employer (or its workers' compensation carrier) the right to reimbursement should the employee make a large tort recovery from a tortfeasor (third party other than the employer) responsible for the injury. Sadly, we've forgotten the last half of that bargain. The trend today, unfortunately, is bad judgment shown by insurance companies and self-insured employers who do not aggressively strive to recognize and pursue third-party reimbursement for the benefits they have paid. Successful subrogation assists in avoiding a potential significant increase to what is already one of the most expensive overhead items in starting up or running a small business – workers' compensation insurance premiums. Understanding how and why a company can save itself money in the future is using good judgment.

Workers' compensation insurance and underwriting is not always logical. How can a company which did nothing to contribute to an employee's injury be on the hook for increased insurance premiums just because its employee was a klutz – or worse? For many corporate personnel, the concepts of underwriting and experience ratings remain a mystery, yet they directly affect the amount of insurance premiums a company pays. Even more mysterious is what effect, if any, subrogation efforts have on premiums. Everyone can agree that "to get money back" is a good thing. Whether or not it affects the insured's experience rating or will lead to reduced premiums for an insurance client is another issue altogether and remains shrouded in the hieroglyphics of modern insurance underwriting. Understanding the correlation between the goals of lower premiums and subrogation recoveries often stimulates subrogation efforts and allows corporate decision-makers an opportunity to shape subrogation opportunities which would otherwise be lost, directly affecting the company's bottom line.

The concept of experience ratings shouldn't be a mystery. Experience ratings reward insureds who have a favorable loss history and penalize insureds who do not. This is accomplished by the application of a credit (a reduction) or a debit (an increase) to premiums pre-determined by the National Council of Compensation Insurance (NCCI) or, in some cases, an independent state agency. The National Council on Compensation Insurance (NCCI) is a national, non-profit rating bureau owned by insurance companies that focuses on workers' compensation insurance. The NCCI organizes and compiles information on insurance risk and losses and, depending on the state, keeps statistics on various insureds, thereby enabling it to calculate experience modifiers for companies and employers. A company's loss history is compiled on unit statistical cards which are available to insurers and insureds. It is prudent for an employer to periodically check its unit statistical card to determine if any errors or miscalculations have been made which may detrimentally affect its premiums.

Losses are divided into primary losses and excess losses. Any losses under \$5,000 are considered primary losses, while the amount of losses in excess of \$5,000 is considered excess losses. Actual and expected primary losses are calculated separately, with each state applying different weighted values and ballast values in order to arrive at an experience modifier which is intended to reflect the true condition of the insured's loss history. Experience modifiers are obtained after dividing actual losses by expected losses. Experience modification is calculated by comparing the actual losses to the expected losses. Actual losses are the medical and indemnity claim costs resulting from a work-related injury, that an insurance company has paid or expects to pay in the future. Expected losses represent a business's projected losses for the industry in which it operates. In other words, given its classifications and payroll, its expected losses represent the statistical average losses that a business of a similar size in the same industry is expected to incur. Given two businesses within the same industry, the larger the business, in terms of payroll, the more losses that business is expected to incur.

Experience Modification = Actual Losses / Expected Losses

The Experience Modification Rate (a/k/a Mod Factor, Modification Factor, or Mod Rate, or "X-Mod") is a numeric expression of an insured's claims history and safety record as compared to other businesses in the same industry within the same state. It breaks down as follows:

- Insured is riskier than average (EMR > 1.00—results in a higher premium)
- Insured is no more or less risky than average (EMR = 1.00—results in no change to premium)
- Insured is safer than average (EMR < 1.00—results in a lower premium)

The X-Mod is calculated based on the job code, the payroll, the insured's past losses and the premium itself. From there the X-Mod is used to determine your final workers' compensation premium. Obviously, if actual losses exceed expected losses, this is a bad thing, and the resulting modifier constitutes a debt or increase to an insured's insurance premium. If actual losses are lower than expected losses, the modifier has the opposite result. For example, if actual losses total \$150,000 and expected losses total only \$100,000, the experience modifier is 1.5. The higher the experience modifier, the higher the premium is. It is easy to see how any control the insured or insurer has over the experience modifier may directly affect the premium an insured can expect to pay in subsequent years. When a retrospective rating program (retro policy) is in effect, the effect of a good loss history is even more immediate. Generally, an insured's loss history is reviewed, and its experience rating is calculated over a three-year period. The experience modifier is then issued one year after the three-year period has expired. This gives the experience raters a set time during which to evaluate an insured's loss history and an adequate period of time to digest and publish the information. A credit modifier is good and can lead to lower workers' compensation insurance premiums; a debit modifier is bad and can result in the opposite.

