



# CLIENT NEWSLETTER



THE LAW OFFICE OF RICKY D. GREEN, PLLC

March 30, 2012

Dear Reader:

*The Courts of Appeals have been active in issuing opinions on subrogation cases. Since our law firm handles subrogation, we closely monitor cases to stay on top of trends to determine how they impact insurance carriers. Some of the most recent, important cases involving subrogation were decided in the Amarillo Court of Appeals and the San Antonio Court of Appeals.*

In *City of Lubbock v. Payne and KCCC Properties* decided by the Amarillo Court of Appeals on June 17, 2011, Jarrod Pierson, a City of Lubbock police officer, was injured in the course and scope of employment while chasing a suspect through an apartment complex. Ponderosa Apartments placed a cable in an area to prevent cars from entering into a particular area, and Officer Pierson fell over the cable and sustained injuries. The City of Lubbock paid workers' compensation benefits. Officer Pierson filed a lawsuit against Ponderosa, and the City of Lubbock intervened in the lawsuit. The day before trial, Officer Pierson non-suited the lawsuit with prejudice against Ponderosa Apartments, and was able to get the City of Lubbock's subrogation claim dismissed with prejudice also. The City of Lubbock appealed the case to the Amarillo Court of Appeals, arguing that it still has a subrogation interest that had not been satisfied. The Amarillo Court of Appeals reversed the trial court's dismissal of the City's claim and remanded the case back to the trial court to basically re-instate the City's claim. The most important part of this Court of Appeals decision was that (1) once the City of Lubbock paid comp benefits to Pierson, the City owned at least part of the cause of action against Ponderosa Apartments which Officer Pierson could not dismiss, and (2) Pierson knew the City had a subrogation interest and could not claim lack of notice of the subrogation lien. **IMPORTANT TIP FROM CASE.**

**Always send notice of the subrogation lien to every party involved a case, including the claimant, the claimant's attorney, the third party insurance carrier, or any other party involved in the case.**



*Continued...*

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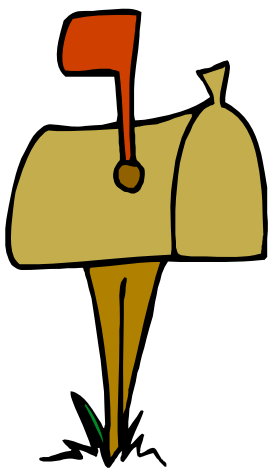
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In *Morales v. Michelin North America* decided by the San Antonio Court of Appeals on August 3, 2011, Bairon Morales and Rodolfo Regalado worked for K & K Repair Service. On the day of injury, Regalado was driving a company truck and Morales was a passenger when a rear tire blew out and the truck rolled over, causing injuries. Texas Mutual Insurance paid comp benefits to Morales in the amount of \$177,729.31. Morales sued Michelin North America, the tire manufacturer; Discount Tire Company, the tire seller; K & K Repair Service, his employer; and Rodolfo Regalado, the driver. Texas Mutual intervened to assert its subrogation rights, and Morales nonsuited K & K Repair Service and Rodolfo Regalado. Morales settled the case with Michelin and Discount Tire for \$375,000.00. Texas Mutual moved for summary judgment to recover the comp lien of \$177,729.31. The trial court granted Texas Mutual's summary judgment that it is entitled to reimbursement of \$177,729.31 minus one-third for attorney fees. The Court of Appeals discussed Texas Labor Code Section 417 (the subrogation statute) in detail, stating that the plaintiff's attorney is entitled to attorney fees from Texas Mutual's recovery since Texas Mutual did not have an attorney who "actively represented" its interests. The Court of Appeals stated that "active representation" occurs when the representing attorney takes steps to prosecute the case for the comp carrier, such as serving discovery requests, preparing and delivering discovery products, deposing witnesses, hiring experts, participating in hearings, preparing the charge, negotiating the settlement, and similar actions. The Court of Appeals declined to consider the plaintiff's argument that Texas Mutual's recovery should be further reduced based on the employer's percentage of responsibility.



If you have any questions on these two cases or any other Court of Appeals, Texas Supreme Court or appeals panel case, please email or call our law firm anytime to discuss. If you would like legal representation on your subrogation claim, our law firm would be more than happy to represent your interest or give you legal guidance if you do not need legal representation.



**QUESTIONS? COMMENTS?** Have questions or comments about any of the stories in the newsletter or general questions about a workers' compensation matter? Drop us a line at [questions@rickyvgreen.com](mailto:questions@rickyvgreen.com), or give us a call at (512) 280-0055. We look forward to handling all of your workers' compensation needs.

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