

DII Industries, LLC Asbestos PI Trust

TRUST UPDATE – August 29, 2013

OHIO WORKER'S COMPENSATION NOTICE: The Ohio Bureau of Worker's Compensation ("Bureau") has put the Trust on notice that settlements made by the Trust are considered payments to claimants for which the Bureau may be entitled to recover. (See attached notice.) Since the Trust is unable to determine whether an individual Halliburton or Harbison-Walker claimant ever claimed or received benefits from the Bureau in connection with alleged asbestos exposure, it undertook the identification of potential claimants with an Ohio relationship and has placed a hold on these claims. This hold does not prevent a claim from being processed, however, it will prevent an offer or payment from being made until such time as the Trust is able to put measures in place to both protect and indemnify the Trust from any action taken by the Ohio Bureau of Worker's Compensation.

The Trust plans to seek consent from the Trust Advisory Committee and Legal Representative to update its form release. If the proposed form release is approved, it will then be updated in Trust Online after which the hold can be removed from all claims. Further updates will be provided by the Trust as it continues to address and resolve this matter.



**Bureau of Workers'
Compensation**

30 W. Spring St.
Columbus, OH 43215-2256

Governor **John R. Kasich**
Administrator/CEO **Stephen Buehrer**

ohiobwc.com
1-800-OHIOBWC

April 22, 2013

DII Asbestos Trust
7557 Rambler, Suite 100
Dallas, Texas 75231

Re: Asbestos Trust Settlement Distributions

Dear Sir or Madam,

When workers' compensation benefits are paid pursuant to R.C. 4121 and 4123, the Ohio Bureau of Workers' Compensation (BWC) or a self insured employer become a statutory subrogee pursuant to R.C. 4123.93 and R.C. 4123.931. The BWC or a self insured employer, as statutory subrogee, has an independent right of recovery against any third party for compensation and medical benefits paid on a claimant's behalf. The subrogation statute is designed to permit the BWC or the self-insured employer to be reimbursed out of any recovery that the claimant may obtain from any third party (ies) responsible for causing injury.

R.C. 4123.93(A) defines a claimant as a person who is eligible to receive workers' compensation benefits in the form of compensation, medical benefits, or death benefits. R.C. 4123.93(C) defines a third party as "an individual, private insurer, public or private entity, or public or private program that is or may be liable to make payments to a person without regard to any statutory duty contained in this chapter or Chapter 4121, 4127, or 4131 of the Revised Code." Your trust clearly fits the definition of a third party under R.C. 4123.93(C). Thus, you are subject to joint and several liability under R.C. 4123.931(G) should your trust not include the BWC in asbestos trust litigation settlements including wrongful death settlements involving a claimant.

R.C. 4123.931(G) mandates that if a third party and a claimant enter into a settlement and exclude the BWC from the settlement, the third party and the claimant shall be jointly and severally liable for the full amount of the subrogation interest. Stated more simply, if the BWC's subrogation lien is ignored or otherwise not honored, the full amount of the lien (the paid-to-date amount plus future benefits) will become due and owing regardless of the amount of the underlying asbestos settlement. In a case decided on December 18, 2008 by the Ohio Court of Appeals, Tenth Appellate District, *Ohio Bur. of Workers' Comp. v. Williams*, 2008-Ohio-6685, the Court affirmed the proposition that if a settlement excludes the BWC's interest, the third party and the claimant are jointly and severally liable for the full amount of the subrogation interest because they failed to follow the procedures set forth in R.C. 4123.931(G).

More recently, in *In Re Estate of Ray Blackburn, Case No. 525999*, decided by the Franklin County Probate Court on March 9, 2012, the Court held that the decedent's widow was receiving workers' compensation death benefits and, therefore, she is a claimant as defined under R.C. 4123.93. Because proceeds of a wrongful death settlement do not belong to the estate but to the beneficiaries (*See* R.C. 2125.03(A)), the BWC has a subrogation interest in wrongful death settlement funds received by the decedent's widow. Therefore, finding jurisdiction in R.C. 4123.931(J), the Court found that any settlement funds received by the decedent's widow by virtue of wrongful death claims automatically triggered the obligation of the claimant **and any third party disbursing wrongful death settlement funds** to reimburse the BWC.

In *Ohio Bur. of Workers' Comp. v. McKinley* (2011), 130 Ohio St.3d 156, 2011-Ohio-4432, the Ohio Supreme Court held that BWC has six (6) years to bring an action against the claimant and third-party(ies) who exclude the BWC from settlement pursuant to R.C. 4123.931. It is the claimant's responsibility to notify the Ohio Attorney General and the BWC of the identity of third parties against whom they may have a claim.

Although we are not required to do so, we wanted to formally put you on notice that many of the settlements being made from the DII Asbestos Trust are payments to claimants. Accordingly, and in light of applicable Ohio law, we recommend that you do not make asbestos settlement disbursements without first notifying BWC and the Ohio Attorney General of the pending disbursements so that BWC may assert its subrogation lien and fully participate in the division of the proceeds.

BWC should be notified when the trust applications are initially filed with your office. After notice is received, BWC will assert its subrogation lien (if this has not already been done) and can provide documentation of our subrogation interest upon request. Prior to disbursement of any settlement proceeds, contact should be made with BWC so that the subrogation lien can be properly determined in accordance with R.C. 4123.931. Once a subrogation settlement amount is determined, BWC will forward a settlement agreement to you.

We recommend that you send notice of all asbestos trust settlements, including potential wrongful death settlements in state fund workers' compensation claims to the following:

Administrator of the State of Ohio,
Bureau of Workers' Compensation
C/o Legal Subrogation Unit
30 West Spring Street, 26th Floor
Columbus, Ohio 43215

Office of the Ohio Attorney General
Collections Enforcement
150 East Gay Street 21st Floor
Columbus, Ohio 43215

Please note that the statute requires that you provide notice directly to self insured employers of any potential third party recovery. As such, when a subrogation matter involves a self insured employer, please contact the self insured employer directly.

Our offices will strive to provide you with a prompt response and will work with all parties to reach an amicable resolution. Thank you for your time and consideration in this matter. Should you have any questions, please do not hesitate to contact Ellen Wentzel, Legal Counsel, BWC Subrogation Unit at (614) 466-0501 or Ellen.Wentzel@ohiobwc.com.

Sincerely,

A handwritten signature in black ink that reads "Steph Buehrer". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Stephen Buehrer, Administrator/CEO
Ohio Bureau of Workers' Compensation