So, how does subrogation fit into all of this? In theory, subrogation recoveries serve as a debit to actual loss totals and actual primary losses, thereby directly affecting the experience modifier. In short, one or two subrogation recoveries can mean the difference between a debit modifier and a credit modifier. Once an X-Mod is issued, it can be revised by the states' rating organization under a limited number of circumstances. The X-Mod cannot be modified merely because a large claim changes in value. However, it can be revised if:

- (1) a claim is declared non-compensable,
- (2) there is a change in ownership of the company,
- (3) the insured's operations are reclassified, or
- (4) an insurer reports a claim as "subrogated" after it receives a reimbursement through subrogation efforts.

While procedures from state to state vary somewhat, a handful of states have their own government run rating bureaus that are separate from NCCI. For example, there are 11 Independent Rating Bureaus in the United States which provide actuarially-based information and research and premium rates that were created by their state-specific statutes. These states are California, Delaware, Indiana, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Pennsylvania, and

Wisconsin. The rest of the country, with the exception of the monopolistic states, utilize the services of the National Council on Compensation Insurance (NCCI), which acts as a national bureau. The contact information for these ratings bureaus is as follows:

Workers Compensation Insurance Rating Bureau of California

1221 Broadway, Suite 900
Oakland, CA 94612
Phone: 888-229-2472
www.wcirb.com

Indiana Compensation Rating Bureau

5920 Castleway West Drive – Suite 121
Indianapolis, IN 46250
Phone: 317-842-2800
FAX: 317-842-3717
www.icrb.net

Workers Compensation Rating and Inspection Bureau of Massachusetts

101 Arch Street, 5th Floor
Boston, MA 02110
Phone: 617-439-9030
FAX: 617-439-6055
www.wcribma.org

Compensation Advisory Organization of Michigan

P. O. Box 3337
Livonia, MI 48151-3337 or
17197 North Laurel Park Drive, Suite 311
Livonia, MI 58152-2686
Phone: 734-462-9600
FAX: 734-462-9721
www.caom.com

Minnesota Workers Compensation Insurers Association, Inc.

7701 France Avenue, Suite 450
Edina MN 55435-5288
Phone: 952-897-1737
FAX: 952-897-6495
www.mwcia.org

National Council on Compensation Insurance, Inc.

901 Peninsula Corporate Circle
Boca Raton FL 33487

Phone: 561-893-1000 or 800-622-4123

Fax: 561-893-1191 or 561-917-7025

www.ncci.com

New Jersey Compensation Rating and Inspection Bureau

60 Park Place, 12th Floor

Newark, NJ 07102

Phone: 973-622-6014

FAX: 972-622-6110

www.njcrib.com

New York Compensation Insurance Rating Board

733 3rd Ave.

New York, NY 10017

Phone: 212-697-3535

www.nycirb.org

North Carolina Rate Bureau

2910 Sumner Blvd.

P. O. Box 176010

Raleigh, NC 27616

Phone: 919-783-9790

www.ncrb.org

Pennsylvania Compensation Rating Bureau and Delaware Compensation Rating Bureau, Inc.

United Plaza Building – Suite 150030 S. 17th St.

Philadelphia, PA 19103-4007

PCRB – Phone: 215-568-2371

PCRB – FAX: 215-564-4328

DCRB – Phone: 302-654-1435

DCRB – FAX: 215-564-4328

www.pcrb.com and www.dcrb.com

Wisconsin Compensation Rating Bureau

20700 Swenson Drive, #100

Waukesha, WI 53186

Phone: 262-796-4540

FAX: 262-796-4400

www.wcrb.org

Ratings are often revised for reasons beyond the control and knowledge of the current insurer due to subrogation, classification inspections, formula changes, or reporting error corrections. All of the Independent Bureaus and NCCI are members of the Workers Compensation Insurance Organization (WCIO) and meet together on a bi-annual basis. The objectives of the Association are as follows:

1. To provide a forum to facilitate the lawful exchange of ideas and information between any entities statutorily authorized or licensed as rating, advisory or data service organizations for workers compensation insurance in one or more states to enhance the services provided by those organizations.
2. To advance levels of knowledge available to the Membership through the collection, interpretation and dissemination of information on subjects appropriate to the industry.
3. To conduct other lawful activities of benefit to the industry.

