



EPS Settlements Group
The Structured Settlements Company™

**WORKERS'
COMPENSATION
SETTLEMENTS
AND
STRUCTURED
SETTLEMENTS**

50 State Survey
2014 – 2016



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PREFACE

Workers' Compensation laws are constantly changing and evolving. The goal of this guide is to provide Claims Handlers and Risk Managers with a concise set of statutes, rules and local customs that govern one of the most powerful tools available to a claims or risk professional: Structured Settlements.

A settlement in the form of a lump sum is in and of itself a valuable tool though not always the best solution for a particular Workers' Compensation claim. Just as each claim is unique, so too are the needs of the injured worker or their family.

With a Structured Settlement there is another alternative available to the claims professional that can take any number of forms while providing guaranteed or lifetime tax-free payments to a worker or their family.

Just as the laws in each jurisdiction are unique, so is the application of a Structured Settlement in each case and in each jurisdiction. EPS Settlements Group has consultants available for every jurisdiction, versed in the proper procedures and requirements for that jurisdiction, trained to be a professional advocate for all of the parties involved: insurer, employer and worker.

The intention of this book is not to advocate the use of a Structured Settlement for every claim, but rather to increase your awareness of how EPS Consultants can facilitate Workers' Compensation claim settlements in the various states.

It is important to note that some of the information may differ from actual use in a particular jurisdiction, based upon local rules and various reforms. This information was compiled from case law, statute and the state commissions, but is subject to change without notice. EPS Settlements Group does not provide a warranty as to the accuracy of the information found in this book.

This book is not intended as nor may it be construed as legal advice. Consult with your own legal counsel for advice.

ALABAMA

State of Alabama http://www.alabama.gov/ Workers' Compensation Division Telephone Numbers: WC Fraud: (800) 923-2533 Ombudsman: (334) 242-2868 Toll-Free: (800) 528-5166 http://dir.alabama.gov/wc/	Department of Industrial Relations 649 Monroe Street Montgomery, Alabama 36131 Telephone Numbers: Self-Insurance: (334) 353-0760 Medical Mediation: (334) 353-0500 General Mediation: (334) 353-0530 WC Claim: (334) 353-0690 Legal: (334) 353-0960 http://dir.alabama.gov/
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

By agreement of the parties and with approval of the court, the amounts of compensation payable periodically, under Ala. Code 1975 § 25-5-83 and Article 4, may be commuted to one or more lump sum payments. No commutation shall be approved by the court unless the court is satisfied that it is in the best interest of the employee or the employee's dependent, in case of death, to receive the compensation in a lump sum rather than in periodic payments.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Settlement of workers' compensation claims may be settled by agreement of the parties under Alabama law. However, any such settlement is not valid unless approved by the court based upon the determination that the settlement is in the employee's best interest. (See Ala. Code § 25-5-56).

Are lump sum settlements paid at full value or reduced to present value?

Present value. In making the commutations, the lump sum payment shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a six percent basis. (See Ala. Code § 25-5-83). No commutation shall be approved by the court unless the court is satisfied that it is in the best interest of the employee or the employee's dependent, in case of death, to receive the compensation in a lump sum rather than in periodic payments.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

No, all amounts paid by the employer and received by the employee or his dependents under settlements made under Ala. Code § 25-5-56 shall be final. Unless pursuant to Ala. Code § 25-5-84 the amount of any award payable periodically for more than six months may be modified at any time by agreement of the parties and approved by the court.

Does the employer/insurer remain contingently liable?

No further recourse against employer or employer's insurer if procedure outlined in Ala. Code 25- 5-85 is followed. Alabama law provides that an agreement between the parties on a sum equaling the net present value of all future installments, calculated with interest, and paid in to a Court appointed bank or trust is valid and that, in such event, there is no future recourse against employer or the Workers'

Compensation Carrier, provided that the required procedures are followed. *See id.*

Do structured settlements as previously described result in final release?

Yes.

Do all settlements require court approval?

Yes.

Modification of payments.

All amounts paid by the employer and received by the employee or his dependents under settlements made under Ala. Code § 25-5-56 shall be final, but the amount of any award payable periodically for more than six months may be modified at any time by agreement of the parties and approved by the court.

Who approves settlements?

Workers' Compensation Division
Industrial Relations Building
649 Monroe Street
Montgomery, Alabama 36131

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The type of structured settlement products that may be used are at the discretion of the insurer, the claimant and claimant's counsel. The Workers' Compensation Commission has no rules and/or statutes regulating the type of structured settlements products that may or may not be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No. However Alabama Code 25-5-85 provides that an agreement on a sum between parties equaling the net present value of all future installments calculated with interest and paid in to a Court appointed bank or trust is valid. No further recourse against employer or employer's insurer if procedure outlined in this Statute is followed.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

ALASKA

<p>State of Alaska http://www.state.ak.us</p> <p>Workers' Compensation Division <u>Street Address:</u> 1111 W 8th St, Rm 305 Juneau, Alaska 99801</p> <p><u>Mailing Address:</u> P.O. Box 115512 Juneau, Alaska 99811-5512 Tel: (907) 465-2790 Fax: (907) 465-2797 http://www.labor.state.ak.us/wc/wc.htm</p>	<p>Alaska Workers' Compensation Appeals Commission 1016 W 6th Ave, Suite 405 Anchorage, AK 99501 Tel: (907) 269-6738 Fax: 907-269-6737 http://labor.state.ak.us/WCcomm/home.htm</p> <p>Department of Labor and Workforce Development http://www.labor.state.ak.us/home.htm</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

A lump sum settlement is presumed not in the employee's best interest, and will not be approved absent a showing by a preponderance of evidence that the lump sum settlement is in the employee's best interests. Lump sum settlements are the exception - structured settlements are the preference.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties may settle a workers' compensation claim by agreement, subject to approval by a panel of the Workers' Compensation Board. (See Alaska Stat. § 23.30.012).

Are lump sum settlements paid at full value or reduced to present value?

Reduced to present value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

Yes, pursuant to 8 AAC 85.153(f) a hearing may be reopened on the appeal referee's own motion or at the request of an interested party. All requests must explain in detail the reasons for the request. All other requests may be granted only if there is good cause. The following rules apply to requests:

(3) A request for reopening must be made in writing to the appeal referee and must be delivered or mailed within 10 days after the scheduled date of the hearing. The 10-day period may be extended for a reasonable period on a showing that the request was delayed as a result of circumstances beyond the party's control.

(4) If a request for reopening is not allowed, the appeal referee will mail a written ruling and a statement of the right of appeal from that ruling to each party.

Upon its own initiative, or upon the application of any party in interest on the ground of a change in conditions . . . or because of a mistake in its determination of a fact, the board may, before one year after the date of the last payment of compensation benefits . . . whether or not a

compensation order has been issued, or before one year after the rejection of a claim, review a compensation . . . [and] the board may issue a new compensation order which terminates, continues, reinstates, increases, or decreases the compensation, or award compensation. (See AS § 23.30.130(a)).

Does the employer/insurer remain contingently liable?

Yes.

Do structured settlements as previously described result in final release?

Yes, see response below.

Do all settlements require court approval?

No. As of November, 2005, if the parties are represented by an attorney, the parties are to come to a compromise and then submit the final settlement agreement to the Board for approval. The parties do not appear before a court / judge or any legal authority. The Board approves all agreements once submitted. The only time the Board gets involved is if the claimant is unrepresented by an attorney and then they will assist the claimant to make sure that his rights are represented.

Who approves settlements?

Workers' Compensation Board
P.O. Box 115512
Juneau, Alaska 99811

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The type of structured settlement products that may be used are at the discretion of the insurer, the claimant and claimant's counsel. The Workers' Compensation Commission has no rules and/or statutes regulating the type of structured settlements products that may or may not be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No, however the Workers' Compensation Board in this State has informed injured workers settling claims involving structured that should the structured settlement provider default, Workers' Compensation carrier may be liable for ongoing payments. It is possible to draft a C&R document that would relieve Workers' Compensation carrier of any contingent liability.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

ARIZONA

<p>State of Arizona http://az.gov/</p> <p>Industrial Commission of Arizona</p> <p><u>Phoenix Office</u> 800 W. Washington Street Phoenix, AZ 85007 Telephone Numbers: Admin/Law Judge: (602) 542-5241 Claims: (602) 542-4661 Labor: (602) 542-4515 Ombudsman: (602) 542-4538 Special Fund: (602) 542-3294</p> <p><u>Tucson Office</u> 2675 E. Broadway Tucson, AZ 85716 Telephone numbers: Admin/Law Judge: (520) 628-5188 Claims: (520) 628-5181</p>	<p>Arizona State Compensation Fund 3030 North 3rd Street Phoenix, Arizona 85012 Telephone numbers: Claims Contact Center: (602) 631-2300 or (800) 231-1363 Policy Contact Center: (602) 631-2600 or (866) 284-2694</p> <p>Fax Number: Requests for certificates of ins.: (602) 631-2599 https://www.scfaz.com/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

The commission may allow commutation of the compensation awarded pursuant to A.R.S. § 23-1044(B) to a lump sum payment of not to exceed twenty-five thousand dollars, with or without the consent of the carrier liable for the commutation, under such rules, regulations and system of computation as it devises for obtaining the present value of the compensation. If the lump sum petition is granted, the commutation of compensation pursuant to §§ 23-1044(C) and 23-1045(B)(C)(D) is not to exceed \$150,000 for commutation requests made after June 30, 2007.

If the lump sum commutation petition is approved by the carrier, the Commission's primary consideration in passing upon the petition will be whether more net income per month will be generated after receipt of the lump sum than the applicant is presently receiving. The granting of a lump sum petition will only be granted if the facts demonstrate a reasonable basis for financial betterment or rehabilitation of the claimant. (See AZ ADC R20-5-122(B)).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Arizona law permits the settlement of workers' compensation claims, subject to the approval of the Industrial Commission. (See *Rustin v. Industrial Commission*, 184 Ariz. 476, 479, 910 P.2d 627, 630 (1996) (citing *Safeway Stores v. Industrial Commission*, 152, Ariz. 42, 730 P.2d 219 (1986)).

Are lump sum settlements paid at full value or reduced to present value?

The Commission shall calculate the present value of an award that is commuted to a lump sum under AZ ADC R20-5-122. The Commission shall not include in the present value calculation compensation paid before the filing of a lump sum commutation petition. The Commission shall use the filing date of a lump sum commutation petition to compute the present value of an award. Further, the Commission shall calculate the present value of an award at least annually, whether payable for a period of months or based upon the life of the employee, using the United States Life Tables, 2003, National Vital Statistics Reports, Vol. 54, Number 14, April 19, 2006, revised March 28, 2007, Table 1 incorporated by reference, and discounted at the rate established by the Commission. This incorporation does not include any later

amendments or editions of the incorporated matter. A copy of this referenced material is available for review at the Commission and may be obtained from the U.S. Department of Health and Human Services, Centers for Disease Control. The rate established by the Commission is based on the following formula: The mean average of the three-month Treasury Bill rate on December 31 of each of the five years prior to July 1 of the current year. The rate, once calculated, is effective until the Commission calculates a new rate under this subsection. The discount rate is published in the minutes of the Commission meeting establishing the rate and is available upon request from the Commission. (See AZ ADC R20-5-121).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

Yes, on a claim that has been previously accepted, an employee may reopen the claim to secure an increase or rearrangement of compensation or additional benefits by filing with the commission a petition requesting the reopening of the employee's claim upon the basis of a new, additional or previously undiscovered temporary or permanent condition, which petition shall be accompanied by a statement from a physician setting forth the physical condition of the employee relating to the claim. A claim shall not be reopened if the initial claim for compensation was previously denied by a notice of claim status or determination by the commission and the notice or determination was allowed to become final and no exception applies under A.R.S. § 23-947 excusing a late filing to request a hearing. A claim shall not be reopened because of increased subjective pain if the pain is not accompanied by a change in objective physical findings. A claim shall not be reopened solely for additional diagnostic or investigative medical tests, but expenses for any reasonable and necessary diagnostic or investigative tests that are causally related to the injury shall be paid by the employer or the employer's insurance carrier. Expenses for reasonable and necessary medical and hospital care and laboratory work shall be paid by the employer or the employer's insurance carrier if the claim is reopened as provided by law and if these expenses are incurred within fifteen days of the date that the petition to reopen is filed. The payment for such reasonable and necessary medical, hospital and laboratory work expense shall be paid for by the employer or the employer's insurance carrier if the claim is reopened as provided by law and if such expenses are incurred within fifteen days of the filing of the petition to reopen. Surgical benefits are not payable for any period prior to the date of filing a petition to reopen, except that surgical benefits are payable for a period prior to the date of filing the petition to reopen not to exceed seven days if a bona fide medical emergency precludes the employee from filing a petition to reopen prior to the surgery. No monetary compensation is payable for any period prior to the date of filing the petition to reopen. (See A.R.S. § 23-1061(H)).

Does the employer/insurer remain contingently liable?

The acceptance of any payments or the signing of a settlement agreement, compromise, release of waiver of rights, will not release the employer or the insurance carrier from any obligation imposed by the Workers' Compensation Law unless approved by the Commission. (See AZ ADC R20-5-120(b)).

Do structured settlements as previously described result in final release?

While the award is final when entered unless within thirty days after the date on which a copy of the award is mailed to the parties, the Workers' Compensation carrier is obligated to pay if the annuity carrier fails to pay. The award shall contain a statement explaining the rights of the parties under A.R.S. § 23-943.

Do all settlements require court approval?

Yes. Upon the conclusion of any hearing, or prior thereto with the concurrence of the parties, the administrative law judge shall promptly and not later than thirty days after the matter is submitted for decision determine the matter and make an award in accordance with his determination. (See A.R.S. § 23-942(A), Awards of Administrative Law Judge; contents; disposition and effect). No settlement agreement, compromise or waiver of rights of a workers' compensation claim, will be valid unless approved by Commission. (See AZ ADC R20-5-120(a)).

Who approves settlements?

Industrial Commission of Arizona
800 West Washington
Phoenix, Arizona 85007

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Arizona Industrial Commission does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Industrial Commission stated that the determination for the type of structured settlement product is solely at the discretion of the parties involved and the Administrative Law Judge.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No. However Industrial Board has created a specific form for structured settlement agreements which provides that the settlement does not relieve the Workers' Compensation carrier of its obligation to pay if the annuity company fails to pay. (See Arizona Revised Statutes Annotated § 23-963 - Provisions of compensation insurance policy). Every policy of insurance covering the liability of the employer for workers' compensation, whether issued by the state compensation fund or by another, shall cover the entire liability of the employer to his employees covered by the policy or contract, and be deemed to contain the following provisions:

1. *That as between the employee and the insurance carrier the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge of the insurance carrier.*
2. *That jurisdiction of the employer shall be jurisdiction of the insurance carrier.*
3. *That the insurance carrier shall be bound by and subject to the orders, findings, decisions and awards rendered against the employer for payment of compensation.*
4. *That the insolvency or bankruptcy of the employer and his discharge therein shall not relieve the insurance carrier or workers' compensation pool from payment of compensation for injuries or death sustained by an employee during the life of the policy or contract.*

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No, however the Industrial Board has created a specific form for structured settlement agreements which provides that the settlement does not relieve the Workers' Compensation carrier of its obligation to pay if the annuity company fails to pay.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

ARKANSAS

<p>State of Arkansas http://portal.arkansas.gov/Pages/default.aspx</p> <p>Workers' Compensation Commission <u>Street Address:</u> 324 Spring Street P.O. Box 950 Little Rock, Arkansas 72203-0950 Tel: (501) 682-3930 Toll-free: (800) 622-4472 Legal Advisor Direct: (800) 250-2511 Arkansas Relay System TDD: (800) 285-1131 http://www.awcc.state.ar.us/</p>	<p><u>Mailing Address:</u> P.O. Box 950 Little Rock, Arkansas 72203-0950 Tel: (501) 682-3930 Toll-free: (800) 622-4472 Legal Advisor Direct: (800) 250-2511 Arkansas Relay System TDD: (800) 285-1131</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Whenever the Workers' Compensation Commission determines that it is for the best interest of the parties entitled to compensation, and after due notice to all parties in interest of a hearing, the liability of the employer for compensation may be discharged by the payment of a lump sum. (See A.C.A. § 11-9-804(a)(1). However, lump-sum settlements shall not be allowed if the employer presents evidence which proves by a preponderance of the evidence that ordering the compensation discharged in such a manner would result in a substantial adverse effect on the continuing economic viability of the employer. (See *id.* at (B)).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Upon joint petition for settlement, the workers' compensation commission may approve the same if the commission concludes that the proposed settlement is in the best interests of the employee. (See A.C.A. § 11-9-805).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid equal to the present value of all future payments of compensation computed at ten percent discount, compounded annually. (See § A.C.A. 11-9-804(a)(1)).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

Yes, reopening is permitted only if within thirty (30) days from the receipt by claimant of the order or award, petition in writing for a review by the full commission of the order or award. Any other party to the dispute may cross appeal by filing a written petition for cross appeal within fifteen (15) days after the notice of appeal is filed in the office of the Workers' Compensation Commission, except that in no event shall a cross appellant have less than thirty (30) days from the receipt by him or her of the order or award within which to file a notice of cross appeal. (See A.C.A. § 11-9-711 (Awards or Orders)).

