



# WALLACE · KLOR · MANN CAPENER & BISHOP, P.C.

## Washington Court of Appeals: Self-Insured Employers May Recover Noneconomic Damages Under the IIA's Third Party Action Statute.



October 19, 2016

By Lawrence Mann, Samrach Sar

### Overview

The Washington Court of Appeals in *Cornelio Carrera v. Sunheaven Farms*, issued a decision ruling that the [Department as an injured worker's statutory assignee, could seek and](#)

[recover noneconomic damages in a third party action](#) against the defendant farming conglomerate and associated entities, but it may not retain them and must disburse them through the distribution formula prescribed by the statute. The Court also held that the Department's action was not statutorily time barred because when it seeks noneconomic damages in an assigned third party action, it does so in part on behalf of the State and is, therefore, not subject to any statute of limitations.

### Background

The injured worker sustained injuries, while working on a conveyor belt. The injured worker was employed by Brent Hartley Farms. Brent Hartley Farms is a constituent of the farming conglomerate, Sunheaven's Farms. Sunheaven contracted to provide safety compliance services at the farm but was not the injured worker's direct

employer. There were allegations that the injured worker had not been properly trained to operate the machine, and the machine's safety features did not meet state standards. The injured worker brought a negligence suit against his employer that was dismissed because such claims are not allowed under the Industrial Insurance Act (IIA). The Department was notified of the suit after the dismissal and identified Sunheaven and other entities as potential third party defendants subject to suit under the IIA's third party action statutes. The injured worker failed to elect to pursue the third-party action, and by operation of law the action was assigned to the Department.



Approximately, four years after the date of injury, the Department chose to prosecute the assigned action, and filed an amended complaint against Sunheaven, Brent Hartley Farms and others, asserting negligence claims and seeking both economic and noneconomic damages. Sunheaven asserted an affirmative defense

claiming that a statutory three-year statute of limitations period had run; and that applicable statutes allowed the Department to pursue the injured worker's claims to recover only the amount it had paid for workers' compensation benefits to the injured worker. The lower court granted summary judgment in favor of the Defendants, barring the Department from seeking noneconomic damages and limiting economic damages to the amounts Department paid or would pay in benefits. The Department appealed the lower court's decision.

The Court of Appeals reversed the lower court's decision, first holding that the Department may seek and recover, but may not retain, noneconomic damages in an assigned third party action. Instead, it must disburse those damages through the distribution formula prescribed by statute. Second, the court held that when the Department is assigned in a third party action, it is essentially acting on behalf of the State and is, therefore, not subject to any statute of limitations.

### Impact

The impact that this decision has on self-insured employers is momentous, in terms of recovering noneconomic damages in assigned third-party actions. This decision applies to the self-insured employer because, under the language of RCW 51.24.050(1), along with the Department--self-

insured employers have the right to bring the suit in the injured worker's name or compromise the claim as it sees fit. Thus, under this holding, the self-insured employer may recover noneconomic damages; and cannot retain them; but rather distribute them based on the statutory distribution scheme. Furthermore, for the Department, this case asserts and reinforces the basic principle of sovereign immunity that state agencies enjoy in our legal system.



Wallace Klor Mann Capener & Bishop, PC

---

### Washington

4200 Two Union Square  
601 Union Street  
Seattle, WA 98101-4000  
P: 206.652.3265  
F: 206.652.3205

### Oregon

5800 Meadows Road  
Suite 220  
Lake Oswego, OR 97035  
P: 503.224.8949  
F: 503.224.0410

### California

2033 Gateway Place  
Suite 500  
San Jose, CA 95110  
P: 408.467.3845  
F: 503.224.0410