



# The Washington Supreme Court provides new guidance for third-party claims

By Anna McFaul ■ October 5, 2017

The Supreme Court of Washington issued a new decision September 7, 2017, outlining the Department of Labor and Industries' ability to pursue a third-party claim as well as what damages the Department may recover with such a claim.

In *Carrera v. Olmstead*<sup>1</sup>, the 19-year-old claimant's right hand was severed in a workplace conveyor machine from which safety guards had been removed. Third-party contractor Sunheaven provided administration, operational support and workplace safety training for the employer. Sunheaven provided safety instruction in English to Mr. Carrera (who only spoke Spanish) and did not provide any instruction on how to safely use the conveyor machine. Mr. Carrera was awarded a pension as a result of the workers' compensation claim.

More than three years after the work injury, the Department brought a third-party claim against Sunheaven. The applicable statute of limitations states that this type of claim must be brought within three years of the injury. Sunheaven requested dismissal of the third-party claim on the premise that the statute of limitations had run out and the claim was now barred.

The court ruled that the Department could pursue the third-party claim lawsuit as it was being brought in the "public interest." The public interest elements included reimbursement of the medical aid fund, enforcement of workplace safety laws, deterrence of future negligence, and allowing injured workers to maximize their recovery.

The court determined the statute of limitations does not run even when a private party (the injured worker) may also benefit from the third-party lawsuit brought by the Department. Under statutory guidelines, any third-party recovery is distributed to the Department for legal costs while expenditures from the medical aid fund and the remaining award balance goes to the injured worker.

The court concluded that the Department may seek to recover both economic and noneconomic damages with the third-party claim as long as the recovery is distributed according to statutory guidelines. As the lawsuit against Sunheaven was found to be in the public interest, the Department was exempt from the statute of limitations and the claim could move forward.

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## New guidance for third-party claims in Washington (continued)

The attorneys at Reinisch Wilson Weier PC have extensive experience in aggressively recovering third-party claim workers' compensation liens and proper distribution of third-party claim recoveries. Contact us for assistance with your third-party claim questions and issues. ■

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<sup>1</sup> *Carrera v. Olmstead*, 401 P.3d 304 (2017).

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