Does the employer/insurer remain contingently liable?

No.

Do structured settlements as previously described result in final release?

Yes, the Workers' Compensation Commission loses jurisdiction.

Do all settlements require court approval?

Yes, all settlements require approval by an Administrative Law Judge.

Who approves settlements?

Workers' Compensation Commission
324 Spring Street
Little Rock, Arkansas 72203

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Structured annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in Arkansas and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and category size VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No. However pursuant to A.C.A. § 11-9-808, the Workers' Compensation Commission may require any employer to make a deposit or bond with the commission to secure the prompt and convenient payment of compensation, and payments shall be made upon order of the commission.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

CALIFORNIA

<p>State of California http://www.ca.gov/</p> <p>Department of Industrial Relations http://www.dir.ca.gov/</p> <p>Commission on Health & Safety and Workers' Compensation (CHSWC) 1515 Clay St., Room 901 Oakland CA 94612 Tel: (510) 622-3959 Fax: (510) 622-3265 E-mail: CHSWC@dir.ca.gov http://www.dir.ca.gov/chswc/</p> <p>Division of Workers' Compensation (DWC) 1515 Clay Street 17th floor Oakland, CA 94612-1402 Tel: (510) 286-7100 Recorded information: (800) 736-7401 http://www.dir.ca.gov/DWC/</p> <p>Division of Workers' Compensation Medical Unit <u>Street Address:</u> DWC - Medical Unit 1515 Clay Street, 18th floor Oakland CA 94612</p> <p><u>Mailing Address:</u> DWC - Medical Unit P.O. Box 71010 Oakland, CA 94612 Tel: (510) 286-3700 or (800) 794-6900 http://www.dir.ca.gov/dwc/medicalunit/imchp.html</p>	<p>Workers' Compensation Appeals Board (WCAB) <u>Street Address:</u> 455 Golden Gate Avenue, 9th Floor San Francisco CA 94102</p> <p><u>Mailing Address:</u> P.O. Box 429459 San Francisco CA 94142-9459 http://www.dir.ca.gov/wcab/wcab.htm</p> <p>Self-Insurance Plans (SIP) <u>Headquarters</u> 2265 Watt Avenue, Suite 1 Sacramento, CA 95825 Tel: (916) 574-0300 Fax: (916) 483-1535 http://www.dir.ca.gov/sip/sip.html</p> <p>State Compensation Insurance Fraud (SCIF) 1275 Market Street San Francisco, CA 94103 Tel: (415) 565-1234 Claims Reporting: (888) 222-3211 Fraud Hotline: (888) 786-7372 http://www.statefundca.com/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

All Workers' Compensation benefits may be resolved via a lump sum settlement and determined as follows: (a) if the injury causes temporary disability, the appeals board shall estimate the probable duration thereof and the probable amount of the temporary disability payments therefore, in accordance with Chapter 2 of Part 2 of this division, and shall fix the lump sum at the amount so determined; and (b) if the injury causes permanent disability or death, the appeals board shall fix the total amount of the permanent disability payment or death benefit payable therefore in accordance with Chapter 2 of Part 2 of this division, and shall estimate the present value thereof, assuming interest at the rate of 3 percent per annum and disregarding the probability of the beneficiary's death in all cases except where the percentage of permanent disability is such as to entitle the beneficiary to a life pension, and then taking into consideration the probability of the beneficiary's death only in estimating the present value of such life pension. (See West's Ann.Cal.Labor Code § 5101).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties may settle worker's compensation claims subject to the approval of the Workers' Compensation Appeals Board. (See West's Ann.Cal. Labor Code § 5000).

Are lump sum settlements paid at full value or reduced to present value?

The total amount of the permanent disability payment or death benefit payable shall estimate the present value - assuming interest at the rate of 3 percent per annum.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

No award of compensation shall be rescinded, altered, or amended after five years from the date of the injury except upon a petition by a party in interest filed within such five years and any counter-petition seeking other relief filed by the adverse party within 30 days of the original petition raising issues in addition to those raised by such original petition. Provided, however, that after an award has been made finding that there was employment and the time to petition for a rehearing or reconsideration or review has expired or such petition if made has been determined, the appeals board upon a petition to reopen shall not have the power to find that there was no employment. (See West's Ann.Cal.Labor Code § 5804).

Does the employer/insurer remain contingently liable?

No. No contract, rule, or regulation shall exempt the employer from liability for the compensation fixed by this division, but nothing in this division shall: (a) Impair the right of the parties interested to compromise, subject to the provisions herein contained, any liability which is claimed to exist under this division on account of injury or death; or (b) Confer upon the dependents of any injured employee any interest which the employee may not release by compromise or for which he, or his estate is in the event of such compromise by him accountable to dependents. (See Labor Code § 5000).

Do structured settlements as previously described result in final release?

Yes, structured settlements result in a final release provided no contingent liability language has been inserted or approved by the Workers' Compensation Board.

Do all settlements require court approval?

Yes.

Who approves settlements?

Division of Workers' Compensation
1515 Clay Street, 17th Floor
Oakland, California 94612

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

California Division of Workers' Compensation does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Commission has stated that the determination for the type of structured settlement product is solely at the discretion of the parties involved and the Administrative Law Judge. However, the structured annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in California and authorized to

write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and category size VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No, as long as C&R document contains a provision that sets forth that there is no reversion of a contingent liability to Workers' Compensation insurer and language has been approved by WCAB.

If yes, or if uncertain, identify any controlling or applicable legal authority?

CA Labor Code 5000 - 5004; CA Labor Code 5102 - 5104:

No contract, rule, or regulation shall exempt the employer from liability for the compensation fixed by this division, but nothing in this division shall: (a) Impair the right of the parties interested to compromise, subject to the provisions herein contained, any liability which is claimed to exist under this division on account of injury or death; and (b) Confer upon the dependents of any injured employee any interest which the employee may not release by compromise or for which he, or his estate is in the event of such compromise by him accountable to dependents.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

COLORADO

<p>State of Colorado http://www.colorado.gov/</p> <p>Department of Labor & Employment 633 17th Street, Suite 1200 Denver, CO 80202-3660 Tel: (303) 318-8700 www.colorado.gov/CDLE</p> <p>Division of Workers' Compensation 633 17th Street, Suite 400 Denver, CO 80202-3660 Tel: (303) 318-8700 http://www.colorado.gov/cs/Satellite/CDLE-WorkComp/CDLE/1240336932511</p>	<p>Industrial Claims Appeals Office (ICAP) UI Benefits Inquiries: (303) 318-9000 or (800) 388-5515</p> <p>UI Employer Services Inquiries: (303) 318-9100 or (800) 480-8299 http://www.colorado.gov/cs/Satellite/CDLE-UnempBenefits/CDLE/1251566393439</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

There are no restrictions on which benefits may be resolved via a lump sum settlement.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, subject to the approval of an administrative law judge or the director of the division. (See C.R.S.A. § 8-43-204(3)).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at full value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

Employee's claim or award shall not be reopened; such settlement shall not be subject to being reopened under any provisions of articles 40 to 47 . . . other than on the ground of fraud or mutual mistake of material fact. (See C.R.S.A. § 8-43-204(1)).

Does the employer/insurer remain contingently liable?

The employer/insurer does not remain contingently liable if the employer has complied with the provisions of Articles 40 to 47.

Do structured settlements as previously described result in final release?

Yes, structured settlements result in a final release with the exception of fraud or mutual mistake of material fact. (See C.R.S.A. § 8-43-204(1) – Settlements).

Do all settlements require court approval?

Yes. The settlement shall be reviewed in person with the injured employee and approved in writing by an administrative law judge or the director of the division prior to the finalization of such settlement. The settlement shall be filed with the division as a part of the injured employee's permanent record. (See C.R.S.A. § 8-43-204(3) Settlements).

Who approves settlements?

Division of Workers' Compensation
633 17th Street, Suite 400
Denver, Colorado 80202-3660

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The type of structured settlement products that may be used are at the discretion of the insurer, the claimant and claimant's counsel. The Workers' Compensation Commission has no rules and/or statutes regulating the type of structured settlements products that may or may not be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No, under Colorado Statute 8-43-204, a settled workers' compensation case can be reopened on ground of fraud or mutual mistake of material fact. If there can be shown there was a mutual mistake regarding solvency of the annuity company, the claim may be reopened, subjecting workers' compensation insurer to contingent liability.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Colo. Rev. St. 8-43-204.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Who approves settlements?

Division of Workers' Compensation
633 17th Street, Suite 400
Denver, Colorado 80202-3660

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The type of structured settlement products that may be used are at the discretion of the insurer, the claimant and claimant's counsel. The Workers' Compensation Commission has no rules and/or statutes regulating the type of structured settlements products that may or may not be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No, under Colorado Statute 8-43-204, a settled workers' compensation case can be reopened on ground of fraud or mutual mistake of material fact. If there can be shown there was a mutual mistake regarding solvency of the annuity company, the claim may be reopened, subjecting workers' compensation insurer to contingent liability.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Colo. Rev. St. 8-43-204.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

CONNECTICUT

<p>State of Connecticut http://www.ct.gov/</p> <p>Workers' Compensation Commission Office of the Chairman Capitol Place 21 Oak Street Hartford, CT 06106 Phone: (860) 493-1500 Fax: (860) 247-1361 Email wcc.chairmansoffice@po.state.ct.us http://wcc.state.ct.us/</p>	<p>Compensation Review Board (CRB) Capitol Place 21 Oak Street Hartford, CT 06106 Phone: (860) 493-1500 Fax: (860) 247-1361 http://wcc.state.ct.us/wcc/crb.htm</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

It is determined on a case-by-case basis. The PTD can be settled via a lump sum but the claimant needs to show that it is in their best interest. (*See also* Conn. Gen. Stat. Ann. § 31-302 – Payment of Compensation – Commutation into monthly, quarterly or lump sums).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

If an employer and an injured employee, . . . reach an agreement in regard to compensation, such agreement shall be submitted in writing to the commissioner by the employer with a statement of the time, place and nature of the injury upon which it is based; and, if such commissioner finds such agreement to conform . . . the commissioner shall so approve it. A copy of the agreement, with a statement of the commissioner's approval, shall be delivered to each of the parties and thereafter it shall be as binding upon both parties as an award by the commissioner. (*See* C.G.S.A. § 31-296(a)).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are reduced to present value. In any case of commutation, a true equivalence of value shall be maintained, with due discount of sums payable in the future; and, when commutation is made into a single lump sum, (1) the commissioner may direct that it be paid to any savings bank, trust company or life insurance company authorized to do business within this state, to be held in trust for the beneficiary or beneficiaries under the provisions of this chapter and paid in conformity with the provisions of this chapter, and (2) the parties, by agreement and with approval of the commissioner, may prorate the single lump sum over the life expectancy of the injured employee. (*See* C.G.S.A. § 31-302).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

No.

Does the employer/insurer remain contingently liable?

No. The workers' compensation carrier does not remain contingently liable. (*See* C.G.S.A. § 31-

300).

Do structured settlements as previously described result in final release?

Yes, provided no appeal from the decision is taken by either party within twenty (20) days thereafter, such award shall be final and may be enforced in the same manner as a judgment of the Superior Court. (*See id.*).

Do all settlements require court approval?

Yes, Commissioner approves all Stipulation Agreements.

Who approves settlements?

Workers' Compensation Commission Capitol Place
21 Oak Street, Fourth Floor
Hartford, Connecticut 06106

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The type of structured settlement products that may be used are at the discretion of the insurer, the claimant and claimant's counsel. The Workers' Compensation Commission has no rules and/or statutes regulating the type of structured settlements products that may or may not be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

DELAWARE

<p>State of Delaware http://delaware.gov/</p> <p>Department of Labor 4425 North Market Street Wilmington, Delaware 19802 http://www.delawareworks.com/</p> <p>Division of Industrial Affairs 4425 North Market St. 3rd Floor Wilmington, DE 19802 Labor Law: (302) 422-1134 Workers' Compensation: (302) 422-1392 http://www.delawareworks.com/industrialaffairs/welcome.shtml</p>	<p>Office of Workers' Compensation 4425 North Market St. 3rd Floor Wilmington, DE 19802 Labor Law: (302) 422-1134 Workers' Compensation: (302) 422-1392</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Delaware permits all Workers' Compensation benefits, in whole or in part, may be resolved via a lump sum settlement.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, workers' compensation claims may be settled by agreement of the parties. However, the settlement must be submitted to and approved by the workers' compensation board. (*See* 19 Del.C. § 2344(a)).

Further, commutation of compensation pursuant to 19 Del.C. Section 2358 is to be favorably considered by the Board where there are sound and convincing reasons substantiated by dependable evidence that such communication will be in the best interests of the injured employee or the dependents of a deceased employee. The Board may lay down such guidelines and impose such conditions as it may deem advisable for the disbursement of all funds commuted. (*See* Industrial Accident Board Rules, Rule No. 22).

Are lump sum settlements paid at full value or reduced to present value?

The compensation contemplated . . . may be commuted by the Board at its present value when discounted at five percent interest, with annual rests, disregarding, except in commuting payments due under § 2324 of this title, the probability of the beneficiary's death. (*See* 19 Del.C. § 2358 - Commutation of compensation). According to the Division of Industrial Affairs, this statute is a guideline as all compensation can be negotiated between the parties.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

Reopening is not permitted and is considered full and final when the settlement has been commuted. If the settlement has not been commuted reopening a proceeding after final submission and before decision . . . must be made by petition, duly verified, within ten (10) days after the date of such closing of testimony, final submission or decision, as the case may be. (See Industrial Accident Board Rules, Rule No. 21, Further Hearing, Reopening Or Rehearing). In matters where fraud is involved, the case will be sent to the Delaware Fraud Prevention for review.

Does the employer/insurer remain contingently liable?

The employer/insurer will remain contingently liable until the case has been settled in its entirety. If the claim was only partially settled, the employer/insurer will be held liable until case is officially closed.

Do structured settlements as previously described result in final release?

Yes. The language, "here are the terms . . ." needs to be added into the settlement agreement.

Do all settlements require court approval?

No.

Who approves settlements?

Settlements are approved by either the Industrial Accident Board or if agreed to by the parties, the settlements are approved at the discretion of a Hearing Officer (who is an appointed attorney).

Division of Industrial Affairs
4425 North Market Street, Third Floor
Wilmington, Delaware 19802

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The type of structured settlement products that may be used are at the discretion of the insurer, the claimant and claimant’s counsel. The Workers’ Compensation Commission has no rules and/or statutes regulating the type of structured settlements products that may or may not be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers’ Compensation Insurer to hold a contingent liability on a structured settlement?

