

**OPINION
75-86**

April 9, 1975 (OPINION)

Mr. F. Gene Gruber:
State's Attorney
Bowman County
P.O. Box 996
Bowman, ND 58623

Dear Mr. Gruber:

This is in response to your letter of March 11, 1975, wherein you request an opinion of this office relative to Section 27-08.1-01 of the North Dakota Century Code, as amended. You submit the following question in your letter:

I hereby request an opinion on behalf of the County Justice of Bowman County in respect to the following question:

(N.D.C.C. 27-08.1-01 provides inter alia * * * no claim shall be filed by an assignee of that claim * * *.)

Does this mean that an insurance company which has subrogation rights cannot present that claim in small claims court even though they are within the statutory dollar amount for small claims court jurisdiction?

The basic question which is presented by your inquiry is whether the term "subrogee" is the same as or is synonymously incorporated in the term "assignee" as is used in the statute. We think not. The basic difference in the terms is that a "subrogee" is one who is by operation of law substituted for another while an "assignee" is one that has received something by virtue of a transfer of right or property. In this respect we would note that Black's Law Dictionary, Second Edition, defines "subrogation" as follows:

"SUBROGATION. The substitution of one thing for another, or of one person into the place of another with respect to rights, claims, or securities.

Subrogation denotes the putting a third person who has paid a debt in the place of the creditor to whom he has paid it, so as that he may exercise against the debtor all the rights which the creditor, if unpaid, might have done. (Emphasis supplied)

A subrogee is, of course, the recipient of the rights subject to subrogation.

An assignment, however, is defined by Black's Law Dictionary, Second Edition, as follows:

ASSIGNMENT. The act by which one person transfers to another, or causes to vest in that other, the whole of the right, interest, or property which he has in any realty or personalty, in possession or in action, or any share, interest, or

subsidiary estate therein. (Emphasis supplied)

An assignee is, of course, the recipient of the rights transferred by the assignment.

As the statute employs the term "assignee", we can only conclude that the restriction is limited to those claims which have been the subject of voluntary transfer and apparently was inserted to avoid the "buying of claims" and utilizing the Small Claims Court provisions for the collection of claims so purchased. Such would not appear to be the case in the instance wherein a party is subrogated to a claim since the primary claimant has been satisfied and the liability of the subrogated party generally exists prior to the payment giving rise to the subrogation rights in the form of secondary liability. In the instance of an assignment, there would appear to be no exposure to liability of the assignee prior to the transfer upon which the claim rights exist.

Accordingly, and in direct response to your question, we are of the opinion that a party who is subrogated to the rights of a possible claimant does not come within the restriction in Section 27-08.1-01 of the North Dakota Century Code, as amended, which provides that "
* * *No claim shall be filed by an assignee of that claim."

It would appear that the rights of a possible claimant, however, who or which has been subrogated to the rights of the original claimant, would need bring the action in the name of the original claimant pursuant to the rights established by the subrogation.

We trust that the foregoing observations, comments and expressions will adequately set forth the opinion of this office upon the issue presented by your letter of inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General