

MAINE STATE LEGISLATURE

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August 27, 1956

To Paul A. MacDonald, Deputy Secretary of State
Re: Subrogation under Financial Responsibility Law

. . . After examining your file 60619, Operator, John Cost, Auburn, it appears that your action to date has been proper and legal in sight of the facts furnished you. Your law was correct upon the facts furnished.

However, while you have not yet been furnished proof of the fact, subrogation had taken place in accordance with Section 25 of Chapter 31, R. S. 1954, before the attempted assignment was made by Mr. Samson. The attempted assignment was made on April 30, 1956, on a form sent earlier from your office. I am advised by the Industrial Accident Commission that an agreement for compensation signed by Mr. Samson was approved by the Labor Department on January 23, 1956. As a matter of law, that date was when subrogation took place. Thereafter the City of Auburn alone, and not Mr. Samson, had any right to settle the case by such a release.

While other cases cited and quoted in the Statutes at Chapter 21, Section 25, are helpful, the case of Creamer v. Lott, 124 Me. 118, recites:

"Proof that the employer did in fact pay compensation, whether voluntarily or not, falls short of the necessary condition precedent under which this action may be maintained. . .

"It is only when the injured employee claims compensation under the act, and the same is awarded, and the employer has paid the compensation or has become liable therefor, that the employer succeeds to the rights of the injured employee to recover damages against the other person."

In this case that happened on January 23, 1956, before the attempted assignment. Counsel wants opportunity to present the fact of this subrogation before the attempted assignment. He has represented that the assignment is worthless, and it appears proper that he be allowed to present the facts in regard to subrogation or no subrogation, since in fact only the record kept in the office of the Industrial Accident Commission will show the truth of the matter.

When an injured employee elects to take compensation, as this employee did, the doctrine of subrogation arises and he no longer has claim against the third person. Both the election and the doctrine relate back to when the injury was done.

Neal A. Donahue
Assistant Attorney General