

NO. 93799-1

SUPREME COURT OF THE STATE OF WASHINGTON

BASILIO CORNELIO CARRERA,

Appellant,

v.

SUNHEAVEN FARMS; SUNHEAVEN  
FARMS, LLC; BRENT SCHULTHIES,

Respondents.

ERRATA SHEET AND  
CORRECTED  
SUPPLEMENTAL  
BRIEF OF  
DEPARTMENT OF  
LABOR &  
INDUSTRIES

The Department of Labor & Industries filed its Supplemental Brief on April 7, 2017. Since the time of filing, the Department has learned that the brief misstates the law in Washington about subrogation and misstates the holding in *State v. Cowlitz County*, 146 Wash. 305, 307, 311, 262 P. 977 (1928).

The Department makes the following changes to its brief:

- **On page 15-16 the following paragraph says:**

The formula in RCW 51.24.050 is a change from the original statute and it evidences the right to seek all damages, beyond the Department's reimbursement amount. In dicta, the *Cowlitz* Court interpreted the original version of the third party statute to mean that the Department could seek only the amount it paid. *See State v. Cowlitz Cty.*, 146 Wash. 305, 307, 311, 262 P. 977 (1928); Laws of 1911, ch. 74, § 3 (definition of "workman"). It was described as a subrogation right. *Carrera*, 196 Wn. App. at 258. But now, although analogous, subrogation principles do not apply because they are equitable principles and do not apply to limit a statutory right to recovery. *See Rhoad v. McLean*

*Trucking Co.*, 102 Wn.2d 422, 427, 686 P.2d 483 (1984). The Legislature has made express that it is not a subrogation scheme and now provides the distribution formula in RCW 51.24.050 that shows no intent to limit the Department to what it may seek to what it has paid. Laws of 1977, 1st Ex. Sess., ch. 85, § 3. This change in the law does not take away benefit from the State as Sunheaven posits, instead it shows that the Legislature provided more benefit to the State by taking away any suggestion of a subrogation right.

- **The interlineated version of the revised paragraph at 15-16 says:**

~~The formula in RCW 51.24.050 is a change from the original statute and it evidences the right to seek all damages, beyond the Department's reimbursement amount. Under the original and amended RCW 51.24.050, the Department has always had the right to seek all damages, beyond the Department's reimbursement amount. In dicta, the Cowlitz Court interpreted the original version of the third party statute to mean that the Department could seek only the amount it paid only had a subrogation right. See *State v. Cowlitz Cty.*, 146 Wash. 305, 307, 311, 262 P. 977 (1928); Laws of 1911, ch. 74, § 3 (definition of "workman"). It was described as a subrogation right. *Carrera*, 196 Wn. App. at 258. Under subrogation principles, the general rule is that, while an insurer is entitled to be reimbursed to the extent that payment is recovered, it can recover from the wrongdoer only the excess "remaining after the insured is fully compensated for his loss." *Thiringer v. Am. Motors Ins. Co.*, 91 Wn.2d 215, 219, 588 P.2d 191 (1978). But now, although analogous, subrogation principles do not apply because they are equitable principles and do not apply to limit a statutory right to recovery. See *Rhoad v. McLean Trucking Co.*, 102 Wn.2d 422, 427, 686 P.2d 483 (1984). The Legislature created a statutory right to recovery under RCW 51.24.050 and the distribution formula there shows intent to allow the Department to seek and recover damages beyond the amount the Department has paid. Laws of 1977,~~

1st Ex. Sess., ch. 85, § 3.<sup>1</sup> ~~This change in the law does not take away benefit from the State as Sunheaven posits, instead it shows that the Legislature provided more benefit to the State by taking away any suggestion of a subrogation right.~~

