



2016 STATE-BY-STATE  
SUBROGATION RIGHTS  
FOR WORKERS'  
COMPENSATION LIENS

# Compendium of Law

**USLAW**  
NETWORK, INC.<sup>®</sup>

# State-by-State Subrogation Rights

for Workers' Compensation Liens Compendium | 2016

## INTRODUCTION

**Your employee is injured by a third party during the course of their employment. What are your rights to recovery?**

What steps do you need to take to perfect reimbursement? This compendium answers those questions on a state-by-state basis and provides a quick reference for what is often a frustrating experience, obtaining reimbursement for third party acts.

USLAW's State-by-State Subrogation Rights for Workers' Compensation Liens Compendium takes advantage of USLAW's knowledge and experience of all 50 states plus Washington, D.C.

*Prepared and Edited By:*  
*Fred L. Hubbs, Jr*  
**Hall Booth Smith, P.C.**  
*191 Peachtree Street*  
*Atlanta GA 30303*  
*(404) 954-6928*  
*fhubbs@hallboothsmith.com*  
*www.hallboothsmith.com*

# ABOUT USLAW NETWORK

## **2001. The Start of Something Better.**

Mega-firms...big, impersonal bastions of legal tradition, encumbered by bureaucracy and often slow to react. The need for an alternative was obvious. A vision of a network of smaller, regionally based, independent firms with the capability to respond quickly, efficiently and economically to client needs from Atlantic City to Pacific Grove was born. In its infancy, it was little more than a possibility, discussed around a small table and dreamed about by a handful of visionaries. But the idea proved too good to leave on the drawing board. Instead, with the support of some of the country's brightest legal minds, USLAW NETWORK became a reality.

## **Fast-forward to today.**

The commitment remains the same as originally envisioned. To provide the highest quality legal representation and seamless cross-jurisdictional service to major corporations, insurance carriers, and to both large and small businesses alike, through a network of professional, innovative law firms dedicated to their client's legal success. Now as a network with more than 6,000 attorneys from over 100 independent, full practice firms with roots in civil litigation, spanning the United States, Canada, Latin America, Europe, Asia and Africa, USLAW NETWORK remains a responsive, agile legal alternative to the mega-firms.

## **Homefield Advantage.**

USLAW NETWORK offers what it calls The Homefield Advantage which comes from knowing and understanding the venue in a way that allows a competitive advantage – a truism in both sports and business. Jurisdictional awareness is a key ingredient to successfully operating throughout the United States and abroad.

Knowing the local rules, the judge, and the local business and legal environment provides our firms' clients this advantage. The strength and power of an international presence combined with the understanding of a respected local firm makes for a winning line-up.

## **A Legal Network for Purchasers of Legal Services.**

USLAW NETWORK firms go way beyond providing quality legal services to their clients. Unlike other legal networks, USLAW is organized around client expectations, not around the member law firms. Clients receive ongoing educational opportunities, online resources including webinars, jurisdictional updates, and resource libraries. We also provide a semi-annual USLAW Magazine, USLAW DigiKnow, which features insights into today's trending legal topics, compendiums of law, as well as annual membership and practice group directories. To ensure our goals are the same as the clients our member firms serve, our 45-member Client Leadership Council is directly involved in the development of our programs and services. This communication pipeline is vital to our success and allows us to better monitor and meet client needs and expectations.

## **USLAW Abroad.**

Just as legal issues seldom follow state borders, they often extend beyond U.S. boundaries as well. In 2007, USLAW established a relationship with the Trans-European Law Firms Alliance (TELFA), a network of 25 independent law firms representing more than 700 lawyers through Europe. Subsequently, in 2010, we entered a similar affiliation with the ALN (formerly the Africa Legal Network) to further our service and reach. Additionally, USLAW member firms are located throughout Canada, Latin America, and Asia.

## **How USLAW NETWORK Membership is Determined.**

Firms are admitted to the Network by invitation only and only after they are fully vetted through a rigorous review process. Many firms have been reviewed over the years, but only a small percentage were eventually invited to join. The search for quality member firms is a continuous and ongoing effort. Firms admitted must possess broad commercial legal capabilities and have substantial litigation and trial experience. In addition, USLAW NETWORK members must subscribe to a high level of service standards and are continuously evaluated to ensure these standards of quality and expertise are met.