Uncertain.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Pursuant to 19 Del. C. § 2377(7) -- Substitute compensation systems; approval and termination

(a) Subject to the approval of the Department, any employer may enter into or continue any agreement with employees to provide a system of compensation, benefit or insurance in lieu of the compensation and insurance provided by this chapter.

(b) No such substitute system shall be approved unless it confers benefits upon injured employees at least equivalent to the benefits provided by this chapter, nor, if it requires contribution from the employees, unless it confers benefits in addition to those provided under this chapter at least commensurate with such contributions.

(c) Such substitute system may be terminated by the Department on reasonable notice and hearing to the interested parties, if it is shown that the system is not fairly administered or if its operation discloses latent defects threatening its solvency or if for any substantial reason it fails to accomplish the purposes of this chapter. Upon such termination the Department shall determine upon the proper distribution of all

remaining assets, if any, subject to the right of any party in interest to take an appeal to the Superior Court.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

DISTRICT OF COLUMBIA

<p>District of Columbia http://dc.gov/DC/</p> <p>Department of Employment Services 609 H Street, NE Washington, DC 20002 Tel: (202) 724-7000 Fax: (202) 673-6993 http://www.does.dc.gov/does/site/default.asp</p> <p>Government of the District of Columbia 4058 Minnesota Avenue, NE Washington, DC 20019 Tel: (202) 724-7000</p>	<p>Labor Standards Bureau Office of Workers' Compensation 64 New York Avenue, NE, 2nd floor Washington, DC 20002 Tel: (202) 671-1000</p> <p>Office of Hearings and Adjudication 64 New York Avenue, NE, Suite 2100 Washington, DC 20002 Tel: (202) 671-2233</p> <p>Office of Labor Relations 441 4th Street, NW, Suite 820 North Washington, DC 20001 Tel: (202) 724-4953 Fax: (202) 727-6887</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

The Mayor may approve lump-sum settlements agreed to in writing by the interested parties, discharging the liability of the employer for compensation, notwithstanding D.C ST. §§ 32-1516 and 32-1517, in any case where the Mayor determines that it is in the best interest of an injured employee entitled to compensation or individuals entitled to benefits pursuant to § 32-1509. The Mayor shall approve the settlement, where both parties are represented by legal counsel who are eligible to receive attorney fees pursuant to § 32-1530. These settlements shall be the complete and final dispositions of a case and shall be a final binding compensation order. (*See* DC ST § 32-1508(8)).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, but the settlement agreement must demonstrate that it is in the best interests of the employee. (*Id.*)

Are lump sum settlements paid at full value or reduced to present value?

There are no set rules and/or statutes as to the payment of lump sums at full value or whether they are reduced to present value. The attorneys and Claims Processing Unit decide on a case-by-case basis.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

A compensation order shall become effective when filed with the Mayor as provided in DC ST § 32-1520, and, unless an application for review has been filed with the Board as provided in subsection (b) of this section, shall become final at the expiration of the 30th day thereafter. (*See* DC ST §32-1522(a)). At any time prior to 1 year after the date of the last payment of compensation or at any time prior to 1 year after the rejection of a claim, provided, however, that in the case of a claim filed pursuant to § 32-1508(a)(3)(V) the time period shall be at any time prior to 3 years after the date of the last payment of

compensation or at any time prior to 3 years after the rejection of a claim, the Mayor may, upon his own initiative or upon application of a party in interest, order a review of a compensation case pursuant to the procedures provided in § 32-1520 where there is reason to believe that a change of conditions has occurred which raises issues concerning: (1) The fact or the degree of disability or the amount of compensation payable pursuant thereto; or (2) The fact of eligibility or the amount of compensation payable pursuant to § 32-1509. A review ordered pursuant to subsection (a) of this section shall be limited solely to new evidence which directly addresses the alleged change of conditions. Upon the completion of a review conducted pursuant to subsection (a) of this section, the Mayor shall issue a new compensation order which may terminate, continue, reinstate, increase, or decrease such compensation previously paid, or award compensation. An award increasing or decreasing the compensation rate may be made and shall be effective from the date of the Mayor's order for a review of the compensation case. If, since the date of the Mayor's order for a review of the compensation case, the employer has made any payments of compensation at a rate greater than the rate provided in the new compensation order, the employer shall be entitled to be reimbursed for the difference in accordance with rules promulgated by the Mayor. If, since the date of the Mayor's order for review of the compensation case, the employer has made any payments of compensation at a rate less than the rate provided in the new compensation order, the employee shall be entitled to the difference as additional compensation in accordance with rules promulgated by the Mayor. (See DC ST § 32-1524).

Does the employer/insurer remain contingently liable?

No.

Do structured settlements as previously described result in final release?

All settlements are full and final.

Do all settlements require court approval?

No, settlements are not decided by an Administrative Law Judge but rather are approved by the Claims Processing Unit.

Who approves settlements?

Office of Workers' Compensation
64 New York Avenue, N.E., Room 2909
Washington, District of Columbia 20002

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

District of Columbia does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Claims Processing Unit stated that the determination for the type of structured settlement product is solely at the discretion of the parties involved and they give final approval if in the best interest of the claimant.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

FLORIDA

<p>State of Florida http://www.myflorida.com/</p> <p>Florida Department of Financial Services http://www.myfloridacfo.com/</p> <p>Division of Workers' Compensation 200 East Gaines Street Tallahassee, FL 32399-4220 Workers' Compensation Claims: (800) 342-1741 Workers' Compensation Exemption/Compliance: (800) 742-2214 EMAIL: Workers.CompService@myfloridacfo.com</p> <p>Workers' Compensation Oversight Board http://www.myfloridacfo.com/wc/pdf/2kAR_OversightBoard.PDF 100 Marathon Building 2574 Seagate Drive Tallahassee, Florida 32399-2152 Tel: (850) 487-2613 Fax: (850) 487-3232</p> <p>Florida Division of Administrative Hearings http://www.doah.state.fl.us/internet/</p>	<p>Office of Judges of Compensation Claims http://www.fljcc.org/jcc/</p> <p>Unrepresented parties are to write: OJCC Clerk 1180 Apalachee Parkway, Suite A Tallahassee, FL 32301-4574 Or by Fax: (850) 487-0724</p> <p>All documents must be e-filed using eJCC at www.fljcc.org/ejcc</p> <p>Florida Department of Education http://www.fldoe.org/</p> <p>Florida Division of Vocational Rehabilitation 2002 Old Saint Augustine Road, Building A Tallahassee, Florida 32301-4862 Tel: (800) 451-4327 (Voice/TDD), Tel: (850) 245-3399 (Voice/TDD) http://www.rehabworks.org/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

All workers' compensation benefits can be resolved via a lump sum settlement.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties may settle a workers' compensation claim, subject to the approval of the judge of compensation claims. (See Fla. Stat. § 440.20(11)).

Are lump sum settlements paid at full value or reduced to present value?

Determined on a case-by-case basis at the discretion of the insurer and the attorneys. There are no set rules and/or statutes regulating whether the lump sum settlements are paid at full value or reduced to present value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending. **Is reopening permitted?**

Yes, reopening is permitted only if within thirty (30) days from the receipt by claimant of the order or award, petition in writing for a review by the full commission of the order or award or on the grounds of fraud or mutual mistake of material fact.

Does the employer/insurer remain contingently liable?

No.

Do structured settlements as previously described result in final release?

Yes, structured settlements as previously described result in a final release.

Do all settlements require court approval?

Yes, all settlements require the approval of the Administrative Law Judge.

Who approves settlements?

Division of Workers' Compensation
301 Forrest Building
2728 Centerview Drive
Tallahassee, Florida 32399-0680

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Florida does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The determination for the type of structured settlement product is solely at the discretion of the parties involved and they give final approval if in the best interest of the claimant and whose policyholders' and financial ratings, as reported in A.M. Best's Insurance Reports, Property - Liability, are not less than "A" and "Class V", respectively.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

GEORGIA

<p>State of Georgia http://www.georgia.gov/</p> <p>Georgia State Board of Workers' Compensation Self-Insurance & Insurance 270 Peachtree Street, NW Atlanta, GA 30303-1299 COO Tel: (404) 656-2048 CFO Tel: (404) 656-2314 <i>Administrative Law Judges</i> Tel: (404) 656-3875 <i>Hearing Division</i> Tel: (404) 656-7773 <i>Alternate Dispute Resolution Division</i> Tel: (404) 656-2939 http://sbwc.georgia.gov/</p>	<p>Georgia Subsequent Injury Trust Fund Marquis Two Tower, Ste. 1250 285 Peachtree Center Avenue, NE Atlanta, GA 30303 Tel: (404) 656-7000 Fax: (404) 656-7100 http://stif.georgia.gov/</p> <p>Georgia Self-Insurers Guaranty Trust Fund <u>Street Address:</u> 880 West Peachtree Street Atlanta, GA 30309</p> <p><u>Mailing Address:</u> P.O. Box 7159 Atlanta, GA 30357-0159 Tel: (404) 872-6184 Fax: (404) 876-0992 E-mail: gafund@deflaw.com http://www.gaguaranty.com/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Lump sum payments of all or part of compensation generally (a) Upon the application of any party when benefits have been continued for a period of not less than 26 weeks, if the board determines that it is for the best interest of the claimant to prevent extreme hardship or is essential to the rehabilitation of the claimant, the board may order that the liability of the employer for future income benefits be discharged by the payment of a lump sum equal to the sum of all future payments, reduced to their present value upon the basis of interest calculated at 7 percent per annum; (b) Under the same requirements of subsection (a) of this Code section, the board may order the employer to make advance payments of a part of the future income benefits by payment of a lump sum equal to such part of future payments. The repayment of partial lump sum advance payments, together with interest of 7 percent per annum, may be accomplished by reducing the period of payment or reducing the weekly benefit, or both, as may be directed by the board. (See Ga. Code Ann., § 34-9-222 (2007)).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties may settle workers' compensation claims by agreement of the parties. However, the settlement is not binding unless and until it is approved by the Workers' Compensation Board. (See Ga. Code Ann., § 34-9-15).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are reduced to their present value upon the basis of interest calculated at 7 percent per annum.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

Yes, reopening is permitted only if (a) it's within twenty (20) days from the date that the stipulation was

signed by the parties not by the date the stipulation was entered or (b) stipulation can be vacated on the grounds of fraud or mutual mistake of material fact.

Does the employer/insurer remain contingently liable?

If the agreement provides for a structured settlement to be paid by a party other than the employer or the insurer, then the stipulation must contain a provision that the employer and insurer will be liable for the agreement in the event of the default or failure of that third party to pay. In addition, if the stipulated settlement agreement provides for a Medicare Set-Aside (MSA), the stipulated settlement agreement shall contain a provision as to the actual cost of the MSA. (See Title 34 – Labor and Industrial Relations, Appendix: Rules and Regulations of the State Board of Workers’ Compensation § 15(d) – Stipulated Settlements).

Do structured settlements as previously described result in final release?

Yes, all settlements are full in final with the exceptions as described above.

Do all settlements require court approval?

No. All settlements require the approval of the claims examiner. If approved by the claims examiner – they have been authorized to use an administrative law judge’s name stamp to place on the stipulation for final approval.

Who approves settlements?

Georgia State Board of Workers’ Compensation
270 Peachtree Street, NW
Atlanta, Georgia 30303-1299

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The type of structured settlement products that may be used are at the discretion of the insurer, the claimant and claimant’s counsel. The Workers’ Compensation Commission has no rules and/or statutes regulating the type of structured settlements products that may or may not be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers’ Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

HAWAII

<p>State of Hawaii http://hawaii.gov/</p> <p>Department of Labor & Industrial Relations (DLIR) 830 Punchbowl St. Honolulu, HI 96813 Tel: (808) 586-8842 Fax: (808) 586-9099 Email: dliir.director@hawaii.gov http://hawaii.gov/labor/</p>	<p>Disability Compensation Division</p> <p><u>Street Address:</u> 830 Punchbowl St., Room 209 Honolulu, HI 96813</p> <p><u>Mailing address:</u> P.O. Box 3769 Honolulu, HI 96812-3769</p> <p>Telephone Numbers: WC Facilitator Section: (808) 586-9161 WC Insurance Section: (808) 586-9166 Hearings Review Section: (808) 586-9164 Hearings Branch: (808) 586-9162 Voc Rehab Unit: (808) 586-9171 Cost Review Branch: (808) 586-9181 Plans Acceptance Branch: (808) 586-9188 Audit Section: (808) 586-9199 Investigation Section: (808) 586-9200 Hawaii District Office: (808) 974-6464 West Hawaii District Office: (808) 322-4808 Main District Office: (808) 243-5322 Kauai District Office: (808) 274-3351 http://hawaii.gov/labor/dcd</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Whenever for any reason the Director of Labor and Industrial Relations deems it advisable (on a case by case basis), any lump sum which is payable as provided in § 386-54 shall be paid to a suitable individual or corporation appointed by the circuit judge in whose jurisdiction the work injury occurred as trustee to administer or apply the same for the benefit of the disabled worker or the dependent entitled thereto in the manner determined by the director. The receipt of the trustee for the amount so paid shall discharge the employer of the employer's liability. (See HRS § 386-55 Trustee in case of lump sum payments).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The director must approve Hawaii law provides that workers' compensation claims may be settled by agreement of the parties, subject to the director's approval. Before the director shall be valid unless it is approved by decision of the director (See HRS § 386-78).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at a negotiated rate.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

Reopening is permitted only (a) in the absence of an appeal and within twenty days after a copy of the decision has been sent to each party, the director of labor and industrial relations may upon the director's own motion or upon the application of any party reopen a case to permit the introduction of newly discovered evidence, and may render a revised decision and (b) The director may at any time, either of the director's own motion or upon the application of any party, reopen any case on the ground that fraud has been practiced on the director or on any party and render such decision as is proper under the circumstances. (See HRS § 386-89 Reopening of cases; continuing jurisdiction of director).

Does the employer/insurer remain contingently liable?

Yes, the insurer remains contingently liable as long as the medicals remain open for the claim. Once the claim is closed then the insurer is released from liability. In addition, the Director of Labor has verbally stated it will not approve a settlement that does not impose contingent liability.

Do structured settlements as previously described result in final release?

Structured settlements do not result in a final release as long as the medicals remain open. However, in the settlement agreement if the claimant waives his rights to future medical expenses then the release will become final.

Do all settlements require court approval?

Unless otherwise provided, the director of labor and industrial relations shall have original jurisdiction over all controversies and disputes arising under this chapter. The decisions of the director shall be enforceable by the circuit court as provided in § 386-91. There shall be a right of appeal from the decisions of the director to the appellate board and thence to the intermediate appellate court . . . as provided in §§ 386-87 and 386-88, but in no case shall an appeal operate as a supersedeas or stay unless the appellate board or the appellate court so orders. (See HRS § 386-73 Original jurisdiction over controversies).

Who approves settlements?