The California Insurance Commissioner has regulations which include issuance of a “Uniform Statistical Reporting Plan”. This Plan reports premium and detailed payroll and claim information for a policy to the Workers’ Compensation Insurance Rating Bureau of California (WCIRB), and this Plan describes ratings and loss reporting as follows:

C. Special Loss Reporting Instructions

1. Subrogation Claims

For a subrogation claim reported on a normal valuation of losses, the gross incurred shall be the estimated liability for the claim as of the normal valuation as if there had been no subrogation. For a subrogation claim reported on a correction filed between valuation dates, the gross incurred shall be the estimated liability for the claim at the time of subrogation reimbursement as if there had been no subrogation.

In reporting subrogation claims, the net incurred amount is the sum of the net paid and net outstanding amounts. The net paid is equal to the gross paid less the amount of the subrogation reimbursement that exceeds the expense incurred in obtaining the subrogation. The net outstanding is equal to the gross outstanding less the subrogation credit allowed, and is subject to a minimum of zero. (In other words, Net Incurred = [Gross Paid - (Reimbursement - Expense Incurred in Obtaining Subrogation)*] + [Gross Outstanding - Subrogation Credit Allowed]*).

* Amount is limited to be no less than zero.

The following hypothetical examples illustrate how net and gross incurred on subrogation claims are to be determined:

		Example One	Example Two	Example Three	Example Four
(1)	Total Paid (Gross)	\$15,000	\$15,000	\$15,000	\$30,000
(2)	Amount Reimbursed	\$12,000	\$15,000	\$6,000	\$30,000
(3)	Expense Incurred in Subrogation	\$2,000	\$4,000	\$7,000	\$0
(4)	Total Net Paid [(1) - ((2) - (3))*]	\$5,000	\$4,000	\$15,000	\$0
(5)	Total Outstanding (Gross)	\$0	\$20,000	\$15,000	\$20,000
(6)	Credit Allowed	\$0	\$10,000	\$0	\$20,000
(7)	Total Net Outstanding [(5) - (6)]*	\$0	\$10,000	\$15,000	\$0
(8)	Total Gross Incurred [(1) + (5)]	\$15,000	\$35,000	\$30,000	\$50,000
(9)	Total Net Incurred [(4) + (7)]	\$5,000	\$14,000	\$30,000	\$0

* Amount is limited to be no less than zero.

Controlling experience modifiers becomes the key for insureds interested in holding their premiums to a minimum under the experience rating process. Conscientious insureds can obtain copies of experience modifier worksheets and/or unit statistical cards from the insurer and/or the NCCI. The key to keeping premiums under control is to have a basic working knowledge of the experience rating process over which the insured has some control. Double checking the NCCI figures on the applicable worksheets, aggressively seeking subrogation recoveries, maintaining an accurate record of these recoveries, and seeing that those recoveries find their way into the experience modifier (or "X-Mod") calculations are the most significant things an insured can do to control premiums. Expected loss rates can be adjusted to reflect significant credits obtained as a result of settlements or recoveries in third-party subrogation cases. Actual incurred losses and primary losses should also reflect any subrogation recoveries obtained. However, these adjustments cannot be made until recoveries are achieved. Recoveries are not achieved until subrogation potential is recognized and action is taken to make the recovery.

When workers' compensation is in play, many employers respond to a serious compensable injury suffered by one of their employees by blaming the employee and touting their own safety programs and risk management efforts. Experience has shown that, after investigating thousands of work-related accidental injuries, in 9 out of 10 incidents the employer believes that by placing contributory negligence on the employee and by absolving itself from any fault in connection with the loss, it is somehow protecting itself from liability. After a work-related injury, insurance professionals must immediately contact the insured and carefully explain to them how, by virtue of having workers' compensation insurance, they are immune from liability, and any assistance they can give in identifying third-party liability and subrogation potential may directly impact the premiums they pay in the future by reducing the negative effect the loss may have on their experience modifier. By allowing and/or assisting the claimant to pursue a third-party tortfeasor, the employee's dependence on workers' compensation benefits can be drastically reduced or completely eliminated. This behavior on the part of the insured is equally self-destructive in property and casualty claims.

