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IN the last issue of this publication, we discussed in this column some important guidelines for workers who are injured on the job. For many injured workers, the receipt of workers' compensation benefits is their sole remedy under the law. Although the workers' compensation laws differ depending upon whether an injury occurs in Maryland, Virginia, or the District of Columbia, the types of benefits that can be obtained are similar. Generally speaking, these benefits include a portion of your lost earnings, payment of related medical expenses, and in some cases, additional compensation in the event of a permanent injury.

In many cases involving minor injuries, this compensation may be sufficient. However, when a more serious injury is involved, the benefits that someone may be entitled to under our workers' compensation laws may not fully compensate him for the full effects of a work injury.

Why is this the case? In many instances, the failure of the workers' compensation system to fairly compensate an injured worker can be attributed to one key difference between workers' compensation claims and other types of personal injury claims: the fact that workers' compensation laws generally do not compensate an injured worker for his or her past or future pain and suffering.

For example, some of you may have been involved in an automobile accident where the other driver was at fault. In that case, as long as you can prove that the other driver was "negligent," pain and suffering compensation can be obtained in addition to compensation for lost earnings and medical expenses. In a workers' compensation case, however, the law does not allow a negligence claim to be brought against an employer. Rather, the only claim that can be brought is one for workers' compensation benefits.

The advantage to the workers' compensation system is that a worker does not need to prove that his employer was at fault in order to obtain benefits; on the other hand the amount of benefits to which he may be entitled may be less than in a general negligence claim where pain and suffering damages may be awarded.

But what about those situations where someone is injured on the job and the injury was severe enough such that there was significant pain and suffering? A prime example of this is a Local 26 worker who may have been injured on a construction project. While oftentimes these injuries are relatively minor and not long lasting, this certainly is not always the case. In my practice, I have unfortunately seen many union construction workers who have sustained injuries that have been so severe that workers' compensation laws alone do not fully compensate them for what they have been through and what they may have to live with in the future.

Fortunately, in some of these cases, we are able to "have our cake and eat it too." What I mean by this is that even though a worker injured on a construction site cannot sue his employer for negligence, in certain cases he may be able to file a negligence claim against a "third party" who may have been responsible for the work accident.

As an example, I recently represented a union construction worker who was injured when he was struck in the head and neck by construction debris that was being tossed off a building by employees of another contractor on the site. Because these employees were not employed by the same company as my client, we were able to bring a negligence claim against that company *in addition to* the workers' compensation claim brought against my client's employer. Since my client had sustained significant injuries, and had substantial

Injured at Work?

You May Be Entitled to More Than Workers' Compensation Benefits.

pain and suffering, I was able to obtain for him much more meaningful compensation than I would have been able to obtain with just a workers' compensation claim alone.

It is important to note that the laws regarding these "third-party" construction claims are very complicated and vary significantly depending upon whether an injury occurs in Maryland, Virginia, or the District of Columbia. Also, in certain circumstances, claims against other contractors cannot be brought even though an injured worker may not be a direct employee of that contractor. To complicate matters further, the laws pertaining to a negligent general contractor on a construction site are often different than those pertaining to a negligent subcontractor. Finally, third-party claims are not limited to negligence claims against other contractors on a construction site; any responsible party, other than an employer, may have liability depending upon the circumstances.

Because of the complexity of these laws, it is important to contact a lawyer to investigate this issue as soon as possible after the accident occurs, while the memory of witnesses is fresh and so that all filing deadlines can be met. Additionally, when a third-party negligence claim is filed, an employer who has paid workers' compensation benefits may have a "lien" (an entitlement to reimbursement) on any benefits obtained in the negligence case, and you will want to hire a lawyer who is experienced in handling these complex scenarios.

My firm specializes in these types of claims and we would be happy to discuss this with you should you have the misfortune of sustaining an on-the-job injury.

Please feel free to contact me or any of our other construction accident specialists at (202) 659-5500. You may also email me directly at dschloss@koonz.com.