Director of Labor and Industrial Relations
Department of Labor & Industrial Relations
830 Punchbowl Street
Honolulu, Hawaii 96813

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The Department of Labor and Industrial Relations (DLIR) of Hawaii does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Industrial Commission stated that the determination for the type of structured settlement product is solely at the discretion of the insurance carrier and parties involved.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling,

permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

IDAHO

<p>State of Idaho http://www.idaho.gov/</p> <p>Idaho Industrial Commission Idaho Industrial Commission P.O. Box 83720 Boise, Idaho 83720-0041 Tel: (208) 334-6000 Fax: (208) 334-2321 Adjudication Fax: (208) 332-7558 Email general information: mholbrook@iic.idaho.gov http://www.iic.idaho.gov/</p>	<p>State Insurance Fund <i>General correspondence</i> Idaho State Insurance Fund PO Box 83720 Boise, ID 83720-0044 Telephone toll-free: (800) 334-2370 Boise area: (208) 332-2100</p> <p>Fax: Claims: (208) 332-2171 Underwriting Information and Certificate Requests: (208) 332-2390</p> <p>E-mail Contacts: Claims Department ClaimsIM@IdahoSIF.org Underwriting Department UnderwritingIM@IdahoSIF.org Risk Management RiskManageIM@IdahoSIF.org</p> <p>http://www.idahosif.org/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Whenever the commission determines that it is for the best interest of all parties, the liability of the employer for compensation may, on application to the commission by any party interested, be discharged in whole or in part by the payment of one or more lump sums to be determined, with the approval of the commission. (*See Idaho Code § 72-404 – Lump Sum Payments*).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, the parties are permitted to settle workers' compensation claims by agreement, subject to the approval of the Idaho Industrial Commission. The commission may grant such approval based upon the determination that the settlement agreement is in the best interest of all parties. (*See Id.*)

Are lump sum settlements paid at full value or reduced to present value?

It is left up to the insurance carrier to determine the best settlement for the claimant.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing

Is reopening permitted?

A decision of the commission, in the absence of fraud, shall be final and conclusive as to all matters adjudicated by the commission. However, any party may move for reconsideration or rehearing of the decision on its own initiative, if within twenty (20) days from the date of filing the decision. However, the decision shall be final in the event of a denial of the motion for rehearing or reconsideration or the filing of the decision on rehearing or reconsideration. Final decisions may be appealed to the Supreme Court as provided by Idaho Code § 72-724. (*See I.C. § 72-718 – Finality of Commission's Decision*).

Does the employer/insurer remain contingently liable?

Yes, the employer and insurer remain contingently liable. The Idaho Industrial Commission has stated that it is required language to be placed into the settlement contracts that the insurance company and/or the employer will remain responsible parties in case of default of the annuity.

Do structured settlements as previously described result in final release?

Yes, structured settlements as previously described result in a full and final release, except as described above.

Do all settlements require court approval?

All lump sum settlements require the approval of two (2) out of three (3) Commissioners. Further, all questions arising under this law, if not settled by agreement or stipulation of the interested parties with the approval of the commission, except as otherwise herein provided, shall be determined by the commission. (See I.C. § 72-707 – Commission has jurisdiction of disputes).

Who approves settlements?

Idaho Industrial Commission
317 Main Street
Boise, Idaho 83720-0041

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Idaho Industrial Commission does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Industrial Commission stated that the determination for the type of structured settlement product is solely at the discretion of the insurance carrier and parties involved.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Is reopening permitted?

Reopening is not permitted. In cases of fraud, however, the case is referred to the Fraud Unit for the Department of Professional Regulation. After the Fraud Unit's investigation if they deem fraud was evident it is then referred to the Attorney General's office for prosecution.

Does the employer/insurer remain contingently liable?

No.

Do structured settlements as previously described result in final release?

Structured settlements will result in a final release; for an annuity purchase, only after the last payment is received by the claimant (See below).

Do all settlements require court approval?

Yes, all settlements require the final approval of the Administrative Law Judge.

Who approves settlements?

Illinois Workers' Compensation Commission
100 West Randolph Street, Suite 8-200
Chicago, Illinois 60601

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Structured annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in Illinois and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and category size VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

Yes.

If yes, or if uncertain, identify any controlling or applicable legal authority?

820 ILCS 305/24 (Deposit by employer of commuted value of unpaid compensation; purchase of annuity in amount of compensation due or computed) states that any employer against whom liability may exist for compensation under this Act shall upon the order and direction of the Commission:

- (a) Deposit the commuted value of the total unpaid compensation for which such liability exists, computed at three percent per annum in the

same manner as provided in Section 9, with the State Treasurer, or county treasurer in the county where the accident happened, or with any savings and loan association or State or national bank or trust company doing business in this State. Any such depository to which such compensation may be paid, shall pay the same out in installments as in this Act provided, unless such sum is ordered paid in, and is commuted to a lump sum payment in accordance with the provisions of this Act; or

(b) Purchase an annuity, in an amount of compensation due or computed, under this Act within the limitation provided by law in any insurance company granting annuities and licensed or permitted to do business in this State which may be designated by the employer or the Commission.

In addition, pursuant to 820 ILCS 305 § 4(a)(2) furnish security, indemnity or a bond guaranteeing the payment by the employer of the compensation provided for in this Act, provided that any such employer who application and financial statement shall not have satisfied the commission of his or her financial ability and who shall have secured his liability in part by excess liability insurance shall be required to furnish to the Commission security, indemnity or bond guaranteeing his or her payment up to the effective limits of the excess coverage, or Insure his entire liability to pay such compensation in some insurance carrier authorized, licensed, or permitted to do such insurance business in this State. Every policy of an insurance carrier, insuring the payment of compensation under this Act shall cover all the employees and the entire compensation liability of the insured: provided, however, that any employer may insure his or her compensation liability with 2 or more insurance carriers or may insure a part and qualify under subsection 1, 2 or 4 for the remainder off his or her liability to pay such compensation, subject to the following two provisions:

Firstly, the entire compensation liability of the employer to employees working at or from one location shall be insured in one such insurance carrier or shall be self-insured, and;

Secondly, the employer shall submit evidence satisfactorily to the Commission that his or her entire liability for the compensation provided for in this Act will be secured. Any provisions in any policy, or in any endorsement attached thereto, attempting to limit or modify in any way, the liability of the insurance carriers issuing the same except as otherwise provided herein shall be wholly void.

Nothing herein contained shall apply to policies of excess liability carriage secured by employers who have been approved by the Commission as self-insurers, or make some other provision, satisfactory to the Commission, for the securing of the payment of compensation provided for in this Act, and upon becoming subject to this Act and thereafter as often as the Commission may in writing demand, file with the Commission in form prescribed by its evidence of his or her compliance with the provision of this Section.

INDIANA

<p>State of Indiana http://www.in.gov/</p> <p>Workers' Compensation Board of Indiana Room W-196 402 West Washington Street Indianapolis, IN 46204 Tel: (317) 232-3808 http://www.in.gov/wcb/</p> <p>Government Center South 402 West Washington Street, Room W-196 Indianapolis, IN 46204</p>	<p>Indiana Compensation Rating Bureau (ICRB) 5920 Castleway West Drive Indianapolis, IN 46250 Tel: (800) 622-4208 (317) 842-2800 Fax: (317) 842-3717 http://www.icrb.net/</p> <p>Indiana Government Center North 100 N. Senate Ave., Room 103 Indianapolis, IN 46204-2211 Tel: (317) 232-2600 Toll-free: (complaints only) (800) 628-2909 TDD: (317) 743-3333 Fax: (317) 232-6580</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

In cases indicating complete disability, no petition for a commutation to a lump sum basis shall be entertained by the board until after the expiration of six (6) months from the date of the disablement. (*See* IC 22-3-7-18). Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof, paid in a lump sum for partial or TTD, may petition the worker's compensation board, asking that such compensation be so paid, and if, upon proper notice to the interested parties, and a proper showing made before the worker's compensation board, or any member thereof, it appears to the best interest of the parties that such compensation be so paid. (*Id.*)

Whenever the worker's compensation board deems it expedient, any lump sum under section 25 of this chapter shall be paid by the employer to some suitable person or corporation appointed by the circuit or superior court, as trustee, to administer the same for the benefit of the person entitled thereto, in the manner authorized by the court appointing such trustee. The receipt of such trustee for the amount so paid shall discharge the employer or anyone else who is liable therefore. (*See* IC 22-3-3-26 Lump sum payments; trustee).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, workers' compensation claims can be settled by voluntary agreement of the parties. However, the settlement agreement is not valid unless approved by a member of the workers' compensation board. (*See* IC § 22-3-2-15(a)).

Are lump sum settlements paid at full value or reduced to present value?

The workers' compensation board may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three percent (3%) per year with annual rests (*see* IC 22-3-7-18 Awards; lump sum payments).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

Either party to the dispute may, within thirty (30) days from the date of such award, appeal to the court of appeals for errors of law under the same terms and conditions as govern appeals in ordinary civil actions (*see* IC 22-3-4-8(b) disputes; administrative review). However, an award of the Workers' Compensation Board by less than all of the members . . . if not reviewed as provided in IC § 22-3-4-7, shall be final and conclusive (*see* IC 22-3-4-8(a) Disputes; awards; appeals).

Practically all workers' compensation statutes provide for the commutation of periodic compensation payments to lump sum payments upon a showing that such commutation is in the interests of justice, in the best interests of all the parties, in the best interests of the claimant, or some such other showing. The issues involved in reopening a workers' compensation award for a later-arising disability are frequently made more complicated where the award was made in a lump sum form. Some courts have interpreted lump sum payments as being final settlements of any further claims by the injured workers, while others have asserted the agencies' continuing jurisdiction over the claims. In holding that the claimant could not reopen the lump sum judgment, the court in *Underwood v Zurich Ins. Co.*, (1993, Tenn.) 854 SW2d 94, 26 ALR5th 820, found that the claimant assumed the risk of a future increase in disability in exchange for a lump sum payment, which was relatively larger than periodic weekly payments, but that the claimant could collect medical expenses for the later-arising disability where there was no dispute that the disability was caused by the accident. (*See* 26 A.L.R.5th 127).

Does the employer/insurer remain contingently liable?

No.

Do structured settlements as previously described result in final release?

After a transfer that has been approved . . . a structured settlement obligor and an annuity issuer are immune from liability to a payee, or to a party other than a transferee who is claiming through the payee, for paying structured settlement payments to a transferee. (*See* IC § 34-50-2-10 – Immunities).

Do all settlements require court approval?

All settlements require the approval of either the Workers' Compensation Board or the Administrative Law Judge.

Who approves settlements?

Workers' Compensation Board of Indiana Government Center South
402 West Washington Street, Room W-196
Indianapolis, Indiana 46204

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Any annuity contract issued by a company licensed to do business as an insurance company under the laws of any State, or any obligation of the United States, if (1) such annuity contract or obligation is used by the assignee to fund periodic payments under any qualified assignment, (2) the periods of the payments under the annuity contract or obligation are reasonably related to the periodic payments under the qualified assignment, and the amount of any such payment under the contract or obligation does not exceed the periodic payment to which it relates, (3) such annuity contract or obligation is designated by the taxpayer (in such manner as the Secretary shall by regulations prescribe) as being taken into account under this section with respect to such qualified assignment, and (4) such annuity contract or obligation is purchased by the taxpayer not more than 60 days before the date of the qualified assignment and not later than 60 days after the date of such assignment. (*See* 26 U.S.C.A. § 130(d)). Determined to be financially sound and having an A.M. Best rating of A+ and category size VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service. (*See* IN ST 34-13-3-23 Structured settlements).

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

COMMENTS

Structured Settlement includes both workers' compensation payment rights and non-workers' compensation payment rights under 26 USC § 5891 and the Indiana Structured Settlement Protection Act.

IOWA

<p>State of Iowa http://www.iowa.gov/</p> <p>Iowa Workforce Development 1000 East Grand Avenue Des Moines, Iowa 50319-0209 Tel: (515) 281-5387 Toll-free: (800) JOB-IOWA http://www.iowaworkforce.org/</p>	<p>Iowa Division of Workers' Compensation 1000 East Grand Avenue Des Moines, Iowa 50319-0209 Tel: (515) 281-5387 Toll-free: (800) JOB-IOWA Fax: (515) 281-6501 TTD: (515) 281-4748 E-mail: IWD.DWC@iwd.iowa.gov</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Total disability, scheduled award, temporary partial disability, and death may be resolved via a lump sum settlement. **Full Commutation** (I.C.A. §§ 85.45, 85.47) - A full commutation pays all remaining future benefits in one lump sum; **Partial Commutation** (I.C.A. §§ 85.45, 85.47, 85.48) - A partial commutation pays a part of remaining future weekly benefits in a lump sum; **Compromise Settlement** (I.C.A. § 85.35) - Payment is made in a lump sum; and **Provisions** in I.C.A. § 85.35(6) only apply to Compromise Settlements under I.C.A. § 85.35(3). The rate in a Full Commutation, Partial Commutation and Agreement for Settlement (I.C.A. §§ 85.35(2), 86.13) is fixed by statutory law.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, the parties may enter into a settlement of a workers' compensation claims as a full and final disposition of the claim, subject to the approval of the workers' compensation commissioner. The workers' compensation commissioner shall approve the settlement if the parties show (1) substantial evidence exists to support the terms of the settlement (2) waiver of the employee's right to a hearing, decision, and statutory benefits is made knowingly by the employee and (3) the settlement is a reasonable and informed compromise of the competing interests of the parties. (See I.C.A. § 85.35).

Are lump sum settlements paid at full value or reduced to present value?

A Full Commutation and Partial Commutation may be reduced to present value. However, the parties can agree to waive the discount.

The fair present value of future payments, as determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States internal revenue service. *Also see* Rule 876 I.A.C. 6.3(1), I.C.A. §§ 668.13(3) and 535.3.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

Yes, reopening is permitted under several statutes. First, the parties may enter into an agreement for settlement that establishes the employer's liability, fixes the nature and extent of the employee's current right to accrued benefits, and establishes the employee's right to statutory benefits that accrue in the future (see I.C.A. § 85.35(2) - Agreement for Settlement).

When partial commutation is ordered, the workers' compensation commissioner shall fix the lump sum to be paid at an amount which will equal the future payments for the period commuted, capitalized at their present value upon the basis of interest at the rate provided in I.C.A. § 535.3 for court judgments and decrees. Provisions shall be made for the payment of weekly compensation not included in the commutation with all remaining payments to be paid over the same period of time as though the commutation had not been made by either eliminating weekly payments from the first or last part of the payment period or by a pro rata reduction in the weekly benefit amount over the entire payment period (*see* I.C.A. § 85.48).

An award for payments or an agreement for settlement provided by I.C.A. § 86.13 for benefits under this chapter or chapters 85A or 85B, where the amount has not been commuted, may be reviewed upon commencement of reopening proceedings by the employer or the employee within three years from the date of the last payment of weekly benefits made under the award or agreement. If an award for payments or agreement for settlement as provided by I.C.A. § 86.13 for benefits under this chapter or chapter 85A or 85B has been made and the amount has not been commuted, or if a denial of liability is not filed with the workers' compensation commissioner and notice of the denial is not mailed to the employee, in the form and manner required by the commissioner, within six months of the commencement of weekly compensation benefits, the commissioner may at any time upon proper application make a determination and appropriate order concerning the entitlement of an employee to benefits provided for in I.C.A. § 85.27. The failure to file a denial of liability does not constitute an admission of liability under this chapter or chapters 85A, 85B, or 86 (*see also* I.C.A. § 85.26(2)).

In a proceeding to reopen an award for payments or agreement for settlement as provided by I.C.A. § 86.13, inquiry shall be into whether or not the condition of the employee warrants an end to, diminishment of, or increase of compensation so awarded or agreed upon (*see* I.C.A. § 86.14(2)).

Does the employer/insurer remain contingently liable?

No, if it is a full and final settlement. (*See* I.C.A. §§ 85.18, 85.35, 85.45, 85.47 and 85.48).

Do structured settlements as previously described result in final release?

Yes, on a Compromise Settlement and a Full Commutation.

Do all settlements require court approval?

Yes. Pursuant to I.C.A. § 85.35 / 7 – Settlements, a settlement shall be approved by the workers' compensation commissioner if the parties show all of the following: (a) Substantial evidence exists to support the terms of the settlement; (b) Waiver of the employee's right to a hearing, decision, and statutory benefits is made knowingly by the employee; and (c) The settlement is a reasonable and informed compromise of the competing interests of the parties.

If an employee is represented by legal counsel, it is presumed that the required showing for approval of the settlement has been made.

I.C.A. § 85.35(2) addresses an Agreement for Settlement.

I.C.A. §§ 85.45 and 85.47 set out conditions for a Full Commutation. I.C.A. § 85.48 set out conditions for a Partial Commutation.