Corporate decision-makers and corporate counsel are beginning to pay attention to the direct correlation between work-related injuries and deaths and increased workers' compensation premiums. They are beginning to make it their business to see that subrogation is made a priority, that they are given proper credit for subrogation recoveries, and that these recoveries are reflected in experience modifiers which control how large of a premium the insured will be responsible for paying in the coming years. Loss control programs attack loss frequency and are a worthy goal in connection with any business or insurance program. However, risk management must be taken a step further. It is the insured's responsibility to insist that subrogation potential is being investigated and is being actively and competently acted on. After a successful subrogation venture, it then becomes the insured's obligation to see that they are given proper credit for those subrogation recoveries, which might otherwise be lost in the confusing and obfuscated world of experience rating.

Where increased workers' compensation insurance premiums result from the negligence of a third-party tortfeasor, not only should the employer cooperate and encourage subrogation recovery efforts, but it should rightfully look into the additional recovery of the increased premiums it will be saddled with for years into the future, from the party responsible for causing the accident. Unfortunately, the majority rule across the country is a denial of such a recovery to the employer due to such increased premiums damages being "unforeseeable" by the negligent tortfeasor. Other states, like **New Jersey**, argue that the action brought by the employer for increased premiums is not the action against a third party for causing the employee's injury which contemplated by the subrogation statute, but rather is one in which the employer seeks damages directly related to the compensation payments made under the Act. **South Dakota** believes that the subrogation remedy of the workers' compensation statute does not afford a cause of action to an employer to recover increases in workers' compensation insurance premiums from third-party tortfeasor. That state believes that increased premiums are merely part of the exchange the employer must bear to be free from employee lawsuits. Only a handful of states consider allowing such a recovery (*e.g.*, see **Minnesota**), while many others have yet to address the issue.

Those who opposed the ability of an employer to recover the cost of increased workers' compensation premiums often draw a parallel to auto insurance, asking whether every automobile driver in this state who gets into an auto accident and as a result has to pay an increase in auto insurance premiums would then be able to sue to recover those increased premiums? And if so, for how long will the tortfeasor have to pay for the increased premiums-for as long as the insurance company decides to charge or only for the following year? See *Vogel v. Liberty Mut. Ins. Co.*, 571 N.W.2d 704, 708 (Wis. App. 1997).

The following chart is a summary of current law across all 50 states governing the ability of an employer to recover the burdensome cost of increased workers' compensation insurance premiums from a responsible tortfeasor following an on-the-job accident resulting from the negligence of the tortfeasor. Every state is different, and some states have not addressed the issue at all in legislation or case decisions.

For more information on aggressively pursuing workers' compensation subrogation rights in all 50 states, contact Gary Wickert at gwickert@mwl-law.com.

STATE	RECOVERY FOR INCREASED PREMIUMS?	STATUTE/CASE LAW	RULE SUMMARY
ALABAMA	Undecided	None	There is no authority or precedent allowing or prohibiting the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
ALASKA	Undecided	None.	There is no authority or precedent allowing or prohibiting the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
ARIZONA	Undecided.	<i>State of Arizona, et al., v. American Tobacco Company, Inc., et al.</i> , 1997 WL 34627233 (Ariz. Super. 1997).	In <i>Tobacco Litigation</i> , defendant moved to dismiss State's effort to recover for increased health insurance premiums arising out of employee's use of tobacco arguing that it was considered too remote to permit recovery. The court denied the motion, stating, "The Court has found no Arizona law which would justify dismissal of these claims for damages at this stage of the proceedings. Cases from other jurisdictions are not persuasive at this stage of the proceedings because of Arizona's strong body of law holding that proximate cause issues are primarily issues of fact." (Defendant's brief cited <i>Northern States Contracting Co. v. Oakes</i> , 253 N.W. 371 (Minn. 1934)).
ARKANSAS	Undecided.	None.	There is no authority or precedent allowing or prohibiting the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
CALIFORNIA	No.	<i>Fischl v. Paller & Goldstein</i> , 231 Cal.App.3d 1299, 282 Cal.Rptr. 802, 804 (1991).	Increased workers' compensation premiums resulting from a third-party tortfeasor's injuries to employees are harms that are not foreseeable or are otherwise too remote to be subject to liability.
COLORADO	Undecided.	None.	There is no authority or precedent allowing or prohibiting the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.

