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Closing Out an Employee's Claim

Darwin S. Williams

Under Minnesota workers' compensation law, a stipulation for settlement will not likely operate to close out claims an employee did not expressly bring against the employer and insurer. As with resolutions of all legal claims, the language used to document the resolution is of the utmost importance. Great care must be taken when documenting the agreement of the parties.

In *Haniff v. Wirsbo Co.*, 2012 WL 8017005, 72 W.C.D. 351, WC12-5402 (July 2, 2012), an employee brought a claim against his employer and its insurer regarding a 2005 work injury to his abdomen and low back. The claim petition did not claim injury to the cervical spine, but medical records showed a cervical disc protrusion was present at examination shortly after the work injury date. In the stipulation for settlement the paragraph setting out the employee's "claims and contentions" listed only injuries to his abdomen and low back. However, the paragraph setting forth the employer and insurer's position expressly denied any injury to the "cervical, thoracic or lumbar spine" and asserted that the injury to the employee's abdomen was temporary and resolved. Further, the close-out paragraph stated expressly that the employee was settling any and all claims for "injuries to the abdomen, cervical, thoracic and lumbar spine.…"

Despite medical records documenting issues the employee had with his cervical spine prior to the stipulation for settlement, and the clear language in the close-out paragraph of the stipulation, the Minnesota Workers' Compensation Court of Appeals observed that the employee's claims and contentions as set forth in the stipulation were limited to his abdomen and low back. Therefore, the employee's cervical condition exceeded the scope of the employee's claims and contentions and was not an express subject of dispute between the parties at the time of the settlement. Thus, the court held that the cervical spine claims remained open, and the employee was free to bring his cervical spine claims without having to vacate the previous award on stipulation.

Ultimately, great care must be taken in setting forth the employee's claims and contentions in a stipulation for settlement. Injuries not listed in the claims and contentions are not likely to be considered to be closed out, even if they are listed in the close-out paragraph.

Filing the First Report of Injury in a Medical Only Claim

Nancy M. Aboyan

When the employer receives or has actual notice of an injury to an employee, Minn. Stat. § 176.231 sets forth the parameters under which employers and insurers must prepare and file a First Report of Injury. Upon the occurrence of a death or a serious injury, the employer shall report the death or injury to the commissioner and insurer within 48 hours of its occurrence. Upon the occurrence of an injury "…which wholly or partly incapacitates the employee from performing labor or service for more than three calendar days…", the employer shall report the injury to the insurer within ten days of its occurrence. The insurer and self-insured employer shall report the injury to the commissioner within 14 days of its occurrence. Effective January 1, 2014, Minnesota mandated the electronic filing of First Reports of Injury.

However, the statute does not specifically address whether and when the First Report of Injury should be filed for a medical loss only. For example, on July 1st, Earl Employee receives a deep cut, seeks medical attention, and returns to work the next day without any restrictions or wage loss. The employer has voluntarily agreed to pay the medical bills, the employee has missed little, if any, time from work, and arguably this is not a serious injury. Does the First Report of Injury need to be filed?

If there is a medical loss only, and Earl Employee has missed less than three calendar

Industry News

The EEOC has issued guidelines related to **Cancer in the Workplace** which provides guidance on general information and accommodating employees with cancer. Please see http://goo.gl/znzGGU. Another helpful website is the Job Accommodation Network at http://goo.gl/xFWyF1.

Firm News

JLO welcomes new associate **Brittany R. Cannon**, and is pleased to announce that **Elisa M. Hatlevig** has been recognized by Super Lawyers as a Top Woman Attorney for 2014.

After an illustrative and successful career in Workers' Compensation defense, our **Thomas J. Misurek** retired on December 31, 2013. We wish him all the best in his retirement!

JLO's 2014 version of **Periodic Table of Basic Workers' Compensation Elements** is available. Please call us for a copy.

Don't Settle!

Chocolate-Peanut Butter Pie

There's no denying that peanut butter and chocolate are a match made in dessert heaven. In an ode to the classic combo, this pie layers cocoa-infused whipped cream and a velvety peanut butter filling on top of a crunchy nut crust.

http://www.cookingchanneltv.com/recipes/decadent-dessert-recipes.html

Keep Connected

days from work, then the First Report of Injury does not need to be filed. Employees' claims, however, are not always so simple and straightforward.

If Earl Employee subsequently develops an infection in the wound, seeks additional medical treatment, receives medical restrictions, and looses a week from work commencing August 1st, then the First Report of Injury must be filed. This development next raises a concern that the delay in filing the First Report of Injury exposes the insurer to penalties.

According to the Minnesota Department of Labor and Industry, penalties will not be assessed as long as the First Report of Injury is filed within 14 days of the first three days of missed work. In the case of Earl Employee, the First Report of Injury must be filed by August 17th.

Failing to timely file the First Report of Injury can result in the imposition of penalties upon the employer and the insurer. Minn. Rule 5220.2820 allows for the assessment of penalties in the amounts of $125.00 to $500.00, depending upon the number of violations the employer or insurer has had in the previous 12 months.

Objecting To Intervention Claims

Nancy M. Aboyan

A recent opinion from the Minnesota Workers' Compensation Court of Appeals (WCCA) suggests that a formal objection to intervention claims could facilitate a possible dismissal of those claims.

In *Sumner v. Jim Lupient Infinity*, No. WC13-5639 (W.C.C.A. Apr. 3, 2014) the employer/insurer denied primary liability. Eleven parties submitted motions to intervene, most attaching billing records to their motions. The employer/insurer objected to all but two of the motions to intervene. No intervenor attended the hearing.

The compensation judge awarded the employee temporary total disability benefits, and ruled that none of the intervenors' rights to reimbursement were established prior to the hearing. The judge also denied all of the intervenors' claims for failure to personally attend the hearing.

The WCCA affirmed the denial of the nine opposed intervention claims, stating that the compensation judge had not waived the personal attendance requirement set forth in Minn. Stat. § 176.361. However, because the two unopposed intervention claims attached "…sufficient documentation to their applications to establish their claims…", the two unopposed intervenors were not subject to the personal attendance requirement of Minn. Stat. § 176.361. The case was remanded to determine whether the unopposed intervenors' claims were reasonable, necessary, and causally related to the work injury.

Short Shots

Governor Dayton signed the **Women's Economic Security Act** (WESA) into Law May 11, 2014.

The Minnesota law aims to level the playing field for women. In part, the law provides: closure of the gender pay gap; increased income for working women & their families; expanded access to high-quality, affordable childcare; expansion of family & sick leave; and protection for women from workplace discrimination.

Referrals & Inquiries

A *referral* is the best compliment you can give an attorney. If you know of anyone who may be interested in receiving this newsletter, please complete the section below and return it via email to info@jlolaw.com

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About The Authors

Jardine, Logan & O'Brien, P.L.L.P., is a mid-sized civil litigation law firm that has handled some of the region's largest and most difficult disputes with outstanding results for clients. Litigation has always been our primary focus. With trial attorneys admitted in Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa, our firm has the ability and expertise to manage cases of any size or complexity. We are trial lawyers dedicated to finding litigation solutions for our clients. **View our website at www.jlolaw.com to obtain additional information about our contributing authors and to view information on our Workers' Compensation Practice Group.** Please call us to discuss a specific topic.

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