

# Don't Risk Settlement suspension!

Getting your settlement docs approved

Hon. Monika Reyes and Hon. Robin Leviton

# DISCLAIMER

The opinions expressed here today are our own and not the opinions of the DIR, DWC, WCAB, Pomona or Santa Ana district offices, or other judges

Fill

Order (proposed)

Reasons for settlement

Medicals

Signatures & Service

# FILL

What you need to fill out on the form

## LABOR CODE §5003

Every release or compromise agreement shall be in writing and duly executed, and the signature of the employee or other beneficiary shall be attested by two disinterested witnesses or acknowledged before a notary public.

The document shall specify:

- (a) The date of the accident.
- (b) The average weekly wages of the employee, determined according to Chapter 1 of Part 2 of this division.
- (c) The nature of the disability, whether total or partial, permanent or temporary.
- (d) The amount paid, or due and unpaid, to the employee up to the date of the release or agreement or death, and the amount of the payment or benefits then or thereafter to be made.
- (e) The length of time such payment or benefit is to continue.
- (f) In the event a claim of lien under subdivision(f) or (g) of section 4903 has been filed, the number of days and the amount of temporary disability indemnity which should be allowed to the lien claimant.

# IDENTIFICATION OF PARTIES

City			
<b>Insurance Carrier Information (if known and if applicable - include even if carrier is adjusted by claims administrator)</b>			
XL Specialty Insurance			
Insurance Carrier Name (Please leave blank spaces between numbers, names or words)			
PO Box 14352			
Insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, names or words)			
Lexington	KY	40512	
City	State	Zip Code	
DWC-CA form 10214 (c) (Rev. 5/2020) (Page 2 of 9)			
<b>Claims Administrator Information (if known and if applicable)</b>			
Intercare			
Name (Please leave blank spaces between numbers, names or words)			
PO Box 579			
Street Address/PO Box (Please leave blank spaces between numbers, names or words)			
Roseville	CA	95661	
City	State	Zip Code	
<b>IT IS CLAIMED THAT:</b>			
1. The injured employee, born	(DATE OF BIRTH: MM/DD/YYYY)	, alleges that while employed as a(n)	
		+	

See Reg 10390 and Coldiron v Compuware (2002) 67 CCC 289  
(Appeals Board en banc)

## UNASSIGNED CASES

ADJ1234567 Case Number 2	<input checked="" type="checkbox"/> Specific Injury <input type="checkbox"/> Cumulative Injury	05/09/2017 (Start Date: MM/DD/YYYY) <i>(If Specific Injury, use the start date as the specific date of injury)</i>	(End Date: MM/DD/YYYY)
Body Part 1: _____	Body Part 2: _____	Body Part 3: _____	Body Part 4: _____
Other Body Parts: _____			
The injury occurred at _____ (Street Address/PO Box - Please leave blank spaces between numbers, names or words)			
City	State	Zip Code	
Body parts, conditions and systems <u>may not be</u> incorporated by reference to medical reports.			
Case Number 3	<input type="checkbox"/> Specific Injury <input checked="" type="checkbox"/> Cumulative Injury	01/01/2005 (Start Date: MM/DD/YYYY) <i>(If Specific Injury, use the start date as the specific date of injury)</i>	05/09/2017 (End Date: MM/DD/YYYY)
Body Part 1: _____	Body Part 2: _____	Body Part 3: _____	Body Part 4: _____
Other Body Parts: _____			
The injury occurred at _____ (Street Address/PO Box - Please leave blank spaces between numbers, names or words)			
City	State	Zip Code	

6. The parties represent that the following facts are true: (If facts are disputed, state what each party contends under Paragraph No. 9.)

EARNINGS AT TIME OF INJURY \$ \$2,400.00

TEMPORARY DISABILITY INDEMNITY PAID \$3,645.81

Weekly Rate \$ \$1,215.27

Period(s) Paid 03/03/2018

(Start Date: MM/DD/YYYY)

03/24/2018

(End Date: MM/DD/YYYY)

PERMANENT DISABILITY INDEMNITY PAID \$3,480.00

Weekly Rate \$ \$870.00

Period(s) Paid 3/24/18

(Start Date: MM/DD/YYYY)

End date 04/21/2018

(End Date: MM/DD/YYYY)

TOTAL MEDICAL BILLS PAID \$ \$14,386.22

Total Unpaid Medical Expense to be Paid By: Defendant

Unless otherwise specified herein, the employer will pay no medical expenses incurred after approval of this agreement.

## LIENS AGAINST COMPENSATION

7. The parties agree to settle the above claim(s) on account of the injury(ies) by the payment of the SUM OF

\$ 50,000.00  
Settlement Amount

The following amounts are to be deducted from the settlement amount:

\$ 3,000.00 for permanent disability advances through 10/12/2023

\$ \_\_\_\_\_ for temporary disability indemnity overpayment, if any.