## **USLAW in Review.**

- All vetted firms with demonstrated, robust practices and specialties
- Efficient use of legal budgets, providing maximum return on legal services investments
- Seamless, cross-jurisdictional service
- Responsive and flexible
- Multitude of educational opportunities and online resources
- Team approach to legal services

## **The USLAW Success Story.**

The reality of our success is simple: we succeed because our member firms' clients succeed. Our member firms provide high-quality legal results through the efficient use of legal budgets. We provide cross-jurisdictional services eliminating the time and expense of securing adequate representation in different regions. We provide trusted and experienced specialists quickly.

When a difficult legal matter emerges – whether it's in a single jurisdiction, nationwide or internationally – USLAW is there. Success.

For more information, please contact Roger M. Yaffe, USLAW CEO, at (800) 231-9110 or [roger@uslaw.org](mailto:roger@uslaw.org)

# USLAW NETWORK **WORKERS' COMPENSATION** PRACTICE AREA

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The USLAW NETWORK Worker's Comp Community offers a global network of attorneys who assist clients with creating, managing, implementing and updating employee guidelines and policies as well as defending any workplace-related complaints. Through information exchanges, idea sharing and policy updating, our attorneys remain current with the latest issues facing the work environment – from both the employee and employer perspective – so they can best assist all clients with questions and case-related issues.

## **Why Choose USLAW NETWORK Worker's Comp Law Firms?**

Our attorneys represent public and private employers of all sizes, whether union or nonunion, insurance carriers, self-insured employers/servicing agents, and uninsured employers in all manner of workers' compensation cases. We offer extensive experience in the defense of all types of employment-related lawsuits and grievances. Whether a client needs drafting, revising, and updating personnel policies, employee handbooks, employment contracts, severance agreements, contractor agreements, non-competition/non-solicitation/ confidentiality agreements, and other employment-related documents reflecting the individual employer's unique needs and preferences, we have a network of attorneys able to provide legal counsel. While workers' compensation laws seek to protect employees, USLAW attorneys help to shield our clients from abuses of the system, ensuring fair and just awards for employers and insurance companies.

## **Areas of Practice**

USLAW Worker's Comp attorneys defend and provide legal counsel on a wide range of worker's compensation cases on issues related to:

- ADA
- ADEA
- Arbitration
- Collective bargaining
- EEOC
- Employment Security
- ERISA
- FMLA
- MSHA
- NLRA
- NLRB
- OSHA
- Union campaigning and elections
- Wage & Hour
- WARN
- And other employment-related state and federal laws

## USLAW NETWORK **CONTACT INFORMATION**

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**Roger M. Yaffe**  
Chief Executive Officer  
roger@uslaw.org  
(800) 231-9110, ext. 1

**USLAW NETWORK**  
3111 N. University Drive  
Suite 400  
Coral Springs, FL 33065



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### ALABAMA

**Code of Ala. § 25-5-11**

**Can Carrier Sue Third Party Directly?** .....Yes, after 6-month Statute of Limitation

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?** .....2 years

#### **Encapsulation of Pertinent Statutory Language**

The insurance carrier may sue the third party directly after six months has passed. Even if the injured employee, or his or her dependents, in case of death, do not file a civil action, the insurance carrier is allowed an additional six-month period within which to bring a civil action. If the insurance carrier has paid compensation to the employee, the civil action may be maintained in the name of the insurance carrier or employer.

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### ALASKA

**Alaska Stat. § 23.30.015**

**Can Carrier Sue Third Party Directly?** .....Yes, after 1 year

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?** .....2 years

#### **Encapsulation of Pertinent Statutory Language**

Acceptance of compensation under an award filed by the board operates as an assignment to the employer of all rights of the person entitled to compensation. If the employer is insured and the carrier has assumed the payment of compensation, the carrier shall be subrogated to all the rights of the employer.

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### ARIZONA

**A.R.S. § 23-1023**

**Can Carrier Sue Third Party Directly?** .....Yes, after 1 year

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?** .....2 years

#### **Encapsulation of Pertinent Statutory Language**

If the employee or their dependents fail to follow through with a claim, then the rights of the claim are assigned to the carrier and the carrier can bring suit against the third party. Any dismissal of the employee's suit shall not prohibit a suit by the carrier. The carrier shall also have a lien on the amount actually collectable from the third party by the employee.