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CONNECTICUT	No.	<i>RK Constructors, Inc. v. Fusco Corp.</i> , 231 Conn. 381, 650 A.2d 153, 157 (1994).	Increased workers' compensation premiums resulting from a third-party tortfeasor's injuries to employees are harms that are not foreseeable or are otherwise too remote to be subject to liability.
DELAWARE	Undecided.	None.	There is no authority or precedent allowing or prohibiting the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
DISTRICT OF COLUMBIA	Recovery of increased CGL insurance premiums allowed; Undecided as to workers' compensation premiums.	<i>Williams Enterprises, Inc. v. Sherman R. Smoot Co.</i> , 938 F.2d 230 (D.C. Cir. 1991) (general liability insurance premiums).	In <i>Williams Enterprises</i> , a subcontractor recovered from another subcontractor for increased insurance premiums due to building collapse. This recovery was supported by testimony of insurance broker that collapse caused premiums to increase by \$45,000 per year for at least three years. However, no precedent for recovery of increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
FLORIDA	No.	<i>Southland Constr., Inc. v. Greater Orlando Aviation</i> , 860 So.2d 1031, 1033-34, 1036 (Fla. Dist. Ct. App. 2003). <i>Agency for Healthcare Admin. v. Associated Indus. of Fla.</i> , 678 So.2d 1239 (Fla. 1996) (Tobacco litigation; increased premiums too remote).	Increased workers' compensation premiums resulting from a third-party tortfeasor's injuries to employees are harms that are not foreseeable or are otherwise too remote to be subject to liability and In the <i>Southland Construction</i> case were foreclosed by Pennsylvania's workers' compensation scheme.
GEORGIA	No.	<i>Unique Paint Co. v. Wm. F. Newman Co.</i> , 201 Ga. App. 463, 411 S.E.2d 352, 353 (1991).	Increased workers' compensation premiums resulting from a third-party tortfeasor's injuries to employees are harms that are not foreseeable or are otherwise too remote to be subject to liability.
HAWAII	Undecided.	None.	There is no authority or precedent allowing or prohibiting the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
IDAHO	Undecided.	None.	There is no authority or precedent allowing or prohibiting the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.

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ILLINOIS	Undecided.	<i>Mount Mansfield Insurance Group v. American International Group, Inc.</i> , 2006 WL 6203621 (Ill. App. 2006).	There is no authority or precedent allowing or prohibiting the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor. In <i>Mount Mansfield</i> , an insurance group sued AIG with whom they'd contracted to form a captive insurance program, seeking recovery for increased workers' compensation premiums that each company experienced, and would continue to experience, due to increases in each of the company's experience modifiers as a result of defendant's improper claims handling. Unfortunately, the viability of a claim for recovery of increased premiums from a tortfeasor was not discussed.
INDIANA	Undecided.	None.	There is no authority or precedent allowing or prohibiting the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
IOWA	No.	<i>Anderson Plasterers v. Meinecke</i> , 543 N.W.2d 612, 613-14 (Iowa 1996).	Employer could not recover from negligent third party who injured employer's workers for loss of workers' time, expense of hiring replacement workers, and increased workers' compensation payments. Says such actions have been "almost universally denied."
KANSAS	Undecided, but increased premiums are not recoverable as "restitution" from a criminal.	<i>State v. Caldwell</i> , 84 P.3d 636 (Kan. App. 2004).	There is no authority or precedent allowing or prohibiting the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor. However, damage for increased premiums is not allowed as restitution in a criminal proceeding. The court in <i>State v. Caldwell</i> held that as a matter of law, increased insurance premiums for fleet insurance are indirect or consequential damages not intended to be recouped under that as a matter of law, increased insurance premiums for fleet insurance are indirect or consequential damages not intended to be recouped under Kansas Restitution laws.
KENTUCKY	Yes.	<i>Sand Hill Energy, Inc. v. Ford Motor Co.</i> , 83 S.W.3d 483 (Ky. 2002), cert. granted, judgment vacated sub nom. <i>Ford Motor Co. v. Smith</i> , 123 S. Ct. 2072 (2003).	Whether an employer is able to recover for increased workers' compensation premiums as result of a manufacturer's (tortfeasor's) defective design of a car was a question for the jury, but the employer is "entitled to be heard" on such a claim.