Also see Rule 876 I.C.A. § 6.1-7.

Who approves settlements?

The Workers' Compensation Commissioner or the Workers' Compensation Commissioner's designee must approve all settlements involving work injuries.

Iowa Division of Workers' Compensation
1000 East Grand Avenue

Des Moines, Iowa 50319-0209

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Iowa's Division of Workers' Compensation does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Division of Workers' Compensation states that the determination for the type of structured settlement product is solely at the discretion of the parties involved.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No, however if Workers' Compensation insurer unilaterally enters into a structured settlement in relation to any settlement that is not a complete commutation, Workers' Compensation insurer will continue to hold a contingent liability. (See Iowa Code Chapter 682 – Structured Settlement Protection Act).

If yes, or if uncertain, identify any controlling or applicable legal authority?

See I.C.A. §§ 85.18, 85.35(2) and (3), 85.45, 85.47 and 85.48.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No, however, see Iowa Code Chapter 682.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

KANSAS

<p>State of Kansas http://www.kansas.gov/index.php</p> <p>Department of Labor 401 SW Topeka Boulevard Topeka, KS 66603-3182 Tel: (785) 296-5000 http://www.dol.ks.gov/index.html</p>	<p>Division of Workers' Compensation 800 SW Jackson, Suite 600 Topeka, Kansas 66612 E-mail: wc@dol.ks.gov</p> <p>Telephone Numbers: Ombudsman: (785) 296-2996 (800) 332-0353 Mediation: (785) 296-0848 (800) 332-0353 WC Board: (785) 296-8484 Directors office 785) 296-2996 http://www.dol.ks.gov/wc/about.html</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

A lump sum will only be given as compensation in two situations that are outlined in K.S.A. § 44-525. First, when a portion of the compensation is found to be due and unpaid at the time of the award. And second, when the settlement agreement has been approved by the Director. If the employee has already received payments, the amount paid by the employer will be totaled and considered credit towards the total of the lump sum payment.

If the employee has been overpaid temporary total disability compensation and the employee is entitled to additional compensation, the Administrative Law Judge shall use the overpayment as credit towards the additional compensation. The credit shall be applied to the final week of additional compensation and then to each preceding week until the credit is exhausted.

K.S.A. § 44-531(a) stipulated that if the claim will be settled through a lump sum, an employee could not have returned to work for nine months at a comparable wage if the compensation is based on work disability. K.S.A. § 44-531(b) also outlines that lump sum awards must be in accordance with K.S.A. §§ 510(b)(a), 44-525 and 44-529, if applicable.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, the parties may settle a workers' compensation claim by agreement. (See K.S.A. §§ 44-521 and 44-531). Such an agreement is subject to the approval of the worker's compensation director or the administrative law judge. (See K.S.A. §§ 44-527 and 55-431).

Are lump sum settlements paid at full value or reduced to present value?

Lump sums are paid at eight percent discount.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

Any award or modification thereof agreed upon by the parties, except lump sum settlements approved by the director or administrative law judge, whether the award provides for compensation into the future or whether it does not, may be reviewed by the administrative law judge for good cause shown upon the application of the employee, employer, dependent, insurance carrier or any other interested party. .

. the administrative law judge shall hear all competent evidence offered and if the administrative law judge finds that the award has been obtained by fraud or undue influence, that the award was made without authority or as a result of serious misconduct, that the award is excessive or inadequate or that the functional impairment or work disability of the employee has increased or diminished, the administrative law judge may modify such award, or reinstate a prior award, upon such terms as may be just, by increasing or diminishing the compensation subject to the limitations provided in the workers compensation act. (See Article 5, 44-528(a) – Review and modification of awards; reinstatement; cancellation; effective date).

In addition, Article 5, § 44-5, 120(h) allows that after the expiration of the time allowed for filing a petition for review of an order . . . the director at any time . . . may reopen and alter, modify or set aside . . . any order issued under this section, whenever in the director’s opinion conditions of fact or of law have so changed as to require such action or if the public interest so requires.

Does the employer/insurer remain contingently liable?

Upon paying . . . lump sum the employer shall be released and discharged of and from all liability under the workers compensation act for that portion of the employer’s liability redeemed under this section. (See K.S.A. § 44-531(a)).

However, the Division of Workers’ Compensation will not approve a settlement if the settlement is a structured settlement or purchase of an annuity, whereby the workers’ compensation carrier no longer remains contingently liable for the structured settlement payments.

Do structured settlements as previously described result in final release?

Yes, the structured settlements are full and final pertaining the final receipt and release of liability shall be signed by the claimant, and the signature shall be notarized. The final receipt and release of liability form shall be accompanied by a physician’s final report and by an accident report if the report has not already been filed with the division of workers compensation. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-527; effective Jan. 1, 1966; amended Jan. 1, 1973; amended Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended June 21, 2002).

Do all settlements require court approval?

Yes, every finding or award of compensation shall be in writing signed and acknowledged by the administrative law judge and shall specify the amount due and unpaid by the employer to the employee up to the date of the award, if any, and the amount of the payments thereafter to be paid by the employer to the employee, if any, and the length of time such payment shall continue. The award of the administrative law judge shall be effective the day following the date noted in the award. (See K.S.A. 44-525(a) – Form of findings and awards; effective date).

Who approves settlements?

Pursuant to K.S.A. 44-549, all hearings shall be held by the Administrative law Judge (ALJ) in the county where the accident took place unless it is mutually agreed upon by the employee and employer. The award finding, decision or order of an Administrative Law Judge, when filed in the office of the Director, shall be deemed the final award, finding, decision or order. (See Division of Workers’ Compensation Practice and Procedures Guide, Section X – Location of Proceedings and Section XI - Administrative Law Judge Schedule).

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers’ Compensation Insurer to hold a contingent liability on a structured settlement?

Uncertain. The Division of Workers’ Compensation has verbally stated it will not approve a settlement if buying an annuity or other instrument if it extinguishes ultimate responsibility of Workers’

Compensation insurer to pay.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

Yes.

If yes, or if uncertain, identify any controlling or applicable legal authority?

An employer subject to the provisions of Article 5, 44-5a07 (securing payment of compensation; liability exclusive) shall secure the payment of compensation . . . in any method prescribed by the provisions of K.S.A. § 44-532 of the workmen's compensation law, and such insurance or other security may be separate and distinct from the insurance or other security under the workmen's compensation law. Where the foregoing requirement is complied with the liability of the employer under this act shall be exclusive and in place of any and all other civil liability whatsoever, at common law or otherwise.

KENTUCKY

<p>Commonwealth of Kentucky http://kentucky.gov/Pages/home.aspx</p> <p>Kentucky Department of Labor Suite 4, 1047 U.S. Highway 127 South – Ste. 4 Frankfort, KY 40601 Tel: (502) 564-3070 Fax: (502) 564-5387 http://www.labor.ky.gov/</p> <p>Office of Workers' Claims 657 Chamberlin Avenue Frankfort, KY 40601 Tel: (502) 564-5550</p> <p>Workers' Compensation Board Tel: (859) 246-2773 Fax: (859) 246-2159</p>	<p>Division of Workers' Compensation Funds 1047 U.S. Highway 127 South – Ste. 4 Frankfort, KY 40601 Tel: (502) 564-3534 Fax: (502) 696-1897 http://www.labor.ky.gov/ows/workerscompensationfunds/</p> <p>Workers' Compensation Funding Commission 42 Millcreek Park P.O. Box 1128 Frankfort, KY 40602-1128 Tel: (502) 573-3505 Fax: (502) 573-4923 http://www.kwfc.ky.gov/</p> <p>Kentucky Workers' Compensation Law http://www.comped.net/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

If upon agreement by the employee and the insurance carrier, temporary benefits can be resolved via lump sum settlement. KRS § 342.150 – Lump Sum Compensation – when and how made – was repealed. Settlement agreements providing for commuted lump sum payment of future income benefits which would otherwise be payable in amounts greater than one hundred dollars (\$100) per week shall not be approved unless there is reasonable assurance that the worker will have an adequate source of income during disability. This subsection is remedial and applies to all pending and future claims. (See KRS § 342.265(2)).

However, whenever the administrative law judge considers it expedient, any lump sum which is paid shall be paid to any suitable person appointed by the District Court of the county of the residence of the injured employee or of his dependents as trustee to administer or apply the same for the benefit of the person or persons entitled thereto. The receipt of such trustee for the amount so paid to him shall discharge the employer and his insurer. Except as otherwise herein specifically provided, the manner of qualification and the rights, duties, and liabilities of the trustee shall be determined by the general laws of this state. (See KRS § 342.155 – Payment of lump sum compensation to trustee).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, workers' compensation claims can be settled by agreement of the parties, and further provides that if such agreement is approved by the administrative law judge, it shall be enforceable. (See K.R.S. § 342.265, and K.S.A. 44-549(a)).

Are lump sum settlements paid at full value or reduced to present value?

Upon lump sum settlement of future periodic payments, the discount rate used in the calculation of the settlement amount shall not exceed a reasonable amount fixed by the executive director. Before January 1 of each year commencing in 2001, the executive director shall fix the discount rate to be utilized in the succeeding year based at one-half of one percent (0.5%) below the interest rate paid upon ten (10) year United States Treasury Notes as of August 1 of the preceding year. (See KRS § 342.265(3)).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS § 342.730(1)(c)2, or for reducing a permanent total disability award when an employee returns to work, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party. (See KRS § 342.125 – Reopening and review of award or order).

Does the employer/insurer remain contingently liable?

No, provided the agreement extinguishes future exposure.

Do structured settlements as previously described result in final release?

All settlements are full and final except as described herein.

Do all settlements require court approval?

Yes, all settlements require the approval of the administrative law judge. The administrative law judge may grant continuances or grant or deny any benefits afforded under this chapter, including interlocutory relief, according to criteria established in administrative regulations promulgated by the executive director. The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless extension is mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute. (See § 342.275 - Benefit review by administrative law judge; determination; procedures; deadline).

Who approves settlements?

The Office of Workers' Claims
657 Chamberlain Ave.
Frankfurt, Kentucky 40601

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The insurer, at its own discretion, can use any type of structured settlement product that they believe is in the best interest of the claimant, whether it is a Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No, Kentucky has not enacted a law, administrative regulation or issued a judicial ruling requiring a Workers' Compensation insurer to hold a contingent liability on a structured settlement. However, pursuant to KRS § 342.340(1), the employer is to insure or provide security against liability to its workers.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Every employer under this chapter shall either insure and keep insured his liability for compensation hereunder in some corporation, association, or organization authorized to transact the business of workers' compensation insurance in this state or shall furnish to the executive director satisfactory proof of his financial ability to pay directly the compensation in the amount and manner and when due as provided for in this chapter. In the latter case, the executive director shall require the deposit of an acceptable security, indemnity, or bond to secure, to the extent the executive director directs, the payment of compensation liabilities as they are incurred. A public sector self-insured employer shall not be required to deposit funds as security, indemnity, or bond to secure the payment of liabilities under this chapter, if the public employer has authority to raise taxes, notwithstanding provisions of KRS §§ 68.245, 132.023, 132.027, and 160.470 relating to recall and reconsideration of local taxes; raise tuition; issue bonds; raise fees or fares for services provided; or has other authority to generate funds for its operation. (See KRS § 342.340(1)).

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No law, administrative regulation or judicial ruling has been enacted – however, it is fairly commonly done to assign the CL to an annuity company.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

COMMENTS

Agreement must be approved by the administrative law judge. Approved agreement must extinguish exposure for future medical expenses and for liability for future increase in disability benefits.

LOUISIANA

<p>State of Louisiana http://www.louisiana.gov/</p> <p>Department of Labor</p> <p><i>1001 N. 23rd Street Baton Rouge, LA 70802</i></p> <p><i>Tel: (225) 342-3111</i></p> <p>Fax: (225) 342-9192 E-mail: oois@lwc.la.gov http://www.laworks.net/</p>	<p>Office of Workers' Compensation Administration</p> <p><u>Street Address:</u> 1001 North 23rd Street Baton Rouge, LA 70802-9094</p> <p><u>Mailing Address:</u> P.O. Box 94040 Baton Rouge, LA 70804-9040 Tel: (225) 342-7970 Toll-free: (800) 201-2499 Fax: (225) 342-4790 http://www.laworks.net/WorkersComp/OWC_MainMenu.asp</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

A lump sum payment or compromise settlement in exchange for full and final discharge and release of the employer, his insurer, or both from liability under this Chapter shall be allowed only: (1) upon agreement between the parties, including the insurer's duty to obtain the employer's consent; (2) when it can be demonstrated that a lump sum payment is clearly in the best interests of the parties; and (3) upon the expiration of six months after termination of temporary total disability. However, such expiration may be waived by consent of the parties. (*See LSA - RS 23 § 1271(A)*).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, a workers' compensation claim may be settled by the agreement of the parties where it can be demonstrated that the agreement is in the best interests of the parties. However, the agreement must be approved by the workers' compensation judge. (*See LSA - RS § 23:1272(A)*).

Are lump sum settlements paid at full value or reduced to present value?

In a lump sum settlement, the payments due the employee or his dependents shall not be discounted at a rate greater than eight percent per annum (*See LSA - RS 23 § 1274(A)*).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

The order, decision or award of the Court shall be final and conclusive upon all questions within its jurisdiction between the parties, unless, within twenty (20) days . . . an action is commenced in the Supreme Court of the state, to review such order, decision or award (*see Title 85, Chapter 1, § 3.6*).

Does the employer/insurer remain contingently liable?

Upon payment of a lump sum settlement commuted on a term agreed upon by the parties, approved by the workers' compensation judge, and discounted at not more than eight percent per annum, the liability of the employer or his insurer making the payment shall be fully satisfied. (*See RS 23 § 1274(C)*).

However, under LSA - R.S. 9:2715, an insurer may be liable for penalties on attorney fees if payments are late.

Do structured settlements as previously described result in final release?

Yes.

Do all settlements require court approval?

Yes.

Who approves settlements?

Office of Workers' Compensation
1001 North 23rd Street
Baton Rouge, Louisiana 70804-9094

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Structured annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in Louisiana and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and category size VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

MAINE

<p>State of Maine http://www.maine.gov/portal/index.php</p> <p>Bureau of Labor Standards Bureau of Labor Standards 45 State House Station Augusta, Maine 04333-0045 Tel: (207) 623-7900 FAX: (207) 6449 TTY: (800) 794-1110 E-mail: webmaster.bls@maine.gov http://www.maine.gov/labor/bls/</p>	<p>Worker's Compensation Board 27 State House Station Augusta, ME 04333-0027 Tel: (207) 287-3751 Fax: (207) 287-7198 TTY: (877) 832-5525 Toll-Free (Maine Only): (888) 801-9087</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

By agreement of an insurer, self-insurer or self-insured group and an employer and the claimant may by agreement discharge any liability for compensation, in whole or in part, by the employer's payment of an amount to the employee if: (A) the insurer, the employer, the employee or the employee's dependents petition the board for an order commuting all payments for future benefits to a lump sum; [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]; (B) Six months' time has elapsed from the date of an injury; and [1991, c. 885, Pt. A, §8 (NEW); 1991, c. 885, Pt. A, §§9-11 (AFF).]; or (C) the provision of this section have been met and the agreement has been approved by the board, [1991, c. 885, Pt. A, §8 (NEW); 1991 C. 885, Pt. A, §§9-11 (AFF).] (*See* Title 39-A, Part 1, Chapter 7, Subchapter 2, § 352(1)). The claimant must obtain an impairment rating before the Hearing Officer approves the lump sum settlement and must be written on the WCB10 Form. (*See* 39-A M.R.S.A. at § 352(1)). The board may not approve any lump-sum settlement unless there is an agreement pursuant to subsection 1 or, in the event the employer refuses to agree to the settlement, the board has reviewed the proposed agreement and finds it to be in the best interests of the parties, and unless:

A. The employee has fully participated in the review process, except in circumstances amounting to good cause;

B. The board finds the settlement to be in the employee's best interest in light of the factors reviewed with the employee under subsection 3; and

C. In the case of a lump-sum settlement that requires the release of an employer's liability for future medical expenses of the employee, the board finds that the parties would be unlikely to reach agreement on the amount of the lump-sum payment without the release of liability for future medical expenses.