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## ARKANSAS

**A.C.A. § 11-8-410**

**Can Carrier Sue Third Party Directly?** .....Yes

**Can Carrier Intervene?**.....Yes, but must do so in reasonable time after notice

**What is the Statute of Limitations?** .....3 years

### **Encapsulation of Pertinent Statutory Language**

An employer or carrier shall have the right to maintain an action in tort against any third party responsible for the injury or death. However, the employer or carrier must notify the claimant in writing that the claimant has a right to pursue their own claim. No party involved shall settle a claim without first giving three (3) days' written notice to all parties with an interest in the claim of the intent to settle.

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## CALIFORNIA

**Cal. Lab. Code § 3852**

**Can Carrier Sue Third Party Directly?** .....Yes

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?** .....2 years

### **Encapsulation of Pertinent Statutory Language**

Any employer who pays or becomes obligated to pay compensation may make a claim or bring an action against the third person. The employer may recover in addition to the total amount of compensation, damages for which the employer was liable including all salary, wage, pension, or other emolument paid to the employee or their dependents.

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## COLORADO

**C.R.S. § 8-41-203**

**Can Carrier Sue Third Party Directly?** .....Yes

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?** .....2 years

### **Encapsulation of Pertinent Statutory Language**

The insurance carrier shall not be entitled to recover any sum in excess of the amount of compensation for which said carrier is liable to the injured employee, but to the extent of that compensation the carrier shall be subrogated the rights of the injured employee against the third party causing the injury. The right of subrogation shall apply and include all compensation but shall not extend to moneys collected for noneconomic damages awarded for pain and suffering, inconvenience, emotional stress or impairment of quality of life.

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### CONNECTICUT

Conn. Gen. Stat. § 31-293

**Can Carrier Sue Third Party Directly?** .....No, only employee and employer can file.  
Carrier can file statutory lien and/or intervene in name of the employer

**Can Carrier Intervene?** .....Yes, but must intervene or give  
notice of lien within 30 days after notice of filing suit

**What is the Statute of Limitations?** .....2 years

#### Encapsulation of Pertinent Statutory Language

Any employer or custodian having paid or having become obligated to pay may bring an action against the third party to recover any amount that they have paid or have become obligation to pay. However, the employer or custodian shall immediately notify the others in writing of the action. The employer or insurance carrier shall have a lien against any compensation received by the employee from litigation provided the carrier gave written notice of the lien to the party prior to such judgment or settlement.

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### DELAWARE

19 Del. C. § 2363

**Can Carrier Sue Third Party Directly?** .....Yes

**Can Carrier Intervene?** .....Yes, but must do so through the employer's policy

**What is the Statute of Limitations?** .....2 years

#### Encapsulation of Pertinent Statutory Language

If the injured employee does not commence an action within 260 days after the occurrence of the injury, then the employer or its insurance carrier may enforce the liability of the third party in the name of the injured. Each party must notify any other party of their intent to bring a lawsuit at least 30 days prior to bringing the suit. Any party in interest shall have a right to join in the suit. Any settlement or release by the employee shall not bar an action by the employer or its carrier to proceed against the third party. Any recovery against the third party for damages resulting from personal injury or death, after deducting expenses of recovery, shall first reimburse the employer or its carrier for amounts paid.

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### DISTRICT OF COLUMBIA

D.C. Code § 32-1535

**Can Carrier Sue Third Party Directly?** .....Yes, but only after 6 months of award

**Can Carrier Intervene?** .....Yes

**What is the Statute of Limitations?** .....3 years

#### Encapsulation of Pertinent Statutory Language

Where the employer is insured and the insurance carrier has assumed the payment of the compensation, the insurance carrier shall be subrogated to all the rights of the employer. Acceptance of award by injured party shall operate as an assignment to the employer of all rights of the person entitled to compensation to recover damages against the third party. If the



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### (DISTRICT OF COLUMBIA CONTINUED)

employer fails to commence an action against such third party within 90 days after the cause of action is assigned, the right to the action reverts back to the injured party. A payment made by the employer or insurance carrier pursuant shall operate as an assignment to the employer of all rights of the deceased.

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## FLORIDA

**Fla. Stat. § 440.39**

**Can Carrier Sue Third Party Directly?** .....Yes, but after one year if the employee fails to bring an action

**Can Carrier Intervene?** .....Upon the suit being filed, the carrier may file in the suit a notice of payment of compensation to the employee for their share of recovery to be determine by the court

**What is the Statute of Limitations?** .....4 years

### Encapsulation of Pertinent Statutory Language

If the employee accepts worker's compensation payments, then the rights of a suit against a third party will be assigned to the insurance carrier or the employer. If the injured employee or their dependents fail to bring suit within one year of the injury, then the insurance carrier is assigned the right to bring a suit against the third party but the carrier must give notice to the injured party their intent to bring the suit at least 30 days prior to bringing the suit.

