

There are 3 ways in which to resolve a Workers Compensation Case

1. Stipulation -

a. both sides agree as to the level of permanent disability based upon the medical reports available.

b. disability payments are bi-weekly till entire amount is paid in full, less 15% attorney fees

c. future medical treatment is left open as to the injured body parts only.

d. Generally if you are still employed with the same employer, Stipulation is your only choice.

2. Compromise and Release (C and R)

a. A total settlement value of the case is negotiated by your attorney and the defense attorney. this settlement value is based upon the level of permanent disability as per the medical reports and an estimated value of future medical care which will be paid in one lump sum to the injured worker, less any permanent disability advances (monies paid during the period you were made permanent and stationary and the settlement pay off date) less 15% attorney fees.

b. This form of resolution will close the case forever. There will be no future medical care provided since you received compensation for this in your settlement.

c. The workers compensation judge needs to approve the settlement for adequacy and legality before it becomes final.

d. Please note... you will never receive enough money to adequately pay for an expensive surgery you may possibly need or want in the future. For example... if you may possibly need a knee replacement surgery, the thought process the insurance adjusters use is something like this.

If the Surgery and related costs is say \$100,000 and there is only a 25% chance you will need the surgery you may be offered an additional \$25,000 in your settlement for future medical care. Clearly there is never enough to ever pay for the surgery if you decide sometime in the future to have the surgery. My thinking is generally, if you know you are going to have the expensive surgery sooner or later, then have it sooner and let the insurance company pay

for it. Some clients know from the start they will never have the surgery and do not want to be operated upon... take the money.

Medicare Set Aside Trusts

Many times the insurance company will require Medicare approval under certain circumstances. If your case is one of those ... a company paid by the defense will review the medical records on the case and estimate the future cost of medical care that will be required to be set aside in a trust before Medicare will ever have to pay for your industrial injury. This proposal is then sent to an organization called C.M.S. which needs to approve the proposal before the case can be settled by Compromise and Release.

If you desire to be the trustee and have control over this money which is supposed to be used by you to pay for future medical expenses, you will have certain reporting requirements and bookkeeping functions to fulfill government requirements.

If yours is a case requiring a Medicare set-aside I will discuss this in greater detail with you personally.

3. Trial

a. When the insurance company will not make a reasonable settlement offer, we are left with only one alternative.. Trial. The thing to consider before this final option is what the result will be.

If we have medical reports which have a rating for example of 30% permanent disability, and the insurance company has reports giving the injured worker only 10% permanent disability and the compromise they are offering is only 20%, and the injured worker or his attorney refuse to accept that offer. Trial is ordered.

b. The judge will hear the evidence submitted by both sides. The evidence is generally the medical reports and the testimony of the injured worker.

c. The judge will not split the difference between the reports like King Solomon splitting the baby in the famous biblical story. It will either be the defense rating at 10% or our rating at 30%... period.

d. If you go to trial the award received is paid off over time like the stipulated settlement in number 1;

and like the stipulated settlement in number 1, the future medical care for the injured body parts is left open.

I can not make the choice for you. How to settle is your decision. Do you want a lump sum single check and close the future medical care for an agreed amount, then C and R is your only choice.

If your main concern is future medical care and you feel you will never again have insurance from any source to help with your medical care...then a stipulated settlement is your choice.

If you feel that the settlement offer is too low and you don't care about the risks of trial and don't need a lump sum check, then trial is your choice. .. I work for you... you need to tell me what you want to achieve

Peter M. Schaeffer