Monitoring of lump-sum settlement recipients. The board shall establish and maintain a program to monitor the post settlement employment experience of employees who settle their claims pursuant to this section to help develop future policy. The Department of Labor shall cooperate with the board in the establishment and operation of this monitoring program. (*Id.* at §§ 352(5) and (6)).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, workers' compensation claims can be settled by agreement of the parties provided the agreement is approved by the Workers' Compensation Board. The board may not approve the agreement unless it finds that the settlement is in the best interests of the employee. (*See* 39-A M.R.S.A. at §§ 351(a) and 352(5)).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at full value. (*Note: Pure lump sum settlements are diminishing and are going more towards structured lump sum settlements*).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

Yes, by either (a) Upon the petition of either party, the board may reopen and review any compensation payment scheme, award or decree on the grounds of newly discovered evidence that by due diligence could not have been discovered prior to the time the payment scheme was initiated or prior to the hearing on which the award or decree was based. The petition must be filed within 30 days of the payment scheme, award or decree (*See Title 39-A, Part 1, Chapter 7, Subchapter 1, § 319 Petition for reopening*); (b) upon the petition of either party at any time, the board may annul any agreement that has been approved by the board if it finds that the agreement has been entered into through mistake of fact by the petitioner or through fraud. Except in the case of fraud on the part of the employee, an employee is not barred by any time limit from filing a petition to have the matters covered by the agreement determined in accordance with this Act as though the agreement had not been approved; or (c) A party may petition the board, within one year of initiation of a payment scheme, award or decree, to reopen any case in which fraud on the part of the opposing party is alleged. If the board finds that the petitioning party exercised due diligence in investigating the initial claim and further finds that fraud occurred, the board may reopen the case as to any issue that may have been affected by the fraudulent act and the board may terminate or modify an employer’s obligation to make payment upon a finding that fraud on the part of a party affected the employer’s obligation to make payment. Except in the case of fraud on the part of the employee, an employee is not barred by any time limit from filing a petition to have any issues determined in accordance with this Act as though the payment scheme had not been initiated. (*See Title 39-A, Part 1, Chapter 7, Subchapter 1, §§ 321(1)(2) Reopening for mistake of fact or fraud*).

Does the employer/insurer remain contingently liable?

Neither employer nor the insurer remains contingently liable if a pure lump sum settlement is entered as it is full and final. If, however, the claimant enters into a structured lump sum or a structured settlement, the insurer remains contingently liable for medical expenses unless language is put into the settlement agreement waiving future medical.

Do structured settlements as previously described result in final release?

The insurer remains contingently liable for medical expenses unless language is put into the settlement agreement waiving future medical.

Do all settlements require court approval?

Yes, all settlements require the approval of the Hearing Officer (or ALJ).

Who approves settlements?

Hearing Officers are authorized by the Board to conduct hearings and issue decisions on the approval of lump sum settlements pursuant to 39-A M.R.S.A. § 352. (*See 90-351 Workers’ Compensation Board, Chapter 12, Formal Hearing, § 6*).

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-

Qualified Assignment, Reinsurance or Unassigned Annuity)?

Maine’s Workers’ Compensation Board does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Deputy Director stated that the determination for the type of structured settlement product is solely at the discretion of the parties involved and the Hearing Officer.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers’ Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

MARYLAND

<p>State of Maryland http://www.maryland.gov/</p> <p>Maryland Workers' Compensation Commission 10 East Baltimore Street Baltimore, Maryland 21202-1641 Toll-Free: (800) 492-0479 Tel: (410) 864-5100 Fax: (410) 333 -8122 Fraud: (800) 846-4069 E-mail: info@wcc.state.md.us http://www.wcc.state.md.us/</p>	<p>Insured Workers' Insurance Fund 8722 Loch Raven Boulevard Towson, Maryland 21286-2235 Toll-free: (800) 264-IWIF (4943) Tel: (410) 494-2000 Fax: (410) 494-2001 Injury Reporting Hotline: (888) 410-1400 Fraud: (888) ANTI-FRAUD E-mail: reportfraud@iwif.com http://www.iwif.com/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

All Workers' Compensation benefits may be resolved via a lump sum settlement. Lump sum workers' compensation awards, if actually warranted, may be made with respect to benefits that accrue after \$45,000 statutory cap is paid, but post-\$45,000 benefits do not accrue and are not payable to claimant until expiration of entire period of initial benefits reflected by limit of \$45,000, whether those prior benefits are paid throughout that period or in lump sum. Code 1957, Art. 101, §§ 36, 36 (1)(a) (Repealed); Code, Labor and Employment, § 9-637. *C & P Contractors v. Wagner*, 1992, 614 A.2d 1035, 93 Md.App. 801, *certiorari denied* 620 A.2d 350, 329 Md. 480.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Yes, the parties may settle a workers' compensation claim by agreement. However, the settlement must be approved by the workers' compensation commission. (See MD Code, Labor and Employment, § 9-729).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at full value. An award may not be discounted because of a lump sum payment. (See MD Code, Labor and Employment, § 9-729(d) - Lump sum payments-Commission order).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

H.B. 114, which went into effect on July, 2012, creates an exemption from SIF and UEF assessments in Maryland for a "formal set-aside allocation If the medical benefit is in excess of \$50,000 and paid out with an annuity or in any amount that is professionally administered by a 3rd party vendor with no reversion to the claimant's estate.

Is reopening permitted?

Lump sum settlement agreements cannot be reopened. However, when a petition to reopen to modify a workers' compensation award is based on a change in disability status, the petition must be filed within the statutory five-year period and allege a change in disability status, with a basis in fact, as opposed to merely alleging continuing medical treatment. *Buskirk v. C.J. Langenfelder & Son, Inc.*, 136 Md. App. 261, 764 A.2d 857 (2001). Further, once payment is made on workers' compensation award for

temporary disability, any reopening of the claim, even when disability has since become permanent, is subject to statutory reopening provisions. Code, Labor and Employment, § 9- 736. *Mayor and City Council of Baltimore v. Schwing*, 1997, 696 A.2d 511, 116 Md.App. 404, *certiorari granted* 702 A.2d 291, 347 Md. 683, *affirmed* 717 A.2d 919, 351 Md. 178.

Does the employer/insurer remain contingently liable?

14.09.01.19B(5)

ALL Settlement Agreements Must Now Also Include:

Specific language confirming that the interests of Medicare have been considered
AND a statement that the Insurer shall reimburse Medicare for any provisional payments made by Medicare which were ultimately determined to be the responsibility of the employer/insurer

AND

If the insurer makes an assignment of any of its obligations to a third party, the agreement must contain affirmative language confirming that the Employer/Insurer shall resume its obligation for all remaining payments in the event of a default by the third party

Do structured settlements as previously described result in final release?

Yes, once the structured settlement is entered, it is full and final.

Do all settlements require court approval?

Yes, the Commissioner reviews all settlements.

Who approves settlements?

Maryland Workers' Compensation Commission
10 East Baltimore Street
Baltimore, Maryland 21202-1641

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Maryland's Workers' Compensation Commission does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Commission stated that the determination for the type of structured settlement product is solely at the discretion of the parties involved and the Commissioner.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

Yes. 14.09.01.19B(5)

If the insurer makes an assignment of any of its obligations to a third party, the agreement must contain affirmative language confirming that the Employer/Insurer shall

resume its obligation for all remaining payments in the event of a default by the third party

If yes, or if uncertain, identify any controlling or applicable legal authority?

The judicial department of the Workers' Compensation Commission interprets (Workers' Compensation Law) LE § 9-732 – Prohibition against assignment, charge, attachment, or execution – to *include annuities*, which states "Except as provided in Title 10 of the Family Law Article, before the issuance and delivery of a check or draft for any money payable under this title, the money may not be assigned, charged, or taken in attachment or execution." (An. Code 1957, art. 101, § 50; l 1991, ch. 8, § 2).

MASSACHUSETTS

<p>Commonwealth of Massachusetts http://www.mass.gov</p> <p>Department of Industrial Accidents 1 Congress Street, Suite 100 Boston, MA 02114-2017 Tel: (617) 727-4900 Toll-free: (800) 323-3249 TDD: (Teletype for hard of hearing only): (800) 224-6196 E-mail: Info2@dia.state.ma.us http://www.mass.gov/dia/</p>	<p>Massachusetts Workers' Compensation Advisory Council 1 Congress Street, Suite 100 Boston, Massachusetts 02114-2017 Tel: (617) 727-4900 x378 Fax: (617) 727-1288 http://www.mass.gov/wcac/</p> <p>Workers' Compensation Rating & Inspection Bureau 101 Arch Street Boston, Massachusetts 02110 Tel: (617) 439-9030 Fax: (617) 439-6055 https://www.wcribma.org/mass/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Under the conditions and limitations specified in M.G.L.A. 152 § 48(1), the insurer and employee may, with the written consent of the employer if such employer is an experience modified insured, by an agreement pursuant to section nineteen, redeem any liability for compensation, in whole or in part, by the payment by the insurer of a lump sum amount. Where the employee is not represented by counsel, where the parties seek determination by an administrative judge or administrative law judge of the fair and reasonable amount to be paid out of the lump sum to discharge a lien cognizable under section forty-six A, or where any party requests that such agreement be approved by an administrative judge or administrative law judge prior to the filing of such agreement with the department, a lump sum agreement shall not have been perfected until and unless approved by an administrative judge or administrative law judge as being in the claimant's best interest. In all other cases the agreement shall not have been perfected until reviewed and approved as complete by a conciliator, administrative judge or administrative law judge as appropriate. A conciliator shall be made available in each regional office to review settlements without appointment." (See M.G.L.A. 152 § 48(1)).

Whenever a lump sum agreement has been perfected in accordance with the terms of this section, such agreement shall affect only the insurer and the employee who are parties to such lump sum agreement and shall not affect any other action or proceeding arising out of a separate and distinct injury under this chapter, whether the injury precedes or arises subsequent to the date of settlement, and whether or not the same insurer is claimed to be liable for such separate and distinct injury. (See *Id.* 152 § 48(4))

Whenever a lump sum agreement or payment has been approved by the reviewing board in accordance with the terms of this section, such agreement shall affect only the insurer and employee who are parties to such lump sum agreement and shall not affect any other action or proceeding arising out of a separate and distinct injury resulting in an incapacity whether the injury precedes or arises subsequent to the date of settlement. (See *Id.* § 48(5)).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties may settle a workers' compensation claim by agreement subject to the approval of the administrative law judge. (See MG.G.L.A. 152 § 19).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are usually reduced to present value but the decision is made between the insurers. The reduction is based upon factors such as claimant's age, educational background, skills and work experience.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

Yes only if an employee who receives an amount in violation of M.G.L.A. 152 § 48(3) shall have the right to re-open his or her claim for compensation.

Does the employer/insurer remain contingently liable?

No.

Do structured settlements as previously described result in final release?

Yes.

Do all settlements require court approval?

Yes, all settlements require the approval of an administrative judge or administrative law judge. Conciliators may approve a lump sum, but only as to their completeness. Only a judge can determine whether or not the lump sum is in the injured workers' best interest.

Who approves settlements?

Judges from the Department of Industrial Accidents
Massachusetts Workers' Compensation Advisory Council
One Congress Street, Suite 100
Boston, MA 02114-2017
Tel: (617) 727-4900

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Qualified Assignment.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No. It is accepted practice that workers' compensation carrier can make a qualified assignment.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

COMMENTS

Only condition is that structured settlement agreement be approved by the DIA.

MICHIGAN

<p>State of Michigan http://www.michigan.gov</p> <p>Department of Labor & Economic Growth Street Address: 611 W. Ottawa, 4th Floor Lansing, MI 48933</p> <p><u>Mailing Address:</u> P.O. Box 30004 Lansing, MI 48909 Tel: (517) 373-1820 Fax: (517) 373-2129 http://www.michigan.gov/dleg</p> <p>Workers' Compensation Agency P.O. Box 30016 Lansing, MI 48909 Tel: (888) 396-5041 Fax: (517) 322-6012 E-mail: wcinfo@michigan.gov http://www.michigan.gov/wca</p> <p>Workers' Compensation Appellate Commission <u>Street Address:</u> General Office Building 7150 Harris Drive Dimondale, MI 48821</p> <p><u>Mailing Address:</u> P.O. Box 30468 Lansing, MI 48909-7968 Tel: (517) 636-4692 Fax: (517) 636-4699 Email: wcacinfo@michigan.gov</p>	<p>Michigan Economic Development Corporation 300 N. Washington Square Lansing, MI 48913 Tel: Ombudsman (888) 522-0103 E-mail: MEDCservices@michigan.org http://www.michiganadvantage.org/</p> <p>Michigan Business Guide to Workers' Compensation http://ref.michigan.org/medc/services/workerscomp/</p> <p>Compensation Cost Control Service 300 N. Washington Square, 4th Floor Lansing, MI 48913 Tel: (517) 373-9808 http://www.michigan.gov/wca/0,1607,7-191-26925-41305--,00.html</p> <p>Compensation Advisory Organization of Michigan ("CAOM") 17197 N. Laurel Park Dr., Ste. 311 Livonia, MI 48152 Tel: (734) 462-9600 Fax: (734) 462-9721 http://www.caom.com/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

After six months' time has elapsed from the date of a personal injury, any liability resulting from the personal injury may be redeemed by the payment of a lump sum by agreement of the parties, subject to the approval of a worker's compensation magistrate. When a proposed redemption agreement is filed, it may be treated as a lump sum application, within the discretion of a worker's compensation magistrate. The filing of a proposed redemption agreement or lump sum application shall not be considered an admission of liability and if the worker's compensation magistrate treats a proposed redemption agreement as a lump sum application under this section, the employer shall be entitled to a hearing on the question of liability. (See M.C.L.A. § 418.835(1) - Lump sum payments; proposed redemption agreements; notification, contents, waiver of requirements; fees, disposition).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties may settle a workers' compensation claim by agreement. However, the settlement must be approved by a workers' compensation magistrate. Further, the magistrate shall only approve the settlement agreement if the agreement "serves the purpose of the act, is just and proper under the circumstances, and is in the best interests of the injured employee." (See M.C.L.A. §§ 418.835(1) and 418.836(1)(a)).

Are lump sum settlements paid at full value or reduced to present value?

The worker's compensation magistrate may direct that the deferred payments be commuted on the present worth at ten percent per annum to one or more lump sum payments. (See M.C.L.A. § 418.835(1) - Lump sum payments; proposed redemption agreements; notification, contents, waiver of requirements; fees, disposition).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

Unless review is ordered or requested within 15 days after the date the order of the worker's compensation magistrate is mailed to the parties, the order shall be final on all redemption claims. (See M.C.L.A. 418.837(3)). If the claim is a non-redemption claim, the claim is open indefinitely.

Does the employer/insurer remain contingently liable?

The insurer remains contingently liable only if it is a non-redemption claim.

Do structured settlements as previously described result in final release?

Yes, unless it is a non-redemption claim.

Do all settlements require court approval?

Yes, all settlements require the approval of the Magistrate.

Who approves settlements?

Only workers' compensation magistrates shall hear cases for which an application for a hearing under M.C.L.A. § 418.847 has been filed after March 31, 1986 and shall have the powers and perform the duties prescribed in this act. (See M.C.L.A. § 418.206(2) - Position of hearing referee abolished; workers' compensation magistrates).