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## GEORGIA

**O.C.G.A. § 34-9-11.1**

**Can Carrier Sue Third Party Directly?** .....Yes, after one year

**Can Carrier Intervene?** .....Yes

**What is the Statute of Limitations?** .....2 years

### Encapsulation of Pertinent Statutory Language

If the employee brings a suit or has a right of action then the employer or the carrier will have a subrogation lien on that award, not to exceed the actual amount of compensation paid pursuant to this chapter, against such recovery. If an action is not brought by the employee within one year after the date of injury, then the employer or such employer's insurer may bring their own suit against the third party. The employer or its insurer shall immediately notify the employee of its assertion of such cause of action, and the employee shall have a right to intervene. If the employee asserts a cause of action against a third party, then the employee must immediately notify the employer and the insurance carrier and the employer and insurance carrier shall have the right to intervene.

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### HAWAII

HRS § 386-8

Can Carrier Sue Third Party Directly? .....Yes, after nine (9) months

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....2 years

#### Encapsulation of Pertinent Statutory Language

If the employee commences an action against a third person, the employee must immediately notify the employer. The employer, at any time before trial on the facts, may join as party plaintiff. If within nine months after the date of the personal injury the employee has not commenced an action against a third person, the employer, having paid or being liable for compensation under this chapter, shall be subrogated to the rights of the injured employee.

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### IDAHO

Idaho Code § 72-223

Can Carrier Sue Third Party Directly? .....Yes

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....2 years

#### Encapsulation of Pertinent Statutory Language

If compensation has been claimed and awarded, the employer having paid such compensation or having become liable therefor, shall be subrogated to the rights of the employee, to recover against such third party to the extent of the employer's compensation liability. Action may be instituted against such third party by the employee, or in event compensation has been claimed and awarded, by the employee and employer jointly, in the employee's name, or, if the employee refuses to participate in such action, by the employer in the employee's name.

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### ILLINOIS

820 ILCS 305/5

Can Carrier Sue Third Party Directly?.....Yes, at any time prior to 3 months before such action would be barred

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....2 years

#### Encapsulation of Pertinent Statutory Language

If the injured employee or his personal representative agrees to receive money or compensation from the employer, then the employer may have or claim a lien upon any award from which the employee might be compensated from a third party. Any compensation awarded from litigation must be paid to the employer in the amount of compensation paid to the employee for injury. If the injured party fails to bring a suit against a third party, then the employer or carrier may bring a suit against the third party as long as it is three months before such an action would be time barred.

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### INDIANA

**Ind. Code. Ann. § 22-3-2-13**

**Can Carrier Sue Third Party Directly?** .....Yes, but only after 1 year from when the employee's action has been dismissed

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?** .....2 years

#### **Encapsulation of Pertinent Statutory Language**

The employer or the insurance carrier may bring a suit against the third party as long as it is within one year of the employee's action being dismissed. The employee must provide notice to the employer of their lawsuit against the third party and the employer/carrier may join in such suit provided they do so within 90 days of receipt of notice.

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### IOWA

**Iowa Code § 85.22**

**Can Carrier Sue Third Party Directly?** .....Yes, if the employee fails to bring an action within 90 days

**Can Carrier Intervene?** .....Yes, but must within thirty days of receiving notice of employee suit file notice of lien

**What is the Statute of Limitations?** .....2 years

#### **Encapsulation of Pertinent Statutory Language**

If compensation is paid to the employee, the employer or the carrier shall have a lien on the claim against a third party. However, within thirty days of the suit by the employee against the third party, the employer/carrier must provide notice of the lien to such employee.

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### KANSAS

**K.S.A. § 44-504**

**Can Carrier Sue Third Party Directly?** .....Yes, if employee fails to bring suit within 1 year

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?** .....2 years

#### **Encapsulation of Pertinent Statutory Language**

Failure on the part of the injured worker, or the dependents or personal representatives of a deceased worker to bring such action within the time specified by this section (1 year for injury and 18 months for death) shall operate as an assignment to the employer of any cause of action in tort. The worker's compensation fund is subrogated all rights of the employee. The commissioner of insurance may intervene in suit, enforce a lien or bring their own cause of action.

