THERE IS NO RIGHT TO SUBROGATION FOR HEART AND LUNG BENEFITS PAID AS AGAINST A CLAIMANT'S RECOVERY FOR INJURIES SUSTAINED IN A MOTOR VEHICLE ACCIDENT

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If you have paid Heart and Lung Act (HLA) benefits to an Employee who sustained an injury in a motor vehicle accident (MVA) and expect to get your money back when that Employee makes a financial recovery on the MVA case – don't. The Pennsylvania Supreme Court issued a decision on January 28, 2011, holding that an Employer does not have a right to subrogation under these circumstances.

The holding of Oliver v. City of Pittsburgh directly and adversely impacts your right to recover money that you have paid on a claim which resulted from the negligence of a third party motor vehicle operator.

By way of background, the HLA provides a generous set of benefits to a wide range of public safety personnel typically employed by governmental agencies. The list of covered employees includes, but is not necessarily limited to state police; enforcement officers and investigators; parole agents; Department of Corrections employees; Drug Enforcement Agents; DPW Psychiatric Security Aides; DRPA Police; police officers and fire fighters of any county, city, borough, town or township; sheriffs and special fire police.

The HLA provides a covered employee a full salary along with medical expenses, as opposed to the Pennsylvania Workers' Compensation Act (WCA), which provides only a portion of salary. Hence, an Employee who is eligible for HLA benefits

will almost always choose those over WCA benefits. The trade off, however, is that under the HLA, the Employer has arguably greater control over medical care. HLA benefits cease when a disability is determined to be permanent or alternatively, no longer existing. Further, the ability of an injured employee to receive HLA benefits is more restrictive than the "course and scope" standard under the WCA. Specifically, recovery under the HLA is permitted only for injuries incurred during the performance of one's official duty in the role of a public safety officer. The classic example is that an Employee who sustains an injury during a slip and fall on the way to punch out of work is not entitled to HLA benefits, although that Employee may well be entitled to benefits under the WCA.

With regard to the instant Supreme Court case, the issue presented was whether the City of Pittsburgh had a right to recover the $848.00 in HLA benefits it had paid as against Claimant's $2,300.00 third-party recovery for an injury he sustained during an MVA. The Court undertook a hyper technical analysis and concluded that under the present Motor Vehicle Financial Responsibility Act (MVFRL) there is no right of subrogation or reimbursement unless those benefits were paid out under the WCA. The Court specifically looked at the language of the present MVFRL and concluded that a right of subrogation existed only under the WCA. The Court found this to be the case even though HLA and WCA statutes have often been similarly construed and a prior case had found a right of subrogation under similar circumstances.

At this point, it is not likely that judicial relief is available to Employers who have paid HLA benefits and seek to subrogate against an Employee's recovery under

the MVFRL. What is possible, however, is a legislative effort to simply amend the MVFRL to include a right of subrogation for benefits paid under the HLA or other commonly used statutory schemes which pay injured employees benefits in lieu of workers' compensation.

A future article will deal with the issue not addressed by the Oliver Court, which is whether the 1990 changes to the MVFRL would allow subrogation in these types of cases. The Court noted that the issue had been waived in the instant case.

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