

## See, Richard

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### THIRD PARTY ACTIONS (RCW 51.24)

#### Settlement for nuisance value

Where a third party action settles for "nuisance value", the recovery is subject to Department's statutory lien. ...*In re Richard See, BIIA Dec., 90 0943 (1991)* [Editor's Note: Because action was for medical malpractice, the Department has a lien arguably only to the extent the malpractice caused further payment of benefits.]

Scroll down for order.



1 to further reassess the potential compromise of that lien with due consideration of recent appellate  
2 court decisions, and to take further action as indicated by the law and facts.  
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4 The sole issue presented by this appeal is whether the Department of Labor and Industries is  
5 entitled to maintain a lien pursuant to RCW 51.24 against a recovery in a third party action brought by  
6 a claimant when, as here, the settlement was for "nuisance value" only and the claimant was unable to  
7 sustain his burden of proof in his medical negligence allegation. The Proposed Decision and Order  
8 went considerably beyond this sole issue framed by the parties on which the stipulated statement of  
9 facts was based.  
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13 Our State has long recognized the exclusivity of the industrial insurance act with respect to  
14 injuries occurring in the work place. All civil actions and civil causes of actions for such personal  
15 injuries have been abolished, except as provided in Title 51. RCW51.04.010; RCW 51.32.010. The  
16 right to sue third parties is a purely statutory right and it is within the power of the legislature to limit  
17 that right. RCW 51.24.030 authorizes injured workers to seek damages for injuries which were  
18 negligently caused by third parties not in the same employ. Any such recovery by the worker is  
19 subject to the distribution requirements of RCW 51.24.060. Bankhead v. Aztec Construction, 48  
20 Wn.App. 102, 105, 737 P.2d 1291, (1987). Since Mr. See was dependent upon RCW 51.24.030 to  
21 even maintain the third-party action, he is also subject to the requirements of RCW 51.24.060, which  
22 requires that "any recovery shall" be distributed.  
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28 The statute does not make exception for a third-party suit which settles for so-called "nuisance  
29 value." Had Mr. See not been permitted by RCW 51.24.030 to file the lawsuit, even the "nuisance  
30 value" would not have been recovered. "Nuisance value" comes within the "any recovery" language of  
31 RCW 51.24.060. It is therefore subject to the Department's statutory lien, and we so hold.  
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34 After a careful review of the entire record before us, we are convinced that the order of the  
35 Department dated November 2, 1989 is supported by the stipulated statement of facts and is correct  
36 as a matter of law. There being no contested issues of fact, no formal Findings of Fact need be  
37 entered. RCW 51.52.106.  
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1 The order of the Department of Labor and Industries dated November 2, 1989 which ordered  
2 distribution of the claimant's third party recovery in the sum of \$25,000.00 and which made demand for  
3 reimbursement by the claimant to the Department in the amount \$8,296.53 and which further declared  
4 a statutory lien in the sum of \$27,655.20, is correct and is hereby affirmed.  
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7 It is so ORDERED.

8 Dated this 6<sup>th</sup> day of August, 1991.  
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10 BOARD OF INDUSTRIAL INSURANCE APPEALS  
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12  
13 /s/  
14 FRANK E. FENNERTY, JR. Member  
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16  
17 /s/  
18 PHILLIP T. BORK Member  
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