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### KENTUCKY

**KRS § 342.700**

**Can Carrier Sue Third Party Directly?** .....Yes, only if employee has not filed suit

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?**.....1 year

#### **Encapsulation of Pertinent Statutory Language**

If compensation is awarded under this chapter, the employer, his insurance carrier, the special fund, and the uninsured employer's fund, or any of them, having paid the compensation or having become liable therefor, may recover in his or its own name or that of the injured employee from the other person in whom legal liability for damages exists.

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### LOUISIANA

**La. R.S. § 23:1101**

**Can Carrier Sue Third Party Directly?** .....Yes, with notice

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?**.....1 year

#### **Encapsulation of Pertinent Statutory Language**

Any person having paid or having become obligated to pay compensation under the provisions of this Chapter may bring suit against such third person to recover any amount which he has paid or becomes obligated to pay as compensation to such employee or his dependents.

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### MAINE

**39-A M.R.S. § 107**

**Can Carrier Sue Third Party Directly?** .....Yes, after 30-day demand to bring suit by employer goes unanswered

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?** .....6 years

#### **Encapsulation of Pertinent Statutory Language**

If the employee or the employee's beneficiary fails to pursue the remedy against the 3rd party within 30 days after written demand by the employer, the employer is subrogated to the rights of the injured employee and is entitled to enforce liability in its own name or in the name of the injured party.

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### MARYLAND

**Md. Labor and Employment Code Ann. § 9-901 through 903**

**Can Carrier Sue Third Party Directly?** .....Yes, if a claim is filed and compensation is awarded or paid

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?** .....3 years

#### **Encapsulation of Pertinent Statutory Language**

If a claim is filed and compensation is awarded or paid, a self-insured employer, an insurer, the Subsequent Injury Fund, or the Uninsured Employers' Fund may bring an action for damages against the third party who is liable for the injury or death of the covered employee.

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### MASSACHUSETTS

**ALM GL ch. 152, § 15**

**Can Carrier Sue Third Party Directly?** .....Yes, after seven (7) months following the injury

**Can Carrier Intervene?** .....No

**What is the Statute of Limitations?** .....3 years

#### **Encapsulation of Pertinent Statutory Language**

Either the employee or insurer may proceed to enforce the liability of such person, but the insurer may not do so unless compensation has been paid to the injured party. The insurer and employer also must wait until seven months following the date of such injury to bring suit. The sum recovered shall be for the benefit of the insurer, unless such sum is greater than that paid by it to the employee, in which event the excess shall be retained by or paid to the employee.

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### MICHIGAN

**MCLS § 418.827**

**Can Carrier Sue Third Party Directly?** .....Yes, after one (1) year

**Can Carrier Intervene?**.....Yes

**What is the Statute of Limitations?** .....3 years

#### **Encapsulation of Pertinent Statutory Language**

If the injured employee or his or her dependents or personal representative does not commence the action within 1 year after the occurrence of the personal injury, then the employer or carrier may enforce the liability of the third party in the name of the injured employee

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### MINNESOTA

**Minn. Stat. § 176.061**

Can Carrier Sue Third Party Directly? .....Yes

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....6 years

#### **Encapsulation of Pertinent Statutory Language**

If the employee or the employee's dependents elect to receive benefits from the employer, or the special compensation fund, the employer or the special compensation fund has a right of indemnity or is subrogated to the right of the employee or the employee's dependents to recover damages against the third party.

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### MISSISSIPPI

**Miss. Code Ann. § 71-3-71**

Can Carrier Sue Third Party Directly? .....Yes

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....3 years

#### **Encapsulation of Pertinent Statutory Language**

The employer and insurance carrier are entitled to reasonable notice of any action by the injured employee against a third party and are entitled to intervene in that action. If the employer or carrier have paid compensation benefits then they are entitled to repayment from the employee's action or they are entitled to bring their own suit against the third party, either in the name of the employee or in their own name.

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### MISSOURI

**§ 287.150 R.S.Mo.**

Can Carrier Sue Third Party Directly? .....Yes

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....5 years

#### **Encapsulation of Pertinent Statutory Language**

The employer is subrogated all rights of the injured party against the third party and the recovery is not limited to only that which was paid to the injured party. The employer shall also have a subrogation lien on any recovery that the injured party is awarded.

