

Third Party Liability



Statutory Basis

- The “subrogation” process for the Federal Employees’ Compensation Act (FECA) is set out in 5 U.S.C. 8131 and 8132.
- Under 5 U.S.C. 8131, a claimant may be required to pursue a recovery for damages against a third party. The same is also true of a beneficiary in a death case. In most cases this is done by filing a lawsuit or contacting an insurer.
 - In certain limited circumstances, the claimant may be released from this requirement to pursue a recovery.



Third Party Defined

When a federal employee is injured in the performance of duty and that injury places legal liability on a person or organization other than the United States, this person or organization is referred to as a “third party” or “responsible third party.”



Statutory Basis

- Under 5 U.S.C. 8132, there is a “statutory right of reimbursement” which mandates that beneficiaries who obtain a recovery from a third party action, such as an insurance recovery or a lawsuit, are required to reimburse monies to the United States for benefits paid. This section establishes the reimbursement formula, which is the basis for the Statement of Recovery (SOR).
- The entire recovery in the third party action is included in the formula calculating the refund due, regardless of the elements of damages.
 - This requirement can never be waived.
 - Note: Many attorneys representing claimants in third party cases use the common law term “lien” rather than “reimbursement.” However, both terms refer to essentially the same responsibilities under 5 U.S.C. 8132 requirements.

Third Party Terminology

- SUBROGATION = The process of transferring the right to receive payment of a debt owed (damages for the accident) from one party (the claimant) to another (the United States).
- DISBURSEMENTS = The total funds paid out by OWCP, except payments to the District Medical Advisor for paper review not involving schedule award calculations. Continuation of Pay is not included because it is not “compensation.”
- REFUND = The amount owed for FECA benefits that have been paid based on the calculation in the Statement of Recovery.
- SURPLUS = After calculating the refund, any amount of the recovery still remaining. The surplus is applied to future FECA benefits and typically occurs when the recovery is significantly greater than the amount of disbursements.



Third Party Terminology

- TORT = A civil wrong or wrongful act, whether intentional or accidental, from which injury occurs to another (e.g., motor vehicle accident).
- SOLICITOR'S OFFICE (SOL) = The legal office for the U.S. Department of Labor (DOL).
 - SOL will communicate with attorneys to make sure that the U.S. government receives what is due.
 - All cases over \$1500 are referred to SOL by claims examiners.
 - All asbestos claims are handled by SOL in Washington, D.C.
 - Any case where attorney or claimant has questions about subrogation should be referred to SOL.
- CONSORTIUM = The legal right of husband and wife to companionship.
 - Loss of consortium sometimes can be claimed by a family member.
 - SOL will work this out in accordance with state law(s).

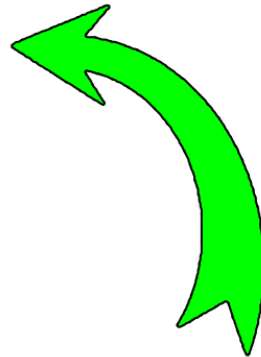
Importance to Employing Agency

- Money refunded to the Office of Workers' Compensation Programs (OWCP) is credited to an employing agency's (EA) chargeback, which reduces EA's cost.
- If the settlement is significantly larger than the disbursements paid in the case, then future benefits are paid from the surplus, not by OWCP, which saves money.



Importance to OWCP

- The claimant is required to pursue damages.
- Injured workers (IW) are required to report any settlements obtained from the third party.
- Benefits can be suspended if claimant does not pursue damages or fails to report them.
- A portion of any settlement obtained must be refunded to OWCP.



Settlements

- The U.S. government cannot waive or compromise any part of its statutory right of reimbursement.
- However, one should be aware that the formula set forth in 5 U.S.C. 8132 creates a considerable reduction in the amount to be refunded by the FECA beneficiary and/or credited against future FECA benefits.
 - The claimant is entitled to retain a minimum of twenty percent of the tort recovery after expenses of suit are deducted.
 - A portion of the recovery may be allocated for loss of consortium for the spouse of an injured employee (with supporting documentation).

Typical Third Party Cases

- **Automobile accident**

- If the claimant is solely at fault, it is not a third party case.
- If another government vehicle is at fault, generally it is not a third party case because the United States cannot sue itself.
- Third party driver should be identified on Form CA-1; check “yes” for “Was injury caused by a third party” on Box 30 of the CA-1. Include as much information as you can.

