



2023 Workers' Compensation Seminar

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Getting Across the Finish Line

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SETTLEMENTS

- Not included in statutory provisions of workers' compensation law
- No mechanism to force either party to settle
- Lifelong claims
 - indemnity benefits
 - medical expenses
 - dependents' benefits

REASONS A CLAIMANT MAY SEEK TO PURSUE A SETTLEMENT

- Medical treatment has concluded
- New job
- Moving out of state
- Financial issues
- Desire to put the workers' compensation claim behind him/her

REASONS FOR AN INSURER TO PURSUE A SETTLEMENT

- Allows for allocation of resources to other claims
- Reduces the inventory of open claims
- To obtain advantageous financial terms
- To resolve contested claims prudently
- To reduce to certainty a potentially large exposure of long duration

EMPLOYERS' CONSIDERATIONS WHEN DECIDING WHETHER TO SETTLE A CLAIM

- Is the injured worker a valued employee?
- Work demands
- Employee morale
- Likelihood of re-injury
- Will the employee need to resign?
- Non-Disclosure Agreement
- Cost to keep the claim open
- Legal fees if the claim does not settle

TIMING: WHEN TO CONSIDER A SETTLEMENT

- Generally governed by the injured employee's medical status
- Has the injured employee reached maximum medical improvement?
- Is the injured employee about to bring a claim for a second injury?
- Injured employee has quit/resigned and obtained other employment

CONSIDERATIONS FOR VALUING A CLAIM

- **Claimant**
 - current medical status
 - current work capabilities
 - future disability related to workers' compensation injury (e.g. how much time I will miss from work in the future as a result of my injury?)
 - likely progression of injury (e.g., work-related spinal fusion, likelihood of adjacent disc disease)
 - future medical expenses
 - emotional overlay

- **Respondent**
 - Value of indemnity and medical benefits paid to date
 - PPD rating obtained, paid
 - Current benefits owed
 - Future indemnity benefits (TT/TPD/PPD)
 - Future medical benefits
 - Subrogation
 - MSA required?
 - Liens

CHECKLIST OF LIENS

- Group health insurance payments
- Medicare conditional payments
- Support orders
- Incarceration liens
- Short-term and long-term disability benefits paid
- ERISA/Union Health reimbursement

BASIC QUESTION: WHAT IS THE COMBINED
VALUE OF LIKELY FUTURE INDEMNITY
BENEFITS AND FUTURE MEDICAL EXPENSES
UNDER THE STATUTORY SCHEME?



CASE STUDY #1

Joe Smith, 45 years old, sustains a non-displaced fracture to his master arm in a slip and fall incident at work. He is placed in a brace for 6 weeks, and then attends 8 weeks of physical therapy. He was also diagnosed as having a cervical strain, which required 10 weeks of PT. Joe was totally disabled for 4 weeks, and was then released to light duty for 6 weeks, but the employer could not accommodate his restrictions. His base compensation rate is \$640.00. He is subsequently rated with a 10% permanency to master arm (\$13,312.00), and a 7% permanency to his neck (\$5,241.60). The medical benefits paid on the claim total \$7,000.00. When Joe is released to full duty work he decides he wants to settle his claim. What is the value of his claim?



CASE STUDY #2

Jane Smith, 62 years old, suffers a herniated disc as a result of a lifting incident at work. Due to the resulting back pain with radiculopathy, she is placed on total disability status while she undergoes conservative treatment. She ultimately requires surgery consisting of a discectomy and fusion at L5-S1. Following surgery she continues to experience leg pain and weakness. When Jane is 6 months post-op her leg gives out, causing her to fall and tear her rotator cuff. She requires surgery to repair her shoulder, but subsequently develops a frozen surgery which requires manipulation under anesthesia. Jane also re-injured her back in the fall, and an MRI shows a disc bulge at L4-5. She receives total disability benefits for 14 months post-incident at a rate of \$640/wk. Jane is rated with a 20% permanency for both her back (\$47,872.00) and shoulder (\$26,624.00) injuries. The medical benefits paid on the claim total \$80,000.00. Jane decides that she can no longer perform her job and wants to settle her claim. What is the settlement value of her claim?

TYPES OF SETTLEMENT

- Full and Final Settlement
- Accepted claims
- Denied claims
- Stipulation to Date
- Indemnity only settlement
- Medical only settlement

NEGOTIATING A SETTLEMENT



Negotiation
[ni-,gō-shē-'ā-shən]

A strategic discussion that resolves an issue in a way that both parties find acceptable.

 Investopedia

STEPS IN NEGOTIATING A SETTLEMENT



PREPARATION: KNOW YOUR CASE

- Injured worker's date of birth
- Occupation
- Job duties
- Date of injury
- Body part(s) injured
- Compensable injuries
- Medical treatment received
- Time missed from work
- Permanency rating(s)
- Current work capacity
- Indemnity benefits paid to date
- Medical benefits paid to date
- Anticipated future medical care



The Daily Utah Chronicle

Who makes the
first move???

REQUEST A DEMAND

- Lump sum v. line item allocations

ANALYZE THE FACTS

- Conduct a forensic review of the demand
- Check for accuracy on facts asserted (*e.g.*, master v. non-master arm)
- Example: do the allocations for future medical expenses exceed the benefits paid during the acute phase of the injury?



MAKING AN OFFER

- Know your opponent
- Memorialize the offer in writing
- Engage in good faith negotiations
- Leverage your strengths

OPTIONS WHEN SETTLEMENT NEGOTIATIONS FAIL

- Judicial conference
- Mediation
 - mandatory in some jurisdictions

CROSSING THE FINISH LINE

ORDER APPROVING SETTLEMENT

- Settlements must be approved by a judge
- Injured worker must be present at the hearing when the settlement is approved to ensure that s/he understands the ramifications of resolving the claim

POST SETTLEMENT

- Settlement proceeds must be disbursed within statutorily mandate time period
- Stiff penalties associated with the delay in receipt of settlement monies
- Confirm address where settlement check will be sent
- Consider sending settlement proceeds via certified mail, FedEx, etc.

EFFECT OF APPROVED SETTLEMENT

- Dismisses the claim with prejudice
- Limited right to re-open a claim
- may be subject to a statute of limitations
- fraud, mutual mistake, mistake of fact
- burden of proof is on the moving party to re-open the stipulation



