

SUPREME COURT OF APPEALS OF WEST VIRGINIA

National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Timothy Tyree

No. 12-0455 (W. Va. June 24, 2013) · No. No. 12-0455 · Decided June 24, 2013

SUMMARY

The West Virginia Supreme Court of Appeals affirmed a circuit court order reducing National Union Fire Insurance Company's workers' compensation statutory subrogation lien from \$129,843 to \$17,660. The court held that the insurer received adequate notice and an opportunity to be heard, and that West Virginia Code § 23-2A-1 permits reduction of the lien for attorney's fees and costs and allows negotiation of the subrogation amount. The court also upheld the circuit court's consideration of the settlement's agreed apportionment between the employer and third-party defendants.

CASE DETAILS

COURT	Supreme Court of Appeals of West Virginia
WRITING FOR THE COURT	Per Curiam; Justice Robin Jean Davis; Justice Margaret L. Workman; Justice Menis E. Ketchum; Justice Allen H. Loughry II
JURISDICTION	West Virginia
DECIDED	June 24, 2013
DOCKET	No. 12-0455
DISPOSITION	affirmed
PROCEDURAL POSTURE	National Union appealed the Circuit Court of Wyoming County's order granting Timothy Tyree's motion to reduce a workers' compensation statutory subrogation lien.
STANDARD OF REVIEW	The ultimate disposition is reviewed for abuse of discretion, underlying factual findings for clear error, and questions of law de novo.
PRECEDENTIAL VALUE	Published memorandum decision; the source does not state a separate precedential classification.
PARTIES	National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Timothy Tyree

TOPICS

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether National Union received adequate notice and a meaningful opportunity to be heard on Tyree's motion to reduce the statutory subrogation lien.
2. Whether the circuit court had jurisdiction to determine the workers' compensation subrogation claim.
3. Whether West Virginia Code § 23-2A-1 permits reduction or negotiation of a private workers' compensation carrier's statutory subrogation lien based on the settlement apportionment and deductions for attorney's fees and costs.

HOLDINGS

1. National Union received adequate notice and a meaningful opportunity to address Tyree's motion to reduce the statutory subrogation lien.
2. The circuit court had jurisdiction to determine the subrogation claim because the claim flowed from and was intertwined with Tyree's deliberate-intent and third-party negligence claims.
3. A private workers' compensation carrier is entitled to statutory subrogation, but the lien is not an absolute entitlement to the full amount of benefits paid; under West Virginia Code § 23-2A-1(c), it must be reduced by reasonable attorney's fees and costs and may be negotiated. The circuit court did not abuse its discretion by considering the settlement's apportionment of responsibility in reducing the lien.

KEY QUOTATIONS

“In reviewing challenges to the findings and conclusions of the circuit court, we apply a two-prong deferential standard of review. We review the final order and the ultimate disposition under an abuse of discretion standard, and we review the circuit court’s underlying factual findings under a clearly erroneous standards. Question of law are subject to a de novo review.” (at 1-2)

“Petitioner, a private workers’ compensation carrier, is entitled to the statutory subrogation lien. Nevertheless, under the plain language of the statute, this subrogation lien shall be reduced by attorney’s fees and costs and may be negotiated.” (at 4)

FACTUAL BACKGROUND

Timothy Tyree, an underground coal miner in training, was injured in a mining accident on August 8, 2010, suffering severe damage to his left foot and amputation of a toe. National Union, the private workers' compensation carrier for his employer, accepted the claim and paid \$129,843 in benefits. Tyree brought a deliberate-intent claim against his employer and negligence claims against Brooks Run and Alpha, and the parties later settled with responsibility apportioned between the defendants. The circuit court reduced National Union's statutory subrogation lien based on that apportionment and deductions for attorney's fees and costs.

PROCEDURAL HISTORY

Tyree was injured in a mining accident and received workers' compensation benefits from National Union. He later sued his employer under West Virginia's deliberate-intent statute and sued third parties for negligence. After the parties settled and apportioned responsibility between the defendants, the circuit court reduced National Union's \$129,843 subrogation lien to approximately \$17,600, after considering the settlement apportionment and deducting attorney's fees and costs. The Supreme Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Walker v. West Virginia Ethics Commission, 201 W. Va. 108, 492 S.E.2d 167 (1997)
- Roberts v. Consolidation Coal Co., 208 W. Va. 218, 539 S.E.2d 478 (2000)

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