- **Airline/Airport Accident**

- Remember that vehicles and equipment owned by airlines can cause injuries and the airline would be the third party. For example, the claimant is hit by an airport vehicle or falls in an airport bathroom.



Typical Third Party Cases

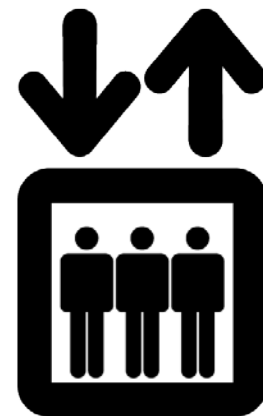
- **A plane crash or train accident**

- If a federal employee traveling in a common transit carrier – such as an airplane or train – while in the performance of his or her assigned duties (including travel for temporary duty (TDY)) is involved in an accident of this type, it constitutes a third party case.
- Liability may be assigned to one or more parties, such as the carrier company or the individual operator. If the plane or train malfunctions, the manufacturer or a subsidiary may be liable for damages.



Typical Third Party Cases

- **Malfunctioning Elevator** - For example, if an elevator has not been properly serviced/maintained and does not stop evenly with the floor or suddenly drops several floors causing injury to a federal employee, the manufacturer and/or the service/maintenance company may be held liable for the employee's injuries.
- **Product Liability** (e.g., defective chair) – For example, if a federal employee sits in a chair, the chair breaks and the employee is injured, the chair may have been defective, and if so, there is third party liability.
 - Still check “Yes” on Box 30 and provide as much information as possible, even “chair manufacturer” or “faulty chair” if no more information is known.



Typical Third Party Cases

- **Negligent Building /Premises Maintenance**
 - Third party can be held liable for accidents (even in federal buildings where building is maintained by a contractor):
 - Wet surfaces
 - Cleaning materials
 - Construction sites
 - Falling tiles
 - Other unsafe conditions caused by a party other than the U.S. government



Typical Third Party Cases

- **Asbestos Cases**

- These are ALWAYS third party claims.
- Often there are multiple third party companies and more than one settlement is not unusual.



Typical Third Party Cases

- **Medical Malpractice**

- If OWCP approved surgery, appliance, and/or treatment with a physician, and physician (hospital, etc...) is negligent, then the claimant is obligated to advise OWCP of any settlement or other legal action.
- Only disbursements occurring on/after the date of the malpractice are included in the total disbursements for third party purposes (this is a manual calculation performed by SOL).



Typical Third Party Cases

- **Dog Bites**



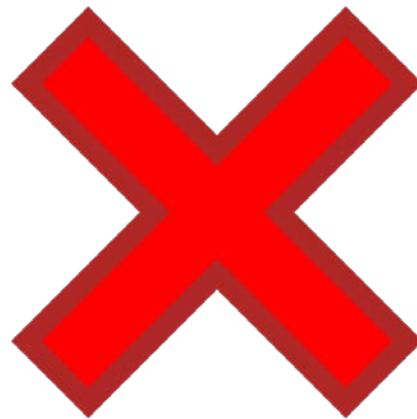
- These are most frequently USPS cases.
- Some dog bite cases do not result in third party actions.
 - Dog bites from stray animals have no third party potential. If the owner cannot be located, no settlement can be obtained.
 - Animal bites are typically minor open-wound injuries, and closed as No-Time-Lost during case create.
- Only if the case is reopened from a closed status due to lost time, medical treatment is provided exceeding \$1500 in bills, or some other reason, then the case will be developed for third party involvement.
- Provide the dog owner's information on the CA-1; as much information as possible.
- When in doubt, refer the case to SOL.

Special Case: Census

- Census enumerators may not reveal the name or address of anyone from whom they collect information to any other agency.
- It has been determined that OWCP claims staff should not pursue the third party aspect of a claim for injury or death filed by an enumerator or field representative of the Bureau of Census IF the circumstances would reveal the name or address of the party from whom they collect information.
 - EX: Slip and fall on homeowners property; bit by homeowner's dog.
 - Confidentiality guaranteed by law (FECA PM 2-1100-7.a.3; FECA Bulletin 99-30)
- In these situations, Bureau of Census cannot provide DOL with the name of the third party.
- This is void if the resident deliberately harmed the enumerator.
- Also may pursue third party cases where the accident happened off specific premises (ex: car accident going from one home to another).

Types of Cases that are NOT Third Party Cases

There are several similar types of cases where another party may be involved, but the case would not be classified as a third party case. The following examples are generally not considered third party cases by OWCP:



If a federal employee is injured on the premises but not in the performance of duty, is this a Third Party case?