- **The final version at 15-16 says:**

Under the original and amended RCW 51.24.050, the Department has always had the right to seek all damages, beyond the Department's reimbursement amount. In dicta, the *Cowlitz* Court interpreted the original version of the third party statute to mean that the Department only had a subrogation right. *See State v. Cowlitz Cty.*, 146 Wash. 305, 307, 311, 262 P. 977 (1928). Under subrogation principles, the general rule is that, while an insurer is entitled to be reimbursed to the extent that payment is recovered, it can recover from the wrongdoer only the excess "remaining after the insured is fully compensated for his loss." *Thiringer v. Am. Motors Ins. Co.*, 91 Wn.2d 215, 219, 588 P.2d 191 (1978). But, although analogous, subrogation principles do not apply to limit a statutory right to recovery. *See Rhoad v. McLean Trucking Co.*, 102 Wn.2d 422, 427, 686 P.2d 483 (1984). The Legislature created a statutory right to recovery under RCW 51.24.050 and the distribution formula there shows intent to allow the Department to seek and recover damages beyond the amount the Department has paid. Laws of 1977, 1st Ex. Sess., ch. 85, § 3.<sup>2</sup>

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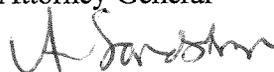
<sup>1</sup> As a practical matter, the Department did not interpret the original RCW 51.24.050 as creating a subrogation right. Before the amendments in 1977, it would reimburse itself and then pay the remainder to the worker. Senate Bill Report on S.B. 2154, 45th Leg. 1st Ex. Sess. (Wash. 1977). The 1977 bill had three effects. First, it gave the worker a guaranteed 25 percent share. Second, it maintained the Department's ability to seek all damages in a third party suit and not just seek benefits paid. And finally, it eliminated any suggestion that subrogation principles applied under *Cowlitz County*.

<sup>2</sup> As a practical matter, the Department did not interpret the original RCW 51.24.050 as creating a subrogation right. Before the amendments in 1977, it would reimburse itself and then pay the remainder to the worker. Senate Bill Report on S.B. 2154, 45th Leg. 1st Ex. Sess. (Wash. 1977). The 1977 bill had three effects. First, it gave the worker a guaranteed 25 percent share. Second, it maintained the Department's ability to seek all damages in a third party suit and not just seek benefits paid. And finally, it eliminated any suggestion that subrogation principles applied under *Cowlitz County*.

The table of authorities and footnote numbers were updated to reflect the changes. The Department's corrected Supplemental Brief is enclosed and will be served on all parties.

DATED this 1<sup>st</sup> day of May, 2017.

ROBERT W. FERGUSON  
Attorney General



Anastasia Sandstrom  
Senior Counsel  
WSBA No. 24163  
Office Id. No. 91018  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
(206) 464-7740

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CERTIFICATE OF  
SERVICE

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, she caused to be served the Department's Supplemental Brief (Corrected), Errata Sheet and Corrected Supplemental Brief, and this Certificate of Service in the below described manner:

**Via E-mail Filing to:**

Susan L. Carlson  
Supreme Court Clerk  
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[Supreme@courts.wa.gov](mailto:Supreme@courts.wa.gov)

**Via First Class United States Mail Postage Prepaid and Email to:**

S. Karen Bamberger  
Betts Patterson & Mines  
701 Pike Street, Suite 1400  
Seattle, WA 98101  
[kbamberger@bpmlaw.com](mailto:kbamberger@bpmlaw.com)

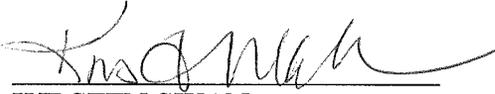
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Herbert Farber  
The Farber Law Group  
400 108<sup>th</sup> Avenue NE, Suite 500  
Bellevue, WA 98004  
[hgfarber@hgfarber.com](mailto:hgfarber@hgfarber.com)

Bryan Doran  
Doran Law, P.S.  
400 108<sup>th</sup> Avenue NE, Suite 500  
Bellevue, WA 98004  
[bryan@doran-law.com](mailto:bryan@doran-law.com)

Philip Talmadge  
Talmadge/Fitzpatrick/Tribe  
2775 Harbor Avenue SW, Suite C  
Third Floor  
Seattle, WA 98126  
[phil@tal-fitzlaw.com](mailto:phil@tal-fitzlaw.com)

DATED this 1st day of May, 2017.

  
KJRSTEN SWAN  
Legal Assistant