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An Act To Clarify Apportionment of Benefits for Multiple Work Injuries

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 39-A MRSA §354, sub-§3, as amended by PL 1999, c. 354, §9, is further amended to read:

3. Subrogation. Any insurer determined to be liable for benefits under subsection 2 must be subrogated to the employee's rights under this Act for all benefits the insurer has paid and for which another insurer may be liable. Apportionment decisions made under this subsection may not affect an employee's rights and benefits under this Act. ~~The board has jurisdiction over proceedings to determine the apportionment of liability among responsible insurers and there may be no reduction of an employee's benefits from:~~

A. Apportionment of benefits due for a prior settled injury; and

B. Apportionment of benefits due when an employee has multiple injuries resulting in permanent impairment under section 213, subsection 1-A and the permanent impairment rating from any one such injury, or a combination of permanent impairment from multiple injuries, is above the applicable threshold for one of the injuries, but one or more than one of the injuries has a permanent impairment rating below that injury's applicable threshold.

Notwithstanding section 213, subsection 1-A, paragraph B, this subsection applies to all injuries, regardless of the dates of the injuries.

Sec. 2. 39-A MRSA §354, sub-§5 is enacted to read:

5. Jurisdiction. The board has jurisdiction over proceedings to determine the apportionment of liability among responsible insurers.

SUMMARY

This bill is in response to the Maine Supreme Judicial Court's decision in *Legassie v. Securitas, Inc.*, 2008 ME 43, 944 A.2d 495. The decision in that case authorized a reduction to an injured worker's wage replacement and medical benefits because of a previously settled workers' compensation claim. This bill specifies that reducing an injured worker's benefits because of a prior settled injury is direct apportionment against the employee and is prohibited.

This bill also clarifies the applicability of the Maine Supreme Judicial Court's decision in *Cust v. University of Maine*, 2001 ME 29, 766 A.2d 566. This bill specifies that when an injured worker's permanent impairment rating under the Maine Revised Statutes, Title 39-A, section 213, subsection 1-A is above the applicable threshold on account of a single injury or the sum of multiple injuries, all of

the worker's weekly benefits under the Maine Workers' Compensation Act of 1992 are exempt from the durational limit of Title 39-A, section 213, subsection 1.

This bill also clarifies that Title 39-A, section 354 applies to all injuries no matter when the injury occurred.