

Cherokee Nation Code Annotated

Title 85: Workers' Compensation

Chapter 1: General Provisions

§ 26. Claims against third persons

Cite as: 85 CNCA § 26

A. Where the compensable injury is caused in whole or in part by the act or omission of a third party, the employer shall be subrogated to the right of the employee against such third party to the extent of the compensation payable under this act by the employer;

B. Reasonable attorney fees and other proper disbursements incurred in obtaining a recovery or in effecting a compromise settlement shall be prorated between the employer and employee. The employer shall pay that proportion of the attorney fees and other proper disbursements that the amount of compensation paid or payable at the time of recovery or settlement bears to the total recovery or settlement.

C. Any recovery against such third person in excess of the compensation theretofore paid by the employer shall be paid forthwith to the employee, and, adding reasonable interest, shall be treated as an advance payment by the employer on account of any future installments of compensation.

D. If the claimant entitled to compensation under this Title does not pursue a remedy against such other person by instituting an action within six (6) months after the cause of action accrues, the employer shall be subrogated to the rights of the employee to maintain the action against such third party, and may recover damages for the injury to the same extent that the employee might.

E. Compromise of any claim by the claimant at an amount less than the compensation paid shall be made only with written approval of the employer.

F. The employee, employer, and carrier have a duty to cooperate with each other in investigating and prosecuting claims and potential claims against third-party tortfeasors by producing nonprivileged evidence and allowing inspection of premises, but only to the extent necessary for such purpose. Unless previously public information, such documents and the results of such inspections are confidential and exempt from the provisions of the Freedom of Information Act and shall not be used or disclosed for any other purpose.

Historical Data

LA 08–04, eff. April 21, 2004. Amended LA 31–05, eff. October 16, 2005; LA 21–06, eff. October 19, 2006; LA 20–10, eff. August 15, 2010.