Workers' Compensation Agency State Secondary Complex
General Office Building
7150 Harris Drive
1st Floor, B-Wing
Lansing, Michigan 48913

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Michigan does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The determination for the type of structured settlement product is solely at the discretion of the parties involved.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes to 10, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling,

permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Comments:

M.C.L.A. § 418.655 - Methods of relieving employer from existing liability for compensation

Any employer against whom liability may exist for compensation under this act, with the approval of the director, may be relieved there from by:

(a) Purchasing an annuity, within the limitations provided by law, in any insurance company granting annuities and licensed in this state, which may be designated by the employee, his dependents or

The director, as provided in subdivision (a).

MINNESOTA

<p>State of Minnesota http://www.state.mn.us</p> <p>Department of Labor and Industry 443 Lafayette Road N. St. Paul, MN 55155 Tel: (651) 284-5005 Toll-Free: (800) DIAL-DLI (800-342-5354) TTY: (651) 297-4198 http://www.dli.mn.gov/main.asp</p>	<p>Workers' Compensation Court of Appeals 25 Rev Dr Milk Jr Blvd # 405 Saint Paul, MN 55155-1500 Tel: (651) 296-6526</p> <p>Workers' Compensation Division 525 Lake Ave. S., Suite 330 Duluth, MN 55802-2368 Phone: (218) 733-7810 Fax: (218) 723-2362 http://www.dli.mn.gov/WorkComp.asp</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

All benefits with the exception of future medical benefits may be closed out via a lump sum payment. Under rare circumstances, medical benefits may also be closed out. (*See* Minnesota § 176.521 deals generally with settlements).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Workers' compensation claims can be settled by agreement of the parties. Such agreements, however, are subject to the approval of the commissioner or a compensation judge. *See Id.*

Are lump sum settlements paid at full value or reduced to present value?

This varies. Payments for PPD are payable on a periodic/weekly basis. The employee has the option of taking the PPD in a lump sum but the insurer is allowed to reduce the amount by 5%. (*See* Minnesota § 176.101 subd. 2a (b)). Otherwise, most insurers utilize present value tables in assessing settlement value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

No such bills or legislation is pending at this time.

Is reopening permitted?

Yes, claims can be reopened unless the claim is settled on a particular issue. Any such claims that a party is attempting to reopen would be subject to the defenses of the employer/insurer. If a case is settled, the settlement can be vacated by means of Petitioning to Vacate the settlement with the Minnesota Workers' Compensation Court of Appeals (*see* Minnesota § 176.461).

Does the employer/insurer remain contingently liable?

No.

Do structured settlements as previously described result in final release?

Structured settlements usually result in final release except for the medical benefits as indicated above.

Do all settlements require court approval?

Settlements are approved either by the court or the Department of Labor and Industry can approve settlements in claims that have been mediated. Most are approved by the Court.

Who approves settlements?

Workers' Compensation Division
443 Lafayette Road North
St. Paul, Minnesota 55155

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Minnesota does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The determination for the type of structured settlement product is solely at the discretion of the parties involved.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

MISSISSIPPI

State of Mississippi http://www.mississippi.gov/	Mississippi Workers' Compensation Commission <u>Street Address:</u> 1428 Lakeland Drive Jackson, Mississippi 39216 Toll-free: (866) 473-6922 <u>Mailing Address:</u> P.O. Box 5300 Jackson, MS 39296-5300 http://www.mwcc.state.ms.us/
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Indemnity and medical benefits may be settled on a compromise, lump sum basis (*see* Miss. Code Ann. § 71-3-29 – Compromise, commutation, and lump sum payments).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Workers' Compensation claims can be compromised but the Workers' Compensation Commission shall review same to ensure it is in the best interests of the injured worker or his dependents. (*See Id.*)

Are lump sum settlements paid at full value or reduced to present value?

"Compromise" settlements are paid at negotiated values determined by the parties. A claimant may also seek a "lump sum" payment of permanent disability benefits, and if approved, the lump sum is determined by reducing to present value the future permanent disability benefits still owing.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

Reopening is permitted for change in condition, mistake in determination of fact, or fraud, but only within one (1) year after settlement.

Does the employer/insurer remain contingently liable?

A compromise settlement is a final release, subject to the remote possibility of reopening.

Do structured settlements as previously described result in final release?

No, structured settlements do not result in a final release. Under Commission Rule 15, until all payments, even those that are structured, have been completed, the employer/insurer remains contingently liable.

Do all settlements require court approval?

Yes, approval of all settlements must be obtained from the Commission or an Administrative Judge.

Who approves settlements?

Mississippi Workers' Compensation Commission
1428 Lakeland Drive
Jackson, Mississippi 39216

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

There are no specific guidelines or limitations on the type of structured products.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

A claim settled on a structured basis will remain open as long as payments were being made to the claimant, even if by the annuity issuer.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Commission Rule 15; *McCrimmon v. Red Arrow Car Wash.*, 859 So. 2d 395 (2003)

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No law directly on point. Only requirement is Commission approval of settlement.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

MISSOURI

<p>State of Missouri http://www.mo.gov/</p> <p>Department of Labor & Industrial Relations 3315 West Truman Blvd. Room 214 P.O. Box 599 Jefferson City, MO 65102-0599 Telephone: (573) 751-2461 Fax: (573) 751-7806 E-mail: lirc@labor.mo.gov</p> <p>http://www.labor.mo.gov/</p>	<p>Division of Workers' Compensation P.O. Box 58 Jefferson City, MO 65102-0058 Tel: (573) 571-4231 Toll Free Information Line: (800) 775-2667 Employee Information Line: (800) 775-2667 Employer Information Line: (888) 837-6069 Dispute Management Unit: (573) 526-4951 Case Administration Review and Evaluation Unit (C.A.R.E): (573) 526-3542 Insurance Unit: (573) 526-3692 Physical Rehabilitation: (573) 526-3876 Second Injury Fund – Benefits: (573) 526-3543 Second Injury Fund – Collections: (573) 526-5756 Fraud and Noncompliance Unit: (800) 592-6003 Medical Fee Disputes Unit: (573) 526-5610 Religious Exception: (573)522-2546</p> <p>E-mail: workerscomp@labor.mo.gov</p> <p>http://www.labor.mo.gov/DWC/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

All workers' compensation benefits may be resolved via a lump sum settlement. Notwithstanding the provisions of V.A.M.S § 287.190, an employee shall be afforded the option of receiving a compromise settlement as a one-time lump sum payment. A compromise settlement approved by an administrative law judge or the commission shall indicate the manner of payment chosen by the employee. (*See* V.A.M.S. § 287.390).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Workers' compensation claims can be settled by voluntary settlement agreements beginning seven days from the date of injury. However, such compromise settlements must be approved by an administrative law judge or the commission. (*See Id.*)

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are reduced to present value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

The final award of the commission shall be conclusive and binding unless either party to the dispute shall, within thirty days from the date of the final award, appeal the award to the appellate court. The appellate court shall have jurisdiction to review all decisions of the commission pursuant to this chapter where the division has original jurisdiction over the case. (V.A.M.S. § 287.495(1)).

Does the employer/insurer remain contingently liable?

On notice to the other parties the commission or court may permit the employer to be discharged from further liability under any agreement, award or judgment for compensation by furnishing to the person entitled thereto an annuity or other obligation, approved by the commission or court, by which payment is assumed by some responsible person, or by depositing the commutable value thereof with the commission to be disbursed to the persons entitled thereto in such manner as the commission shall determine. (V.A.M.S. § 287.540).

An employer's and an insurer's liability under the Workers' Compensation Act releases them from all other liability. (*Shaw v. Scott* (App. W.D. 2001) 49 S.W.3d 720).

Do structured settlements as previously described result in final release?

Yes, there is no contingent liability.

Do all settlements require court approval?

Yes, all settlements require the approval of the Administrative Law Judge.

Who approves settlements?

Administrative Law Judge
Division of Workers' Compensation
3315 West Truman Boulevard, Room 131
Jefferson City, Missouri 65102

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Structured annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in Missouri and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and Class VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

COMMENTS

V.A.M.S. § 86.297 - Workers' compensation or other benefits offset against allowances

Any amounts which may be paid or payable by the said cities under the provisions of any workers' compensation or similar law to a member or to the dependents of a member on account of any temporary total disability, permanent total disability or death shall be offset against and payable in lieu of any periodic benefits payable out of the retirement system on account of the same disability or death. In case the present value of the total commuted benefits under said workers' compensation or similar law is less than the actuarial equivalent of the benefits otherwise payable from the retirement system, then the present value of the commuted payments shall be deducted from the actuarial equivalent of the benefits and such benefits as may be provided by the retirement system so reduced.

MONTANA

<p>State of Montana http://mt.gov/</p> <p>Department of Labor and Industry <u>Street Address:</u> Walt Sullivan Building 1327 Lockey Avenue Helena, MT</p> <p><u>Mailing Address:</u> P.O. Box 1728 Helena, MT 59624-1728 Tel: (406) 444-2840 Fax: (406) 444-1394 TTY: (406) 444-0532 http://dli.mt.gov/</p> <p>Workers' Compensation Claims Assistance Bureau <u>Street Address</u> Beck Building 1805 Prospect Avenue Helena, MT 59601</p> <p><u>Mailing Address</u> P.O. Box 8011 Helena, MT 59604-8011 Tel: (406) 444-6543</p> <p>Mediation Unit P.O. Box 1728 Helena, MT 59624-1728 Kay Henry Tel: (406) 444-6534 khenry@mt.gov</p> <p>Medical Regulations Address P.O. Box 8011 Helena, MT 59604-8011 Tel: (406) 444-7732 http://erd.dli.mt.gov/wcca-bureau.html</p>	<p>Workers' Compensation Court 1625 11th Avenue P.O. Box 537 Helena, MT 59624-0537 Tel: (406) 444-7794 Fax: (406) 444-7798 http://wcc.dli.mt.gov/</p> <p>Montana State Fund <u>Street Address</u> 855 Front Street Helena, MT 59601</p> <p><u>Mailing Address</u> P.O. Box 4759 Helena , MT 59604-4759</p> <p>Premium Payments Only P.O. Box 31477 Billings , MT 59107-1477</p> <p>Tel: Fraud Reporting: (888) 682-7463 Customer Service: (406) 495-5000 (800) 332-6102 TDD – TTY: (406) 495-5030 FAX: (406) 495-5020 (Injury Reports, Policy or Medical Correspondence) http://www.montanastatefund.com/wps/portal</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Pursuant to MT ST 39-71-741 (Compromise settlements and lump sum payments) - (1) by written agreement, benefits under this chapter may be converted in whole or in part into a lump sum. An agreement that settles a claim for any type of benefit is subject to department approval. Lump sum advances and payment of accrued benefits in a lump sum, except permanent total disability benefits under subsection (1)(c), are not subject to department approval. If the department fails to approve or disapprove the agreement in writing within 14 days of the filing with the department, the agreement is approved. The department shall directly notify a claimant of a department order approving or disapproving a claimant's compromise or lump sum payment. Upon approval, the agreement constitutes a compromise and release settlement and may not be reopened by the department. The department may approve an agreement to convert the following benefits to a lump sum only under the following conditions: (a) all benefits if a claimant and an insurer dispute the initial compensability of an injury and there is a reasonable dispute over compensability; (b) permanent partial disability benefits if an insurer has accepted initial liability

for an injury. The total of any permanent partial lump sum conversion in part that is awarded to a claimant prior to the claimant's final award may not exceed the anticipated award under 39-71-703. The department may disapprove an agreement under this subsection (1)(b) only if the department determines that the lump sum conversion amount is inadequate or (c) permanent total disability benefits if the total of all lump sum conversions in part that are awarded to a claimant do not exceed \$20,000. The approval or award of a lump sum permanent total disability payment in whole or in part by the department or court must be the exception. It may be given only if the worker has demonstrated financial need that: (i) relates to: (A) the necessities of life; (B) an accumulation of debt incurred prior to the injury; or (C) a self-employment venture that is considered feasible under criteria set forth by the department; or (ii) arises subsequent to the date of injury or arises because of reduced income as a result of the injury; (d) except as otherwise provided in this chapter, all other compromise settlements and lump sum payments agreed to by a claimant and insurer; or (e) medical benefits on an accepted claim if an insurer disputes the insurer's continued liability for medical benefits and there is a reasonable dispute over the medical treatment or medical compensability.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Workers' compensation claims can be settled by agreement of the parties. However, such an agreement is subject to department approval. (See MT ST 39-71-741).

Are lump sum settlements paid at full value or reduced to present value?

The rate adopted by the department must be based on the average rate for United States 10-year Treasury bills in the previous calendar year. (See MT ST 39-71-741(3)(b) Compromise settlements and lump sum payments). Further, MT ST 39-71-741(4) states that a dispute between a claimant and an insurer regarding the conversion of biweekly payments into a lump sum is considered a dispute for which a mediator and the workers' compensation court have jurisdiction to make a determination. If an insurer and a claimant agree to a compromise and release settlement or a lump sum payment but the department disapproves the agreement, the parties may request the workers' compensation court to review the department's decision.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

The judge may, upon the petition of a claimant or an insurer that the disability of the claimant has changed or that the claimant received benefits through fraud or deception, review, diminish, or increase, in accordance with the law on benefits as set forth in chapter 71 of this title, any benefits previously awarded by the judge. An insurer's petition alleging that the claimant received benefits through fraud or deception must be filed within 2 years after the insurer discovers the fraud or deception. (See MT ST § 39-71-2909. Authority to review, diminish, or increase awards).

Does the employer/insurer remain contingently liable?

Yes, both the employer and insurer remain contingently liable. In addition, Montana has enacted that even in case of bankruptcy, insolvency, liquidation, or the failure of an employer or insurer to meet any obligations imposed by this chapter, every liability which may be due under this chapter shall constitute a first lien upon any deposit made by such employer or insurer, and if such deposit shall not be sufficient to secure the payment of such liability in the manner and at the times provided for in this chapter, the deficiency shall be a lien upon all the property of such employer or insurer within this state and shall be prorated with other lienable claims and shall have preference over the claim of any creditor or creditors of such employer or insurer except the claims of other lienors. (See MT ST 39-71-408).

Do structured settlements as previously described result in final release?

Approved lump sum settlements result in a final resolution of the settled benefits except in cases of fraud, undue influence or coercion. If the settlement calls for future payments, the employer/insurer remains ultimately responsible for those payments to occur.

Do all settlements require court approval?

Yes all settlements require the approval of the administrative law judge. The administrative law judge may grant continuances or grant or deny any benefits including interlocutory relief, according to criteria established in administrative regulations promulgated by the executive director. The administrative law judge shall render the award, order, or decision within sixty (60) days following the final hearing unless extension is mutually agreed to by all parties. The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings, and a copy of the award, order, or decision shall immediately be sent to the parties in dispute.

Who approves settlements?

Workers' Compensation Court
1625 11th Avenue
Helena, Montana 59624

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Structured annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in Montana and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and Class VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

COMMENTS

INJURIES OCCURRING AFTER 1987 GENERAL REVISION -- *No Workers' Compensation Lump Sum Award on Demand -- Best Interests Test for Award of Lump Sum Distribution, Martin v. Hartford*: Martin unsuccessfully attempted to negotiate a lump sum settlement with respondent insurer, so Martin petitioned the Workers' Compensation Court for an order awarding him a lump sum distribution. The

request was denied, and on appeal, the Supreme Court affirmed, noting that lump sum distributions have always been the exception to the rule favoring periodic payments and that Montana's statutory scheme does not allow for the award of lump sums on demand. Rather, the court set out a best interests test for evaluating lump sum requests, allowing courts to consider all aspects of a claimant's personal situation, including: (1) physical and mental health; (2) family situation; (3) level of maturity; and (4) financial condition. Consideration of financial condition may encompass the claimant's outstanding indebtedness and pressing financial needs, as well as a spouse's income, which also must be considered to avoid an absurd treatment of the realities of a marital or family association. After hearing the evidence in this case, the Workers' Compensation Court properly concluded that Martin's financial situation was not pressing and that a lump sum was not in Martin's overall best interests, given that Martin: (1) had assets in excess of debt; (2) was doing well on biweekly benefits; (3) had monthly income in excess of expenses; (4) had other sources of income to allow for payment of extraordinary expenses; (5) was able to assist his children financially from time to time; (6) had invested in annuities and gold; and (7) was able to take periodic vacations. *Martin v. The Hartford*, 2004 MT 57, 320 M 206, 86 P3d 569 (2004).

