Will Workers' Comp Take Part of My Construction Accident Settlement in New York?

What Happens to the Money After a Construction Injury Lawsuit Settles

New York construction accident cases often involve two separate paths to compensation. Workers' compensation pays medical bills and part of lost wages after a jobsite injury, no matter who caused the accident. In addition, a lawsuit against an owner, contractor, or another company (known as a third party) can provide additional money for pain and suffering.

What many injured workers don't realize is that these two paths can overlap. If a construction accident lawsuit settles, state law allows the workers' compensation insurance company to recover part of what it paid, a right to repayment called a lien. Mistakes about the insurance company's rights can be costly and hard to undo once a settlement check is divided.

The New York construction accident lawyers at Pasternack Tilker Ziegler Walsh Stanton & Romano, LLP handle both the workers' comp claim and the injury lawsuit in these cases. Knowing the rules on liens, legal fees, and consent can help you protect more of your recovery.

What to Know Before You Settle

- **The Insurance Company Has a Lien** – The workers' compensation insurance company can be repaid from a lawsuit settlement for the benefits it paid.
- **The Insurance Company Shares Legal Fees** – It must pay its fair share of the lawyer's fees and costs that produced the settlement.
- **Future Benefits Can Pause** – After a settlement, weekly checks may stop until they would have added up to the worker's share of the money.
- **Approval Comes First** – Get the insurance company's written approval, or a judge's approval, before settling the lawsuit.
- **Missing a Step Is Costly** – Settling without that approval can cost an injured worker future workers' compensation benefits.

Why Do Construction Workers Have Both a Comp Claim and a Lawsuit?

In New York, you generally can't sue your own employer for a work injury, and workers' compensation coverage is the trade-off. But if someone other than your employer caused your injury, you can sue that person or business. Such at-fault parties can include the property owner, a general contractor, or the maker of defective equipment.

Two state laws make these lawsuits especially valuable. Labor Law Section 240, often called the Scaffold Law, covers many falls from heights and injuries from falling objects. It holds property owners and contractors responsible for those hazards.

Labor Law Section 241(6) requires owners and contractors to follow specific state safety rules. Because these laws put the responsibility on owners and contractors, the lawsuits can lead to large settlements.

A lawsuit settlement raises a question many injured workers never expect. The workers' compensation insurance company that paid their benefits has a right to be repaid from that money. Workers can still sue a third party while collecting benefits, but the insurance company's claim affects how much of the settlement they actually take home.

What Is a Workers' Comp Lien on a Construction Settlement?

A lien is a legal right to be paid back, much like an IOU attached to an injured worker's settlement. Under Workers' Compensation Law Section 29, the workers' compensation insurance company has a right to recover compensation it paid from what the injured worker receives from a third party. The insurance company is repaid before the worker gets the rest of the money.

Say the insurance company paid a worker $80,000 in weekly wage benefits and covered $70,000 in medical bills. When the case settles or ends in a verdict, it can ask for up to $150,000 of that money. It isn't a separate bill the worker pays out of pocket, and the repayment shrinks by the insurance company's share of the legal fees.

The law also requires written notice when the lawsuit is filed. Within 30 days, the employer, the insurance company, and the chair of the Workers' Compensation Board must be told. That way, everyone with a stake in the money knows about the case early, well before it settles or goes to trial.

Does the Insurance Company Have to Pay Part of the Legal Fees?

Yes. The insurance company gets repaid only because the worker's lawyer won the case, so it must help pay for that work. Under Section 29, a judge can split the lawyer's fees and other costs fairly between the two sides. That keeps the worker from paying the full cost of a recovery that benefits both of them.

New York's highest court, the Court of Appeals, set the basic formula in a 1983 case, *Matter of Kelly v State Insurance Fund*. The insurance company pays the same share of costs that the worker does. If fees and costs took one-third of the settlement, the insurance company's repayment shrinks by one-third.

A settlement can also save the insurance company money later, since it may not have to pay future benefits for a while. In 2007, the Court of Appeals ruled in *Burns v Varriale* that it must share legal costs on those savings, too. These calculations get complicated, so the numbers deserve a close look before anyone signs.