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LOUISIANA	No. Too speculative.	<i>Am. River Transp. Co. v. KAVO KALIAKRA SS</i> , 206 F.3d 462 (5th Cir. 2000) (applying La. Law).	An employer may not recover from a third party for an increase it suffers in its workers' compensation premiums allegedly caused by accident. The company cannot recover for economic damages unconnected to an injury to a property interest. This prevents limitless liability for negligence and the filing of lawsuits of a highly speculative nature.
MAINE	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
MARYLAND	Undecided.	None. But <i>See Young v. Sass</i> , 2006 WL 4104497 (Md. Cir. Ct. 2006). Briefing by defendant says, "Although the Maryland Courts have not directly addressed this issue, numerous other jurisdictions have done so, and the vast majority of those jurisdictions have rejected such claims." <i>Young v. Sass</i> , 2005 WL 5250191 (Md. Cir. Ct. 2005).	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor. Such a cause of action has been attempted but not successfully brought to a conclusion.
MASSACHUSETTS	No.	<i>R.L. Whipple Co. v. Pondview Excavation Corp.</i> , 887 N.E.2d 1095 (Mass. App. 2008).	Employer cannot recover increased workers' compensation premiums from the third party who injured its employee because purely economic losses are unrecoverable in tort actions in the absence of personal injury or property damage.
MICHIGAN	No, but only because of exclusive remedy protection.	<i>Pro-Staffers, Inc. v. Premier Mfg. Support Servs., Inc.</i> , 651 N.W.2d 811 (Mich. App. 2002) (temporary employment agency sued client company for injury resulting in increased premiums).	Exclusivity of Worker's Disability Compensation Act (WDCA)'s subrogation provision precluded agency from recovering increased workers' compensation premiums and any lost profits that arose therefrom from client, as third-party tortfeasor.

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MINNESOTA	Yes.	M.S.A. § 176.061(5)(c); <i>N. States Contracting Co. v. Oakes</i> , 253 N.W. 371 (Minn. 1934).	Minnesota is one of the few states that allows the employer to pursue the negligent tortfeasor for increased workers' compensation premiums, either because of retroactive assessments or because of a change affecting future rates. Section 176.061(5)(c) appears to overrule <i>N. States Contracting Co. v. Oakes</i> , which states: "Contractor could not recover from subcontractor for increased workmen's compensation insurance premiums which contractor was compelled to pay in consequence of employee's death caused by subcontractor's negligence; increase being too remote and indirect result of wrongful act."
MISSISSIPPI	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
MISSOURI	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
MONTANA	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
NEBRASKA	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
NEVADA	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
NEW HAMPSHIRE	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.

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NEW JERSEY	No.	<i>Multiplex Concrete Co. v. Besser Co.</i> , 380 A.2d 708 (N.J. Super. App. 1977) (<i>per curiam</i>) (action prohibited in both strict liability and negligence); <i>United States Casualty Co. v. Hercules Powder Co.</i> , 72 A.2d 190 (N.J. 1950).	An action for increased premiums is not an action the employer is pursuing on behalf of its employee's rights, but rather, directly in its own right; rather it seeks damages directly related to the compensation payments made pursuant to the Workers' Compensation Act.
NEW MEXICO	No.	<i>Nat'l Roofing, Inc. v. Alstate Steel, Inc.</i> , 366 P.3d 276 (N.M. App. 2015), <i>cert. denied</i> (2016).	An employer does not have a cause of action against a tortfeasor the increased costs of workers' compensation insurance premiums resulting from benefits paid by the compensation carrier to its employee for injuries sustained due to negligence of the third-party tortfeasor.
NEW YORK	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
NORTH CAROLINA	Not allowed where employee had already settled third-party personal injury action with tortfeasor. Otherwise undecided.	<i>M.B. Haynes Corp. v. Strand Electro Controls, Inc.</i> , 487 S.E.2d 819 (N.C. App. 1997).	Employer was precluded as matter of law from maintaining cause of action against manufacturer to recover increases in premiums, due to employee's settlement with manufacturer in employee's third-party tort action and based on statutory scheme governing claims against third-party tortfeasors.
NORTH DAKOTA	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
OHIO	No.	<i>Cincinnati Bell Tel. Co. v. Straley</i> , 533 N.E.2d 764 (Ohio 1988).	No duty owed to employer regarding insurance premiums. It would appear that such a duty could only exist based on contract or warranty.
OKLAHOMA	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
OREGON	Probably Not.	<i>Ore-Ida Foods, Inc. v. Indian Head Cattle Co.</i> , 627 P.2d 469 (Or. 1981).	Oregon has not specifically denied the employer a cause of action against the negligent third-party tortfeasor for the increased premiums it experiences as a result of a work-related accident caused by the tortfeasor. However, it does prohibit a plaintiff from recovering for economic loss resulting from negligent infliction of bodily harm to a third person.

