

## **THIRD PARTY ELECTION – IMPORTANT INFORMATION**

(Please read before responding to the enclosed election letter)

### **INTRODUCTION**

You are receiving this information because your workplace injury or illness may have been caused by a third party. A third party is typically someone other than your employer or a co-worker. Some examples of third parties:

- the driver of the car that hit you;
- a manufacturer of the defective product that injured you;
- injury caused by an employee from another employer;
- a property owner who failed to properly maintain the building where you were working when you were hurt;
- the owner of an animal that bit you.

### **LEGAL REPRESENTATION**

The “third party” process is complex. It is very important that you understand your rights and responsibilities. **It is strongly recommended that you seek the advice of an attorney before taking any action or signing any document.** You may locate an attorney for a free consultation using the yellow pages, internet, or Oregon State Bar ([www.oregonstatebar.org](http://www.oregonstatebar.org)).

If you obtain an attorney, the attorney’s fee will be paid from any money you obtain from the third party. Therefore, you are not directly responsible for attorney fees. However, you may be responsible for some litigation costs incurred in pursuing your case; e.g., expert’s fees; court fees, service fees, investigation costs, etc.

### **NOTICE OF ELECTION**

The workers’ compensation insurer processing your claim has the right to require you to decide whether you want to take legal action against the third party yourself or if you want to assign the right to take action to the workers’ compensation insurer.

The ‘election letter’ from your workers’ compensation insurer will provide you 60 days to make an election decision. If you do not timely respond, the right to take action against the third party will be automatically assigned to the workers’ compensation insurer by operation of law. This means that the workers’ compensation insurer shall assume your rights to pursue the cause of action against the third party.

Your decision to elect to take action yourself, or assign the right to the insurer has no impact on your workers’ compensation benefits. However, it can have a significant affect on your share of any third party recovery.

### **Option A: TAKE ACTION YOURSELF**

If you decide to take action yourself, or with your own attorney:

1. You must timely inform the workers' compensation insurer that you are electing to take action.
2. You must file a cause of action with the appropriate civil court within the time period prescribed by the workers' compensation insurer.  
(Typically, it must be at least 90 days from the date you informed them that you were electing to take action yourself. You may be responsible for legal costs; e.g., court fees, investigation expenses, expert witness fees, litigation costs, etc.)
3. If you receive a settlement offer, you must notify the workers' compensation insurer.  
(Without the insurer's approval, the settlement is not valid. If the insurer does not approve the settlement, you have the right to request the Workers' Compensation Board to resolve the conflict.)

#### **Distribution of Money from the "Third Party" – If you Prevail:**

- Costs and attorney fees as stated in your attorney retainer agreement. The maximum attorney fee may not exceed 33-1/3 percent of the third party recovery, unless the Board finds "extraordinary circumstances" justifying a larger attorney fee.
- You will receive at least 1/3 of the balance, after costs and attorney fees.
- By statute, the workers' compensation insurer will receive a portion of the remaining balance of the recovery. Generally, this portion will be an amount consistent with the insurer's actual claim costs it has already paid and its reasonably expected future claim costs, to the extent that such funds can be recovered from the remaining balance of the recovery from the third party. If there is a dispute, you can ask the Board to resolve the conflict.
- You will receive any remaining balance.

### **Option B: ASSIGN ACTION TO THE INSURER**

If you decide that you do not want to take action yourself (or your cause of action has been deemed assigned to the workers' compensation insurer because you did not timely respond to the insurer's "notice of election" letter or you did not timely file a cause of action against the "third party"), the workers' compensation insurer becomes responsible for the cause of action. In doing so, the insurer has several options:

1. The insurer may decide to NOT take any action.
2. The insurer may settle the action without your approval.
3. The insurer may or may not pursue a third party recovery on your behalf.

#### **Distribution of Money from the "Third Party" – If the Insurer Prevails:**

- You are not guaranteed any portion of any proceeds.
- You will only receive a portion if the settlement amount exceeds the insurer's legal and claim costs (actual costs already paid, plus any reasonable expectation of future costs and benefits).
- It is very possible you will not receive any share of the insurer's proceeds.

## **PURPOSE OF THIS DOCUMENT**

This document is accompanying a “third party election” letter in which you are asked to either exercise your right to initiate a cause of action against a “third party” or to assign that cause of action to the workers’ compensation insurer. This summary provides you with information regarding the “third party election/assignment” process, and the recovery/distribution procedures that may arise from an “election/assignment” decision.

Should any dispute occur during these procedures, such matters may be directed to the Workers’ Compensation Board at 2601 25<sup>th</sup> St. SE, Ste. 150, Salem, OR 97302.

## **KNOW YOUR RIGHTS**

This summary is only an overview. If you have more specific questions, you may contact the Ombuds Office for Oregon Workers toll-free at 1-800-927-1271.

As discussed in the “Legal Representation” section above, **you are encouraged to seek legal representation.** You may locate an attorney for a free consultation using the yellow pages, internet, or Oregon State Bar ([www.oregonstatebar.org](http://www.oregonstatebar.org)).