

LET'S MAKE A DEAL

**23rd Annual Pennsylvania Workers'
Compensation Conference**

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Contributors

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Mediation



Facts of the Case

Claimant is a 64-year-old female

- Employed as a housekeeper, Union member
- Experiences a slip and fall while cleaning a bathroom on August 28, 2023
- Injuries to left shoulder, head and knee – accepted by Carrier as left shoulder sprain/strain, left knee contusion and head contusion per NTCP for medical and wage loss
- AWW: \$762.48 Comp Rate: \$636.50/week

Facts of the Case

- Claimant undergoes an MRI which shows a chronic rotator cuff tear
- Injury mechanism aggravated the underlying shoulder condition, and treatment will address aggravation but not repair the rotator cuff
- Claimant will need either a rotator cuff repair (not likely to succeed) or a total shoulder replacement
- Carrier denies payment for surgery as not related to the work injury
- Claimant files a Review Petition to expand the injury description to include rotator cuff tear and/or aggravation of underlying chronic rotator cuff tear

Facts of the Case

- Claimant returned to work light duty without a wage loss
- Employer does not file a Notification of Suspension, but indicates light duty can no longer be accommodated – benefits reinstated
- Employer obtains full recovery opinion from sprain/strain/contusion injuries via IME – files Termination Petition
- Mandatory mediation conference scheduled between the parties

Settlement Factors



Settlement Factors

Things to Consider

Defense Counsel/Adjuster Considerations:

- Claimant's benefits status/pending petitions?
- Nature of the Injury?
- Average weekly wage and compensation rate?
- Claimant's age – Medicare/SS issues?
- Outstanding medical bills - how much if so?
- Third-party claims/lien potential?
- Child/spousal support Orders/arrears?

Settlement Factors

Things to Consider

Defense Counsel/Adjuster Considerations:

- IME opinion – full recovery or only work release (full or modified)?
- Job availability – can employer offer work or need LMS/EPA?
- Claimant's medical evidence and strength of respective opinions?
- Proclivities of WCJ on claim?
- Prospect of prevailing on pending or future litigation, exposure and costs associated with continuing litigation?

Settlement Factors

Things to Consider

Defense Counsel/Adjuster Considerations:

- Medical Cost Projection and amount of same/annuity funding?
- “Other” considerations – Claimant family or personal issues, claimant expectations, willingness to resolve medical vs. future treatment needs, surveillance/social media evidence?
- Age of the claim – is an IRE possible? 500 weeks issues?
- Any applicable offsets or credits?

Settlement Factors

Things to Consider

Claimant Considerations:

- Medical expenses – is resolving medical possible? Feasible?
- Wage loss issues – will settlement provide for future needs?
- Prospect of returning to work?
- Company benefits – is anything being given up by settlement/resignation?
- Medical evidence – strength of treating doctor vs. IME
- Prospect of prevailing on claim and consequences of loss?

Settlement Factors

Things to Consider

Judge's Considerations:

- Mediation memorandums – these make a difference! Goal to submit 72 hours prior to mediation.
- Don't wait for a demand to provide an evaluation of the case and obtain authority.
- Be Available! This means all parties, claimant AND adjuster.
- Liens, Medicaid, Private insurance?
- Any pending UR petitions? If so, is the provider aware of possible resolution?

Settlement Factors

Things to Consider

Judge's Considerations:

- Resignation – short form? General release? Separate consideration?
- Litigation costs?
- Difficult parties? Stubbornness or unwillingness to accept flaws of case/chance of loss?

Questions?



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