

Pennsylvania Supreme Court Declares Future Credit on Medical Benefits Dead

Robert Caplan
The Subrogation Strategist
6.25.18

On June 19, 2018, the Pennsylvania Supreme Court decided *Whitmoyer v. WCAB (Mountain Country Meats)*, No. 52 MAP 2017, 2018 Pa. Lexis 2995. The decision reversed longstanding Pennsylvania law and the Commonwealth Court's decision. **The net result of this decision: an insurer can no longer assert a future credit on projected medical benefit payments when settling a third-party case.** However, insurers may continue to assert a future credit on indemnity payments.

In *Whitmoyer*, Craig Whitmoyer sustained injuries in a work-related accident. Thereafter, he filed both a workers' compensation claim and a third-party lawsuit. Whitmoyer settled the indemnity portion of his workers' compensation claim, but the medical benefits portion remained open. Whitmoyer filed the required LIBC-380, also known as the Third Party Settlement Agreement (TPSA), once the third-party case settled. The TPSA asserted the workers' compensation insurer's future credit on Whitmoyer's medical benefits. Whitmoyer challenged the insurer's assertion of a future credit for reimbursement of future medical bills, contending that this was not an "installment payment" under Pennsylvania's Workers' Compensation Act (WCA). The Commonwealth Court agreed with the insurer and Whitmoyer appealed to the Supreme Court.

The Supreme Court found that Section 319 of the WCA only permits a credit on "future installment payments" for quantifiable indemnity payments and not on anticipated medical bills that are both unknown and may never be paid.

What Does the *Whitmoyer* Decision Mean for Insurers?

Insurers must take great care in properly setting medical reserves before third-party claims are settled because there is no longer a right to claim a future credit for medical bills paid after a third-party settlement is finalized. Global resolution of all claims should be considered prior to the resolution of any third-party claim. This proactive approach may allow insurers to regain the leverage lost by the *Whitmoyer* decision by reducing the reserved cost of future medical bills to a sum certain prior to global resolution. While this may result in higher initial workers' compensation payments, it may, ultimately, produce higher subrogation recoveries. This, along with other alternative strategies, including leaving medical benefits open, must be carefully evaluated and negotiated on a case-by-case basis as there are risks associated with these strategies.

This correspondence should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only and you are urged to consult a lawyer concerning your own situation and legal questions.