\$ 9,000.00 payable to EDD

\$ \_\_\_\_\_ payable to \_\_\_\_\_

\$ \_\_\_\_\_ payable to \_\_\_\_\_

\$ \_\_\_\_\_ payable to \_\_\_\_\_

\$ 7,500 requested as applicant's attorney's fee.

LEAVING A BALANCE OF \$ 30,500.00, after deducting the amounts set forth above and less further permanent disability advances made after the date set forth above. Interest under Labor Code section 5800 is included if the sums set forth herein are paid within 30 days after the date of approval of this agreement.

8. Liens not mentioned in Paragraph No. 7 are to be disposed of as follows (Attach an addendum if necessary):

# ADDENDUMS

1. No contradictory language
2. Cases cannot be dismissed after they resolve
3. Do not include language that violates paragraph 3 or the anti-merger clause
4. Confidentiality clauses – ok but no remedies available for breach
5. Resignations are not allowed to be tied to settlement of benefits- 132A?
6. 5710 Fees
7. NO GENERAL RELEASE

# Medicare?

- Addendum
- Attach MSA
- Did you use Characterization of Benefit formula? If so, it should be on the OACR, not separate order

# Orders

Proposed orders- what to mark and what to leave for the WCJ to fill in

# Captions on OACR

1. Name of Applicant (incl aka if on application or necessary to cash check)
2. Name of Employer as listed on Application & C&R- or tell WCJ you are amending name
3. Name of Carrier- NOT just the TPA...Full name- not acronyms
4. If self-insured, say so
5. If illegally Uninsured, must list only the full legal name of Employer such that Applicant can lodge Order in civil court
6. State employment means State of California, legally uninsured and admin by State Compensation Insurance Fund

# What Boxes Should you mark?

- Date settlement filed
- Amount of settlement
- Death Benefits
- Attorney fees

# Beltran Finding?

1. Do not initial voc rehab/voucher on page 7
2. Offer of Proof requires more than just statement that case is denied

# COMPROMISE & RELEASE AGREEMENTS FOR ILLEGALLY UNINSURED EMPLOYERS

1. YOU MUST SETTLE ALL MEDICAL BILLS AND LIENS PRIOR TO PRESENTING SETTLEMENT TO WCJ
2. OBTAIN CASHEIRS CHECKS FOR EVERYONE (APPLICANT, ATTY, LIEN CLAIMANTS AND MEDICAL PROVIDERS

3. SHOW WCJ A COPY OF ALL CASHIERS CHECKS/PROOF OF SERVICE



# Reasons

Like the Boy Scout Motto

BE PREPARED

- Title 8 of the California Code of Regulations (WCAB Rules) Section 10700 section c states that agreements that provide for less than the full amount of compensation due “...will be approved **only** where it appears a **reasonable doubt exists as to the rights of the parties or that approval is in the best interest of the parties.**”

## PRO PER SETTLEMENTS: P&P 1.91(A)

1. All relevant medical reports of treating physicians and QMEs, filed in chronological order with the most recent report on top;
2. A brief explanation of the basis of settlement;
3. Ratings of all P&S reports, whether by DEU, a private rater, or claims examiner. In cases involving multiple body parts, upper extremities, or non-scheduled ratings, a DEU rating should be included;
4. Basis and calculation of average weekly earnings if less than maximum;
5. Notices sent to the employee pertaining to the settlement (without attachments);
6. Letters advising applicant of the QME process (without attachments); **SEE Reg 9812.**
7. Where benefits have been provided, a current computer printout of all benefits paid;
8. A proof of service of the settlement document and supporting documents, including the medical reports/records filed, showing service on all lien claimants and the injured worker pursuant to WCAB Rule 10886 (now 10702).

Whether to allow credit for overpayment of temporary disability against permanent disability was addressed by the Court of Appeal in the case of Maples vs. WCAB, 45 CCC 1106. Defendants failed to timely file and serve the report upon which their claimed overpayment of temporary disability was based. The insurance company, Eldorado, was asserting a credit for overpayment of temporary disability for a period of time after the doctor declared the applicant permanent and stationary but before the report had been served on applicant.

The Court stated at p. 1114 of the opinion: “We are of the opinion that estoppel should similarly apply to the situation herein. Eldorado’s failure to comply with statutory and administrative provisions should not prejudice Maples when he received indemnity in good faith with no wrong doing on his part.”

