

Ohio Governor Approves Changes in Insurance Subrogation Law, Vetoes Some Provisions

On June 30, 2015, Ohio Governor John Kasich signed the 2016-2017 Ohio budget that includes an amendment that dramatically alters the state's subrogation system. When the amendment goes into effect on September 28, 2015, an insurer's monetary recovery in any subrogation claim will be reduced in the same proportion that the injured party's claim is diminished if the injured party is unable to collect the so-called "full value of the tort action ... resulting from limited liability insurance of any other cause." Additionally, either party in a dispute over the distribution of the recovery may file an action for declaratory judgment to resolve the issue.

The practical impact of these changes means that insurance companies or any person or entity claiming a right to subrogation by contract will face reduced awards in subrogation actions and increased litigation over the "full value of the tort action" brought by the injured party. Plaintiff's attorneys will have a litany of new tactics at their disposal. The amendment, which was introduced near the end of session in the Ohio Senate on the budget, was proposed without public debate.

The new law, implemented as part of a new R.C. 2323.44, reads:

(B) Notwithstanding any contract or statutory provision to the contrary, the rights of a subrogee or any other person or entity that asserts a contractual, statutory, or common law subrogation claim against a third party or an injured party in a tort action shall be subject to all of the following:

(1) If less than the full value of the tort action is recovered for comparative negligence, diminishment due to a party's liability under sections 2307.22 to 2307.28 of the Revised Code, or by reason of the collectability of the full value of the claim for injury, death, or loss to person resulting from limited liability insurance or any other cause, the subrogee's or other person's or entity's claim shall be diminished in the same proportion as the injured party's interest is diminished.

(2) If a dispute regarding the distribution of the recovery in the tort action arises, either party may file an action under Chapter 2721 of the Revised Code to resolve the issue of the distribution of the recovery.

While Governor Kasich signed the provision into law, he vetoed a portion of the amendment that would have implemented the "Common Fund" rule, which would have required an insurer to pay for a portion of an injured party's attorney fees and "the expenses of procuring a recovery in the tort action." Further, Governor Kasich vetoed a provision that would have given control over "any settlement of a tort action" solely to an injured party. These vetoes were necessary, as the changes would have upended long-standing Ohio law and drastically increased the costs of litigation to insurers.

The amendment raises considerable questions about the new law. First, a number of terms in the amendment are simply undefined or are broadly defined. Second, while the law goes into effect on September 28, 2015, there is no indication whether it will apply to unresolved tort claims that arose before that date or only to claims arising after that date. The answers to these questions may have broad consequences on any tort action in Ohio subject to a subrogation claim by an insurer. Insurers should look to the Ohio General Assembly or Ohio courts to clarify these issues as the law goes into effect.

Roetzel & Andress will continue to monitor these amendments. Please contact any of the listed Roetzel Attorneys.

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