PENDER & COWARD
ATTORNEYS AND COUNSELLORS AT LAW

PRACTICE AREA

THIRD-PARTY LIABILITY

Third party liability occurs when someone or some company who does not work for the employer causes an injury to the employer's employee. In a compensable workplace accident scenario, the employer would pay workers' compensation benefits to the injured employee. The employer may seek reimbursement for Workers' Compensation benefits it has paid. The employer is then permitted to exercise its subrogation rights for reimbursement of its payments against the negligent party. The employer is permitted to recover funds from the proceeds of that third-party action regardless of whether the claim is brought by the employer or the employee.

Several sections of the Virginia Workers' Compensation Act address the rights of an employer to assert its subrogation rights when a third-party lawsuit is instituted. Under VA Code §65.2-309, a workers' compensation claim against an employer automatically creates a lien on behalf of the employer against any verdict or settlement arising from any right to recover damages which the injured employee may have against any other party for such injury. The employer is subrogated to any such right of recovery of the injured worker. The employer may enforce, in its own name or in the name of the injured employee or his personal representative, the legal liability of such other party for the workplace injuries suffered by the employee.

Any amount collected by the employer in a third-party liability suit that is greater than the amount paid by the employer or for which the employer is liable in the workers' compensation case is required to be held by the employer for the benefit of the injured employee, less a proportionate share of such ordered monetary amounts as provided in Va Code §65.2-311.

Car Accidents

This is one of the most common third-party liability suits within the workers' compensation realm. Oftentimes, employers require their employees to be on the road to complete their job duties and while on those roadways, the employee is in a car accident. Any recovery that the employee receives from the third-party liability suit is offset by the employer's subrogation rights against that responsible party. In this scenario, a lawsuit would be instituted by the injured employee or the employer against the driver who was responsible for the car accident and then the employer would assert its right to subrogate any proceeds from that separate lawsuit.

Premises Liability

A premises liability claim could arise if an employee were injured while working on a property that the employer does not own or control. If this occurred, then a third-party action against the property owner could be instituted for its negligence on the site. Examples include a failure to warn against a dangerous condition that it knew about on the premises or the violation of a federal or state safety code, such as OSHA.

Product Liability

There could be a products liability claim if the subject work accident involved equipment or heavy machinery. If such was at play in the development of the workplace accident, there may be a third-party claim against the manufacturer or distributor of the subject product. Many of these types of third-party products liability claims include accidents that occur in construction, transportation, manufacturing, and warehouse-based industries.

Medical Malpractice

Workers' compensation inevitably involves the employee seeking medical treatment from a medical provider. When such medical treatment rendered to the employee is negligent during his/her course of treatment for those workplace injuries, there may be a recourse of medical malpractice lawsuit against the medical providers. This can arise as a result of surgical procedures gone awry, missed diagnoses, or medication errors. When an employee receives workers' compensation benefits from the employer and separately sues the third-party physicians responsible for such medical treatment, then the employer has a lien for medical expenses and proportionate fees and costs for such medical treatment rendered.

Third party liability claims require an attorney who will conduct a substantial investigation to determine if there are responsible third parties who should provide compensation for the employee's injuries. Third party suits benefit both the employee and the employer because the responsible party for such injuries must pay for the injuries incurred and both the employee and employer can financially benefit from that payment. Our firm is committed to providing exceptional legal services and our third-party liability attorneys have decades of combined experience in litigating these complicated cases within the context of a workers' compensation case.