Example of How a Construction Settlement Gets Divided

Here's how the math might look. An ironworker in Brooklyn falls from an unsecured beam and sues the general contractor under Labor Law 240, and the contractor agrees to pay him $900,000 to settle the case. The workers' compensation insurance company paid $150,000 in wage benefits and medical bills, and the lawyer's fees and costs total $300,000:

- **Fees and Costs** – $300,000 is one-third of the $900,000 settlement.
- **Insurance Company's Share of Fees** – One-third of the $150,000 it's owed is $50,000.
- **Amount Repaid to the Insurance Company** – $150,000 minus $50,000 leaves $100,000.
- **What the Worker Keeps** – $900,000 minus $300,000 and $100,000 leaves $500,000.

Without the fee-sharing rule, the insurance company would collect the full $150,000, and the worker would keep only $450,000. Real cases often have more moving parts, including future benefits and ongoing medical care. That's why the final numbers in a real case may look very different from this example.

What Happens to Future Workers' Comp Benefits After a Settlement?

A settlement can affect workers' compensation benefits that haven't yet been paid. Under Section 29, the insurance company can count the worker's share of the settlement against future benefits. This means regular workers' compensation checks can stop until the skipped benefits add up to that amount, a period lawyers often call a "payment holiday."

In the example above, the ironworker keeps $500,000. If his weekly benefit would be $1,000, the insurance company can stop paying until it has skipped $500,000 in checks. Future medical bills can count toward that amount, too. After that, benefits can start again if he still qualifies.

The insurance company still has to share legal costs during that holiday. Under *Burns*, it pays its share a little at a time, so with fees at one-third, the ironworker might still get about $333 a week. In some cases, such as death benefits or a schedule loss of use award, where future benefits can be valued up front, courts can set that share at settlement.

Do You Need the Insurance Company's Approval to Settle?

Yes, and skipping this step can be costly. Section 29 requires the insurance company's written approval before a worker settles for less than the benefits it owes, and courts have gone further, requiring approval before any settlement of the lawsuit. Without that approval, or a judge's approval, a worker can lose future workers' compensation benefits.

What if the insurance company refuses or doesn't respond? The worker can ask the judge handling the lawsuit to approve the settlement instead, since a judge's approval takes the place of the insurance company's consent. The judge can also split the legal fees fairly if the insurance company won't agree to pay its share.

Timing matters. A worker who settles without the insurance company's consent should ask a judge for approval within three months. Later requests are possible but harder, because the worker must show the settlement was fair, the delay wasn't the worker's fault, and the insurance company wasn't harmed. A 2023 appeals court decision, *Matter of Delessio v York Risk Servs. Group, Inc.*, applied that test.

Your Situation	What It Means for Workers' Comp Benefits
Insurance company approves the settlement in writing	Future benefits are protected, though checks may pause for a time
Insurance company refuses or doesn't respond	Ask the judge in the lawsuit to approve the settlement
Settled without approval less than three months ago	Ask a judge for approval right away
Settled without approval more than three months ago	Must show the settlement was fair, the delay wasn't the worker's fault, and the insurance company wasn't harmed
No insurance company or judge's approval	Future workers' compensation benefits can be cut off

Protecting Your Settlement With a New York Construction Accident Lawyer

A construction accident settlement may be the largest amount of money an injured worker ever receives. Liens, fee sharing, payment holidays, and approval rules all affect how much of it the worker keeps. Each step has deadlines and paperwork, and one mistake can cost an injured worker benefits for years.

For more than 90 years, Pasternack Tilker Ziegler Walsh Stanton & Romano, LLP has represented New Yorkers hurt on the job. Our lawyers can handle your workers' compensation claim and your injury lawsuit together, so lien and consent issues are addressed before you sign anything. Our goal is to protect as much of your recovery as the law allows.

If you were hurt on a construction site in New York, contact us to learn more about your legal rights and options. Bring any letters from the workers' compensation insurance company, along with paperwork from your lawsuit. We'll review where things stand and explain what the insurance company can and can't take.