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### MONTANA

§ 39-71-414 MCA

- Can Carrier Sue Third Party Directly? .....Yes, after 1 year
- Can Carrier Intervene?.....Yes
- What is the Statute of Limitations? .....3 years

#### Encapsulation of Pertinent Statutory Language

The insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery. If an injured employee refuses or fails to institute the third-party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative.

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### NEBRASKA

R.R.S. Neb. § 48-118

- Can Carrier Sue Third Party Directly? .....Yes
- Can Carrier Intervene?.....Yes
- What is the Statute of Limitations? .....4 years

#### Encapsulation of Pertinent Statutory Language

When a third person is liable to the employee or to the dependents for the injury or death of the employee, the employer shall be subrogated to the right of the employee or to the dependents against such third person. The recovery by such employer shall not be limited to the amount payable as compensation to such employee or dependents, but such employer may recover any amount which such employee or his or her dependents should have been entitled to recover.

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### NEVADA

Nev. Rev. Stat. Ann. § 616C.215

- Can Carrier Sue Third Party Directly? .....Yes
- Can Carrier Intervene? .....Possibly
- What is the Statute of Limitations? .....2 years

#### Encapsulation of Pertinent Statutory Language

Insurer has right of action against third party and is subrogated to employee's rights; Insurer has lien upon total proceeds of recovery from third party whether by judgment, settlement or otherwise; lien is total WC expenditures, paid and obligated to pay; employee or his/her attorney shall advise insurer in writing before initiating third party action and within 15 days of recovery by judgment, settlement or otherwise.

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## NEW HAMPSHIRE

**N.H. RSA 281-A:13**

Can Carrier Sue Third Party Directly? .....Yes, after 9 months

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....3 years

### Encapsulation of Pertinent Statutory Language

The employer or the employer's insurance carrier will have a lien on the amount of damages and benefits recovered by the employee including compensation, medical, hospital or other remedial care paid by the employer or carrier minus the attorney's fees/costs of action incurred by the injured employee.

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## NEW JERSEY

**N.J. Stat. § 34:15-40**

Can Carrier Sue Third Party Directly? .....Yes, after 1 year

Can Carrier Intervene? .....No

What is the Statute of Limitations? .....2 years

### Encapsulation of Pertinent Statutory Language

If 1 year passes and the employee fails to either bring suit or effect a settlement with the liable third party, then the carrier or the employer may bring a suit against the third party or effect settlement with the third party as long as they provide 10 days written notice to the injured employee.

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## NEW MEXICO

**N.M. Stat. Ann. § 52-5-17**

Can Carrier Sue Third Party Directly?.....No, reimbursement only

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....3 years

### Encapsulation of Pertinent Statutory Language

If the injured party receives payment from the employer, this receipt shall operate as an assignment to the employer or his insurer of any cause of action to the extent the injured party was compensated.



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### NEW YORK

NY CLS Work Comp § 29

Can Carrier Sue Third Party Directly? ..... Yes

Can Carrier Intervene? ..... Yes

What is the Statute of Limitations? ..... 3 years

#### Encapsulation of Pertinent Statutory Language

If the injured party accepts compensation but fails to commence an action against the third party with the appropriate time limit, then such failure shall operate as an assignment of the rights to the cause of action to the state or the state insurance fund if the state paid money into the injured party's compensation, if the state did not pay money then the failure to commence the action will then operate as an assignment of the rights to that cause of action to the employer or carrier.

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### NORTH CAROLINA

N.C. Gen. Stat. § 97-10.2

Can Carrier Sue Third Party Directly? ..... Yes, after 1 year, but prior to 60 days before expiration of statute of limitations

Can Carrier Intervene? ..... Yes

What is the Statute of Limitations? ..... 3 years

#### Encapsulation of Pertinent Statutory Language

If the injured party fails to make a settlement or commence an action within 12 months of the injury, then the employer shall have the right to proceed to enforce liability against a third party or effect a settlement as long as the employer has filed with the Industrial Commission a written admission of liability for the injured party. The employer must do this at least 60 days before the expiration of the statute of limitations or the rights to bring suit will revert back to the injured party.

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### NORTH DAKOTA

N.D. Cent. Code, § 65-01-09

Can Carrier Sue Third Party Directly? ..... Yes, after 60 days from injury

Can Carrier Intervene? ..... Yes

What is the Statute of Limitations? ..... 6 years

#### Encapsulation of Pertinent Statutory Language

Within sixty days after both the injured employee and the organization have declined to commence an action against a third person as provided above, the employer may bring the action in the employer's own name or in the name of the employee, or both, and in trust for the organization and for the employee.