## **CREDIT FOR Temporary Disability Overpayment**

JCPenney vs. WCAB, Edwards,  
74 Cal Comp Cases 826  
Cordes vs. General Dynamics,  
31 CCC 429  
State Compensation Insurance  
Fund vs. IAC (Verden), 30 CCC 132.

FFA HARTMAN  
FORMULA ANYONE ON  
SSDI If benefits +  
payments on work comp  
equal more than 80% of  
injured worker's earnings  
prior to injury, social security  
will take credit. 42 U.S.C.A. §  
424a(a) ; Sciarotta v. Bowen,  
837 F.2d 135 Must be  
incorporated & approved

- ADDENDUM C - CHARACTERIZATION OF SETTLEMENT PROCEEDS
- After negotiation between the parties, the following terms have been reached in regard to the settlement proceeds being received:
  - (1) Total amount of Compromise and Release: \_\_\_\_\_
  - (2) Temporary Disability should have been paid to the Applicant between: \_\_\_\_\_ and \_\_\_\_\_
  - (3) Temporary Disability should have been paid at the rate of \$ \_\_\_\_\_.
  - (4) Total Temporary Disability benefits that should have been paid to the Applicant is \$ \_\_\_\_\_.
  - (5) Applicant was actually paid Temporary Disability benefits in the amount of \$ \_\_\_\_\_.
  - (6) Of the above referenced Compromise and Release amount, \$ \_\_\_\_\_ is being paid to Applicant for Temporary Disability.
  - (7) Included in the Compromise and Release, is the sum of \$ \_\_\_\_\_ to be used for future medical care. In accordance with the recommendation of the treating doctor \_\_\_\_\_.
  - (8) After deduction for attorney's fees, medical care and Temporary Disability, the sum of \$ \_\_\_\_\_ remains. This sum is being paid to Applicant, \_\_\_\_\_ due to a life long Permanent Disability which will interfere with Applicant's ability to engage in gainful employment for the remains of his/her life. This sum is being paid to Applicant in a lump sum based upon a life expectancy of \_\_\_\_\_ and payments at the rate of \$ \_\_\_\_\_ beginning on \_\_\_\_\_ at the rate of \$ \_\_\_\_\_ per month. This is based upon Sciarotta v. Bowen, 837.2.135, using the "Hartman" formula.
    - The specific characterization of the settlement proceeds in this matter, as set forth above, are an essential element of the Compromise and Release in this matter and it is specifically re-requested that the Judge reviewing this Compromise and Release make a specific finding in the Order approval as to the characterization of the benefits set forth in this Compromise and Release.
    - c) The lump sum remainder of the Compromise and Release amount is to be construed as periodic payments of Permanent Disability at the rate of \$ \_\_\_\_\_ per week for the remainder of Applicant's life time.
    - California Workers' Compensation Law and Practice  
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# Medicals

# WHAT NEEDS TO BE FILED?

## TITLE VIII CCR §10700(a):

When filing a Compromise and Release or a Stipulations with Request for Award, the filing party shall file:

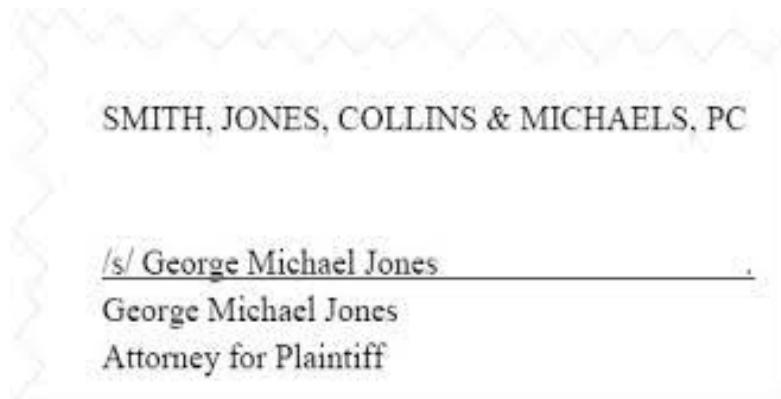
All agreed medical evaluator reports,

All qualified medical evaluator reports,

Treating physician reports that are relevant to a determination of the adequacy of the Compromise and Release or Stipulations with Request for Award that have not been filed previously.

# Signatures & Service

## ELECTRONIC SIGNATURES



Per Eams Reference Guide (page 42) and Jet Filing BR-16(b): Wet signed signatures required on settlement documents.

Arguably mandated by A.D. Rules 10206 and 10216.15

Discussed in Hernandez v. Henkel Loctite: (2018) 83 CCC 698 (appeals board *en banc*)

# Service of documents

1. pre-served on all parties before walk-thru or filing- Reg. 10789
2. Party designated for service of order must serve everyone within 10 days AND file proof of service with court- Reg. 10629