- No, this is not covered under the FECA.
- If the claim is not accepted, OWCP does not pursue any third party settlement.

If two federal employees collide while driving government vehicles, is this a Third Party case?

- This can be complicated because it depends on the duty status of the employees. Unless it is clear that both employees were working, referral to SOL is suggested.
- When two or more U.S. government employees are involved in an accident involving a third party, the cases must be referred to SOL (required by FECA Procedure Manual).

If a claimant is solely at fault in a vehicle accident, is this a Third Party case?

- No, if the claimant is sole party at fault, state so on the CA-1.
- If it is merely an accident and, for example, a government driver hits a patch of ice and slides into a ditch, there are usually no negligent third parties.
- Similarly, another example, if a U.S. Forest Service employee performing duties on an ATV, hits a rock and falls off the trail, there are typically no other liable parties.

If one employee attacks another, is this considered a Third Party case?

- Again, this situation is complicated. State as many facts on the CA-1 as possible regarding the circumstances and parties involved.
- There can be third party liability, but it must be reviewed. Referral to SOL is suggested.



If a claimant receives money from his/her own insurance company, does OWCP have a Third Party interest?

- No, the claimant is sometimes called the “first party” and OWCP has no right to these funds.
- This happens often in uninsured/underinsured motorist claims. Nothing is recovered from the third party, but the claimant recovers something from his/her own insurance company.

Unidentified Parties

- If no third party can be identified from the information on file, we cannot pursue the third party.
- It is best to include as much information regarding circumstances and parties involved on the CA-1.



If a prisoner/patient assaults a federal employee, is this a Third Party case?

- In situations such as when a prisoner or a patient assaults a federal employee, there is third party liability; however, whether the claimant will be released from the obligation to pursue damages under 8131 from a prisoner or patient is up to DOL.
- If damages are awarded, the injured worker will need to notify the relevant OWCP district office immediately.
 - In any case where damages are awarded, an SOR must be completed.

Review:

Which cases below are NOT likely to have “third party” potential?

- a) The claimant is hit by a car on a military base on his/her day off.
- b) The claimant sues a surgeon for malpractice and wins a settlement (OWCP paid for surgery).
- c) The claimant is assaulted by an unknown assailant while at work.
- d) The claimant runs their government vehicle into a telephone pole while intoxicated and no other cars are involved.
- e) The claimant’s injury is caused from repetitive motion while operating a piece of machinery.

*****In any instance, ONCE A CLAIMANT SUES A THIRD PARTY, THE MATTER MUST BE REFERRED TO SOL.**

Answer: a), c), d), e)

References

Federal Employees' Compensation Act

- 5 U.S.C. 8131
- 5 U.S.C. 8132

Title 20, Code of Federal Regulations, Employees' Benefits

- 20 CFR 10.705 - 10.719

FECA Procedure Manual

- 2-1100 FECA Third Party Subrogation Guidelines

Questions

A beneficiary who obtains a recovery from a third party action, such as a lawsuit, is required to reimburse monies to the United States for benefits paid.

- a) True
- b) False

Questions

Third party liability is important to both the employing agency (EA) and to OWCP for all the following reasons except:

- a) Money refunded to OWCP is credited to the EA chargeback, which reduces EA's costs.
- b) If the settlement is significantly larger than the disbursements paid in the case, then future benefits are paid from the surplus.
- c) A portion of the settlement obtained must be refunded to OWCP.
- d) Benefits can be suspended if claimant does not pursue damages or fails to report them.
- e) Pursuing a third party liability claim is not important to OWCP or EA

Questions

The following are all examples of types of third party cases except:

- a) A malfunctioning elevator
- b) An automobile accident when another government vehicle is at fault
- c) A train wreck or plane crash while traveling in the performance of duty
- d) Asbestos cases

Take Away Tips

- 1) When a federal employee is injured in the performance of duty and that injury places legal liability on a person or organization other than the federal government, this person or organization is referred to as a “third party” or “responsible third party.”
- 2) A claimant may be required to pursue a recovery for damages against a third party. The same is also true of a beneficiary in a death case.
- 3) Money refunded to the Office of Workers’ Compensation Programs (OWCP) is credited to an employing agency’s (EA) chargeback, which reduces EA’s cost.
- 4) The claimant is entitled to retain a minimum of twenty percent of the tort recovery after expenses of suit are deducted.