# State-by-State Subrogation Rights

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## OHIO

**ORC Ann. 4123.931**

Can Carrier Sue Third Party Directly? .....Yes

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....2 years

### Encapsulation of Pertinent Statutory Language

The right of subrogation is automatic. The employer or carrier can join in on the action against the third party or commence their own action against the third party. The net amount recovered by the injured party is the subrogee's right of recovery.

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## OKLAHOMA

**85A Okl. St. § 43**

Can Carrier Sue Third Party Directly? .....Yes

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....2 years

### Encapsulation of Pertinent Statutory Language

An employer or carrier liable for compensation for the injured party shall have the right to maintain an action in tort against any third party responsible for the injury. However, the employer/carrier shall notify the injured party of their entitlement to bring their own suit. The employer or carrier liable for compensation shall also be entitled to maintain a third party action against the employer's uninsured motorist coverage.

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## OREGON

**ORS § 656.593**

Can Carrier Sue Third Party Directly?.....Yes, after 90 days

Can Carrier Intervene? .....No

What is the Statute of Limitations? .....2 years

### Encapsulation of Pertinent Statutory Language

The carrier is entitled to notice of a claim or a suit and the proceeds of any damages recovered from an employer or third person by the worker or beneficiaries. Any action or settlement against a third party shall be subject to a lien of the paying agency for its share of the proceeds.

## State-by-State Subrogation Rights

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### PENNSYLVANIA

77 P.S. § 671

Can Carrier Sue Third Party Directly? .....No

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....2 years

#### Encapsulation of Pertinent Statutory Language

When a compensable injury is caused in whole or in part by the negligence of a third party, the employer is subrogated the right of the injured party against the third party to the extent of the compensation payable to the injured party.

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### RHODE ISLAND

R.I. Gen. Laws § 28-35-58

Can Carrier Sue Third Party Directly? .....Yes, if employee or employee representative fails to bring suit within two (2) years and eight (8) months after the injury

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....3 years

#### Encapsulation of Pertinent Statutory Language

If the injured party fails to commence suit against the third party within two years and eight months after the injury, the employer or the employer's carrier may proceed with an action themselves and shall be subrogated to the rights of the injured employee, but the employer or the employer's carrier must notify the injured party of their intent to bring a suit at least six months (26 weeks) prior to the expiration of the two- year-and-eight-month timeframe referenced above. The failure of the injured party to bring suit within that two-year-eight-month timeframe will operate as an assignment of the right of action to the employer or the employer's carrier.

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### SOUTH CAROLINA

S.C. Code Ann. § 42-1-560

Can Carrier Sue Third Party Directly? .....Yes, after 1 year

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....3 years

#### Encapsulation of Pertinent Statutory Language

The carrier shall have a lien on the proceeds of any recovery by the injured party from the third party either as a judgment, settlement or otherwise. If one year passes since the injury and the injured party has not brought suit, then the right to bring suit is assigned to the carrier as long as the carrier commences suit at least 30 days before the statute of limitations runs.

# State-by-State Subrogation Rights

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## SOUTH DAKOTA

S.D. Codified Laws § 62-4-38 through 62-4-40

Can Carrier Sue Third Party Directly? .....Yes

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....3 years

### Encapsulation of Pertinent Statutory Language

If compensation has been awarded and paid under this title and the employee has recovered damages from another person, the employer having paid the compensation may recover from the employee an amount equal to the amount of compensation paid by the employer to the employee, less the necessary and reasonable expense of collecting the same.

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## TENNESSEE

Tenn. Code Ann. § 50-6-112

Can Carrier Sue Third Party Directly? .....Yes, after one (1) year

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....1 year, but Carrier gets additional 6 months to file

### Encapsulation of Pertinent Statutory Language

In the event that the injured party receives compensation, the employer and the carrier shall have a subrogation lien against the recovery, and the employer may intervene in any action to protect and enforce the lien. Failure on the part of the injured party to bring an action within one year shall operate as an assignment to the employer of the right to the cause of action against the third party, but the employer will then only have six months to commence the suit after it has been assigned to them.