STATE	RECOVERY FOR INCREASED PREMIUMS?	STATUTE/CASE LAW	RULE SUMMARY
PENNSYLVANIA	No.	<i>Whirley Indus., Inc. v. Segel</i> , 462 A.2d 800 (Pa. Super. 1983); <i>Southland Constr., Inc. v. Greater Orlando Aviation</i> , 860 So.2d 1031 (Fla. App.2003) (applying PA law); <i>Erie Castings Co. v. Grinding Supply, Inc.</i> , 736 F.2d 99 (3d Cir. 1984) (applying Pennsylvania law); <i>Canada Dry Bottling Co. v. Mertz</i> , 400 A.2d 186 (Pa. Super. 1979); <i>Reliance Ins. Co. v. Richmond Machine Co.</i> , 455 A.2d 686 (Pa. Super. 1983).	Increased workers' compensation premiums resulting from a third-party tortfeasor's injuries to employees are harms that are not reasonably foreseeable or are otherwise too remote to be subject to liability.
RHODE ISLAND	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
SOUTH CAROLINA	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
SOUTH DAKOTA	No.	<i>Schipke v. Grad</i> , 562 N.W.2d 109, 112 (S.D. 1997).	Court denied recovery on the ground that the employer, having no more rights under the workers' compensation statutes against a negligent third party than the employee injured by the third party's negligence, has no right to sue for increased premiums. The South Dakota Supreme Court says that the subrogation remedy of workers' compensation statute does not afford cause of action to an employer to recover increases in workers' compensation insurance premiums from third-party tortfeasor. Increased premiums are merely part of the exchange the employer must bear to be free from employee lawsuits.
TENNESSEE	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
TEXAS	No.	<i>Higbie Roth Constr. Co. v. Houston Shell & Concrete</i> , 1 S.W.3d 808, 812-13 (Tex. App. 1999).	Increased workers' compensation premiums resulting from a third-party tortfeasor's injuries to employees are harms that are not reasonably foreseeable or are otherwise too remote to be subject to liability.

STATE	RECOVERY FOR INCREASED PREMIUMS?	STATUTE/CASE LAW	RULE SUMMARY
UTAH	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
VERMONT	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
VIRGINIA	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
WASHINGTON	Undecided.	None.	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor.
WEST VIRGINIA	No.	<i>Crab Orchard Improvement Co. v. Chesapeake & O. Ry. Co.</i> , 115 F.2d 277, 282-83 (4th Cir.1940) (applying West Virginia law).	Increased workers' compensation premiums resulting from a third-party tortfeasor's injuries to employees are harms that are not foreseeable or are otherwise too remote to be subject to liability.
WISCONSIN	No.	<i>Vogel v. Liberty Mut. Ins. Co.</i> , 571 N.W.2d 704 (Wis. App. 1997).	In an action brought by an employer against a tortfeasor to recovery lost premium discounts and the amount of increased workers' compensation premiums resulting from a work-related injury caused by the tortfeasor, the Wisconsin Court of Appeals has held that denial of such a cause of action is justified on multiple levels. Allowing such damages to an employer for economic consequences arising from injuries to an employee would "enter a field with no sensible stopping point."
WYOMING	Undecided.	<i>Gates v. Richardson</i> , 719 P.2d 193 (Wyo. 1986).	There is no authority or precedent regarding the attempted recovery of damages for increased workers' compensation insurance premiums by an employer from a third-party tortfeasor. However, in a case involving the extension of the tort of negligent infliction of emotional distress, referring to liability insurance premiums said, "[i]mpose upon the public the unwarranted economic burden of increased insurance premiums to fund insurers' costs in paying and litigating such claims."

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