

OREGON LAW UPDATE

Workers' Compensation Insurer Must Notify Claimant of Potential Conflict of Interest

From the Desk of Jeff Eberhard: This case discusses the obligation of a workers' compensation insurer to provide a claimant with potential conflict of interest information and the need to wait 60 days before pursuing any third party claim.

Claims Pointer: In workers' compensation cases, an insurer must inform a claimant of any potential conflict of interest before she makes an election to assign her third-party claim.

case in point ...

Liberty Mutual Insurance Company v. Christine Schwanenberg, in the Court of Appeals of the State of Oregon, A148541, --- P3d ---- (August 8, 2012).

Christine Schwanenberg's husband died on August 5, 2008 in a helicopter crash while working for Carson Helicopters, Inc. (Carson) as a pilot. As the paying agency and Carson's workers' compensation insurer, Liberty Mutual Insurance Company (Insurer) paid claimant, Christine Schwanenberg (Christine), death benefits. On October 14, 2008, Christine received a demand letter from the insurer advising her that a third party may have negligently caused her husband's death and asking her to make an election within 60 days whether to assign the negligence claim to the insurer. The letter did not disclose that the manufacturer of the helicopter, Columbia Helicopters (Columbia), was a potentially liable third party and that Liberty also insured this company. Fifty-six days after Christine's receipt of the letter, the insurer filed a lawsuit in federal court on Christine's behalf against Columbia and other defendants. However, Insurer then moved to dismiss Columbia from the suit and it was granted. Christine intervened in the federal action, but her motions to join Columbia and dismiss Insurer as a party plaintiff were denied. Afterward, she filed a lawsuit in state court against multiple defendants, including Columbia.

In the administrative proceeding, Christine argued the demand letter was defective and

void. The Workers' Compensation Board (the Board) agreed with Christine explaining that the demand letter failed to state a time period, aside from the statutory limitations period, within which Christine was required to file a third-party claim, or that failure to file a claim within the time period would assign it to Insurer. Thus, the Board concluded Christine's failure to respond to Insurer's letter did not constitute her election to assign the third-party claim. The Board determined the letter made two misrepresentations: (1) she had up to 60 days to make her election; and (2) the letter failed to inform Christine that the insurer also insured Columbia as required by ORS 656.583(2). The Board concluded the defects nullified and voided the demand letter. The Board further concluded in the event Insurer's demand letter was valid, its misleading and incomplete nature allowed Christine to rescind her election. Insurer filed for judicial review of the Board's decision.

On review, Insurer argued that its written demand satisfied statutory requirements and Christine was not entitled to rescind her election. The Court of Appeals determined that Insurer should have made Christine aware of their potential conflict of interest involving Columbia before she made her election. Since she was not made aware of the conflict of interest, Christine was allowed to rescind her election.

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