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## TEXAS

Tex. Lab. Code. § 417.001

Can Carrier Sue Third Party Directly? .....Yes

Can Carrier Intervene?.....Yes

What is the Statute of Limitations? .....2 years

### Encapsulation of Pertinent Statutory Language

If the injury party claims the benefit and receives compensation, the insurance carrier is subrogated the rights of the injured party and may enforce the liability of the third party in a cause of action. The subrogation rights are limited to the amount of the total benefits paid.

## State-by-State Subrogation Rights

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### UTAH

Utah Code Ann. § 34A-2-106

Can Carrier Sue Third Party Directly? ..... Yes

Can Carrier Intervene? ..... Yes

What is the Statute of Limitations? ..... 4 years

#### Encapsulation of Pertinent Statutory Language

If compensation is claimed and the employer or insurance carrier becomes obligated to pay compensation, the employer or insurance carrier shall become trustee of the cause of action against the third party; and may bring and maintain the action either in its own name or in the name of the injured employee, or the personal representatives of the deceased.

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### VERMONT

21 V.S.A. § 624

Can Carrier Sue Third Party Directly? ..... Yes, after 1 year

Can Carrier Intervene? ..... Yes

What is the Statute of Limitations? ..... 3 years

#### Encapsulation of Pertinent Statutory Language

If the injured employee or the employee's personal representative does not commence the action within one year after the occurrence of the personal injury, then the employer or its insurance carrier may, within the period of time for the commencement of actions prescribed by statute, enforce the liability of the third party in the name of the injured employee or the employee's personal representative. Any party must provide notice by registered mail to any other party involved about the suit not less than 30 days before the commencement of the suit.

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### VIRGINIA

Va. Code Ann. § 65.2-309

Can Carrier Sue Third Party Directly? ..... Yes

Can Carrier Intervene? ..... Yes

What is the Statute of Limitations? ..... 2 years

#### Encapsulation of Pertinent Statutory Language

Any worker's compensation claim against an employer on the behalf of an injured party creates a lien on behalf of the employer against any verdict or settlement arising from any right to recover by the injured party. Such employer shall also be subrogated any right and may enforce, in their name or in the injured party's name, the legal liability against the third party.

# State-by-State Subrogation Rights

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### WASHINGTON

Rev. Code Wash. (ARCW) § 51.24.030 and § 51.24.050

Can Carrier Sue Third Party Directly? ..... Yes

Can Carrier Intervene? ..... Yes

What is the Statute of Limitations? ..... 3 years

#### Encapsulation of Pertinent Statutory Language

The injured party must give notice to the state or to the insurance carrier for action taken. The carrier then must file a notice of statutory interest in recovery. The carrier may then intervene as a party in the action to protect its statutory interest in recovery. An election by the injured party to not proceed against the third party operates as an assignment of the cause of action to the insurance carrier.

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### WEST VIRGINIA

W. Va. Code § 23-2A-1

Can Carrier Sue Third Party Directly? ..... Undecided

Can Carrier Intervene? ..... Yes

What is the Statute of Limitations? ..... 2 years

#### Encapsulation of Pertinent Statutory Language

In the event that an injured worker, his or her dependents or personal representative makes a claim against a third party, there shall be a statutory subrogation lien upon the moneys received which shall exist in favor of the Insurance Commissioner, private carrier or self-insured employer, whichever is applicable.

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### WISCONSIN

Wis. Stat. § 102.29

Can Carrier Sue Third Party Directly? ..... Yes

Can Carrier Intervene? ..... Yes

What is the Statute of Limitations? ..... 3 years

#### Encapsulation of Pertinent Statutory Language

An employer or compensation insurer that has paid or is obligated to pay a lawful claim under this chapter shall have the same right to make claim or maintain an action in tort against any other party for such injury or death. However, each shall give to the other reasonable notice and opportunity to join in the making of such claim or the instituting of an action and to be represented by counsel.

## State-by-State Subrogation Rights

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### WYOMING

Wyo. Stat. § 27-14-105

Can Carrier Sue Third Party Directly? ..... Yes

Can Carrier Intervene? ..... Yes

What is the Statute of Limitations? ..... 4 years

#### Encapsulation of Pertinent Statutory Language

The department or employer shall have an additional six (6) month limitation period beyond the date on which the employee or his estate is barred under the statute of limitations from commencing a claim for personal injury or wrongful death, in which to commence such an action on behalf of the employee or his estate. Very state oriented statute but it appears the carrier has rights to intervene in suit and conduct own suit against third party.