NEBRASKA

State of Nebraska

<http://www.nebraska.gov/>

Workers Compensation Court

Mailing address:

P.O. Box 98908
Lincoln NE 68509-8908

Lincoln Hearings, Filings in Person, Filings by FedEx, UPS, etc., and Deliveries to State Capitol offices:
Nebraska Workers' Compensation Court
State Capitol Building, 13th Floor
1445 'K' Street
Lincoln, NE 68508

Deliveries to Administrative offices:
Nebraska Workers' Compensation Court
1221 'N' Street, Suite 402
Lincoln, NE 68508

Omaha Hearings and Deliveries to Hall of Justice offices:
Nebraska Workers' Compensation Court
Hall of Justice
1701 Farnam Street
Omaha, NE 68183-0001
Tel: (402) 471-6468
Toll-free: (800) 599-5155
Fax Number:
Clerk of Court State Capitol Building
(402) 471-8231
Administrative Office
(402) 471-2700
Omaha Office
(402) 595-1299
Vocational Rehabilitation
(402) 742-8311

<http://www.wcc.ne.gov/>

Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Temporary total disability, temporary partial disability, permanent partial disability (scheduled member; body as a whole), permanent total disability, medical expenses, and death benefits may be resolved via a lump sum.

The interested parties shall have the right to settle all matters of compensation between themselves with the consent of the workers' compensation insurer, if any, and in accordance with the Nebraska Workers' Compensation Act. A copy of such settlement, duly verified by all parties, shall be filed with the Nebraska Workers' Compensation Court and no such settlement shall be binding unless the settlement is in accordance with such act. (*See Neb. Rev. Stat. §§ 48-136 - Compensation; voluntary settlements*).

Every such lump sum settlement or agreement approved by order of the compensation court shall be final and conclusive unless procured by fraud. Upon paying the amount approved by the compensation court, the employer (1) shall be discharged from further liability on account of the injury or death, other than liability for the payment of future medical expenses if such liability is approved by the compensation court on the application of the parties, and (2) shall be entitled to a duly executed release. Upon filing the release or other proof of payment, the liability of the employer under any agreement, award, finding, or

decree shall be discharged of record (*see* Neb. Rev. Stat. § 48-139).

All settlements by agreement of the parties with the approval of the Nebraska Workers' Compensation Court and all awards of compensation made by the compensation court, except those amounts payable periodically, shall be final and not subject to readjustment; PROVIDED, no settlement shall be final unless it is in conformity with the Nebraska Workers' Compensation Act and approved by order of the compensation court pursuant to section 48-139 (*see* Neb. Rev. Stat. § 48- 140 – Compensation; settlements; conclusiveness; exception).

All amounts paid by an employer or by an insurance company carrying such risk, as the case may be, and received by the employee or his or her dependents by lump sum payments, approved by order pursuant to section 48-139, shall be final, but the amount of any agreement or award payable periodically may be modified as follows: (1) At any time by agreement of the parties with the approval of the Nebraska Workers' Compensation Court; or (2) if the parties cannot agree, then at any time after six months from the date of the agreement or award, an application may be made by either party on the ground of increase or decrease of incapacity due solely to the injury or that the condition of a dependent has changed as to age or marriage or by reason of the death of the dependent. In such case, the same procedure shall be followed as in sections 48-173 to 48-185 in case of disputed claim for compensation (*see* Neb. Rev. Stat. § 48-141 – Lump sum settlement; finality; periodic payment; modification).

Copy of lump sum settlement is required to be filed with compensation court. *Miller v. Schlereth*, 151 Neb. 33, 36 N.W.2d 497 (1949).

At any time after the amount of any award has been agreed upon by the parties and approved by the Nebraska Workers' Compensation Court, a sum equal to the present value of all future installments of compensation may, when death or the nature of the injury renders the amount of future payments certain, by leave of the compensation court, be paid by the employer, or by the insurance company carrying such risk, as the case may be, to any savings bank or trust company of this state, in good standing, and such sum together with all interest thereon, shall thereafter be held in trust for the employee or the dependents of the employee, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee to be filed with the compensation court, shall operate as a satisfaction of such award as to the employer. Payments from such fund shall be made by the trustee in the same amounts and at the same time as are herein required of the employer until the fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the compensation court, to the choice of the injured employee or the dependents of the deceased employee as the case may be (*see* Neb. Rev. Stat. § 48-142 – Compensation; amount agreed upon; payment to trustee; procedure).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The interested parties shall have the right to settle all matters of compensation between themselves with the consent of the workers' compensation insurer, if any, and in accordance with the Nebraska Workers' Compensation Act. No such settlement shall be binding unless the settlement is in accordance with such act. (*See* Neb. Rev. Stat. § 48-136).

Are lump sum settlements paid at full value or reduced to present value?

Either. However, monetary amount must equal the sum of the probable future payments, reduced to present value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending pertaining to settlement of all benefits under the settlement agreement.

Is reopening permitted?

Yes, reopening is permitted if evidence of fraud.

Does the employer/insurer remain contingently liable?

Yes. The workers' compensation carrier must remain contingently liable for structured settlement payments when an annuity is purchased to fund the obligation to make the periodic payments. Any release of the carrier by the claimant under these circumstances, would be in violation of this statute. (See Neb. Ct. R. Worker's Comp. Ct. Rule 47(B)(10)).

Do structured settlements as previously described result in final release?

Settlement agreements are permitted under Rule 46 of the Nebraska Workers' Compensation Court Rules of Procedure. Such settlement agreements will not be approved if there is any statement of implication that such settlement agreement is final or which requires a release from the claimant. (See Rule 46,I).

Do all settlements require court approval?

Yes. Agreements to settle workers' compensation cases not filed in and approved by the Workers' Compensation Court are void and of no effect. *Miner v. Robertson Home Furnishing*, 239 Neb. 525, 476 N.W.2d 854 (1991).

Who approves settlements?

Workers' Compensation Court
State House, 13th Floor
Lincoln, Nebraska 68509

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Not defined in statute or rule -- Rule 47,B,10 of the Nebraska Workers' Compensation Court Rules of Procedure provides as follows: "When an annuity or structured settlement is used to effectuate a lump sum settlement, the terms of said annuity or structured settlement together with the name of the annuity carrier must be included in the application, although the cost of the annuity or structured settlement need not be set forth; however, the cost of any annuity must be separately provided in writing to the court with the submission of the application. Any such application shall recite that the workers' compensation insurer, risk management pool, or self-insurer employer shall be responsible for all payments in the application in case the annuity carrier or any entity to which the annuity has been assigned is unable to fulfill any of its obligations. The application shall also state that the owner of the annuity or structured settlement shall be someone other than the employee or other beneficiary, and that the employee or other beneficiary shall have no control over or right to transfer the annuity or structured settlement.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

Yes.

If yes or if uncertain, identify any controlling or applicable legal authority?

See Rule 47(B)(10) of Nebraska Workers' Compensation Court Rules which states, ". . .when an annuity or structured settlement is used to effectuate a lump sum settlement, the terms of said annuity or structured settlement together with the name of the annuity carrier must be included in the application, although the cost of the annuity or structured settlement need not be set forth; however, the cost of any annuity must be separately provided in writing to the court with the submission of the application. Any such application shall recite that the workers' compensation insurer, risk management pool, or self-insured employer shall be responsible for all payments in the application in case the annuity carrier or any entity to which the annuity has been assigned is unable to fulfill any of its obligations. The application shall also state

that the owner of the annuity or structured settlement shall be someone other than the employee or other beneficiary, and that the employee or other beneficiary shall have no control over or right to transfer the annuity or structured settlement”.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

Yes.

If yes, or if uncertain, identify any controlling or applicable legal authority?

See Rule 47(B)(10) of Nebraska Workers’ Compensation Court Rules which states, when an annuity or structured settlement is used to effectuate a lump sum settlement, the terms of said annuity or structured settlement together with the name of the annuity carrier must be included in the application, although the cost of the annuity or structured settlement need not be set forth; however, the cost of any annuity must be separately provided in writing to the court with the submission of the application. Any such application shall recite that the workers' compensation insurer, risk management pool, or self-insured employer shall be responsible for all payments in the application in case the annuity carrier or any entity to which the annuity has been assigned is unable to fulfill any of its obligations. The application shall also state that the owner of the annuity or structured settlement shall be someone other than the employee or other beneficiary, and that the employee or other beneficiary shall have no control over or right to transfer the annuity or structured settlement.

NEVADA

<p>State of Nevada http://www.nv.gov/</p> <p>Department of Business & Industry <u>Northern Nevada:</u> 555 E. Washington Ave., Suite 4900 Las Vegas, NV 89101 Tel: (702) 486-2750 Fax: (702) 486-2758</p> <p><u>Southern Nevada:</u> 901 South Stewart Street, Suite 1003 Carson City, NV 89701-5491 Tel: (775) 684-2999 Fax: (775) 684-2998 email: biinfo@business.nv.gov http://dirweb.state.nv.us/</p> <p>Division of Industrial Relations Division Headquarters 400 West King Street, Suite 400 Carson City, Nevada 89703 Tel: (775) 684-7260 Fax: (775) 687-6305 http://dirweb.state.nv.us/</p>	<p>Workers' Compensation Section Charles J. Verre Chief Administrative Officer: (702) 486-9087</p> <p><u>Northern District:</u> 400 West King Street, Suite 400 Carson City, Nevada 89703 Tel: (775) 684-7270 Fax: (775) 687-6305</p> <p><u>Southern District:</u> 1301 North Green Valley Parkway, Suite 200 Henderson, Nevada 89074 Tel: (702) 486-9080 Fax: (702) 990-0364 http://dirweb.state.nv.us/WCS/wcs.htm</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

An employee injured on or after July 1, 1995, who incurs a permanent partial disability that: (1) does not exceed 25 percent may elect to receive his compensation in a lump sum; or (2) exceeds 25 percent may elect to receive his compensation in a lump sum equal to the present value of an award for a disability of 25 percent. If the injured employee elects to receive compensation in a lump sum the insurer shall pay in installments to the injured employee that portion of the injured employee's disability in excess of 25 percent up to the age of 70. (The Department of Insurance stated that the installment payments are paid directly by the insurance carrier to the claimant and the monies are not structured or placed into any annuities. If the claimant requests, however, the installment payments can be placed into an annuity and structure the settlement). (See NAC 616C.498 - Eligibility to receive compensation in lump sum for injury incurred on or after July 1, 1995; installments and NRS 616C.495 Permanent partial disability: Payments in lump sum).

If an injured employee elects to receive his award for a permanent partial disability in a lump sum, he must reaffirm his election within 20 days after receiving notification from the insurer pursuant to subsection 2 of NRS 616C.495 before the lump sum will be paid. (See NAC 616C.499 - Election to receive award in lump sum: reaffirmation; payment; notice of waiver of rights); or if an injured employee is eligible for vocational rehabilitation services pursuant to NRS 616C.590, the insurer and the injured employee may, at any time during the employee's eligibility for such services, execute a written agreement providing for the payment of compensation in a lump sum in lieu of the provision of vocational rehabilitation services. An insurer's refusal to execute such an agreement may not be appealed. (See NRS 616C.595 Agreements for payment of compensation in lump sum in lieu of provision of vocational rehabilitation services). Except as otherwise provided above and by NRS 616C.380, 616C.427, 616C.495, 616C.505, 616C.580 and 616C.595, the insurer shall not make or allow any lump sum settlements. (See NRS 616C.410 - Prohibition of settlements paid in lump sum; exceptions).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Workers' compensation carriers generally are not permitted to be released from claims in exchange for a lump sum settlement. (*See id.*)

Are lump sum settlements paid at full value or reduced to present value?

The lump sum payable must be equal to the present value of the compensation awarded, less any advance payment or lump sum previously paid. The present value must be calculated using monthly payments in the amounts prescribed in subsection 7 of NRS 616C.490 and actuarial annuity tables adopted by the Division. The tables must be reviewed annually by a consulting actuary. (*See* NRS 616C.495(5) - Permanent partial disability: Payments in lump sum).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

For a workers' compensation claim to be reopened, Nevada statutes require proof of a change of circumstances and proof that the primary cause of the change of circumstances is the injury for which the claim was originally made. General requirements to reopen a claim are found in NRS 616C.390, except as otherwise provided in NRS 616C.392.

Does the employer/insurer remain contingently liable?

The employer/insurer does not remain contingently liable when offering an award for a permanent partial disability in a lump sum. The insurer shall notify the injured employee that acceptance of the award waives all of his rights regarding the claim, including his right to appeal, except his right to reopen his claim and to vocational rehabilitation services. (*See* NAC 616C.499(3) - Election to receive award in lump sum: reaffirmation; payment; notice of waiver of rights).

Do structured settlements as previously described result in final release?

Yes. The language, "here are the terms . . ." needs to be added into the settlement agreement.

Do all settlements require court approval?

No. Settlements in Nevada do not require court approval. All settlements are determined by the rating physician appointed by the state and final determination is then made by the insurance carrier and/or third-party administrator. If there is a disagreement as to the percentage of the injury (*i.e.*, the treating physician states the disability is at fifteen percent and the insurance carrier states five percent), then the claim will be paid at ten percent. The claimant can then, if they so desire, appeal the abatement before a hearing officer who will at that time make a final determination as to the percentage of disability).

Who approves settlements?

Employers Insurance Company of Nevada
9790 Gateway Drive, Suite 100
Reno, Nevada 89501

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Structured annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business

in Nevada and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and category size VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

Yes.

If yes, or if uncertain, identify any controlling or applicable legal authority?

NRS 616C.412 - *Purchase of annuity by insurer to ensure payment of claim; adoption of regulations by Commissioner.*

- 1. An insurer may purchase an annuity to ensure the payment of a claim filed with the insurer pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS.*
- 2. The Commissioner shall adopt such regulations as are necessary to carry out the provisions of this section.*

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

Yes.

If yes, or if uncertain, identify any controlling or applicable legal authority?

NRS 616C.412 - *Purchase of annuity by insurer to ensure payment of claim; adoption of regulations by Commissioner.*

- 1. An insurer may purchase an annuity to ensure the payment of a claim filed with the insurer pursuant to chapters 616A to 616D, inclusive, or chapter 617 of NRS.*
- 2. The Commissioner shall adopt such regulations as are necessary to carry out the provisions of this section.*

COMMENTS

NV ADC 616C.505 -(NRS 616A.400) *Acceptance of award in installment payments.* An injured employee may accept an award for a permanent partial disability in installment payments without prejudice to any right which he may have to an administrative or judicial review.

NEW HAMPSHIRE

<p>State of New Hampshire http://www.nh.gov/</p> <p>Department of Labor <u>Street Address:</u> 95 Pleasant Street Concord, NH 03301</p> <p><u>Mailing Address:</u> P.O. Box 2076 Concord, NJ 03302 Tel: (603) 271-3176 Fax: (603) 27-2668 http://www.labor.state.nh.us/</p>	<p>Workers' Compensation Division NH Department of Labor 95 Pleasant Street Concord, NH 03301</p> <p>Kathryn J. Barger - Director, Workers' Compensation Division Tel: (603) 271-3176 Toll-free: (800) 272-4353</p> <p>Division Contact Numbers Coverage: (603) 271-2042 Claims: (603) 271-3174 Vocational Rehabilitation: (603) 271-3328 Self-Insurance: (603) 271-6172</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Weekly disability indemnity, permanent impairment awards and vocational rehabilitation can be settled via a lump sum settlement. Medical benefits remain open indefinitely.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties can settle a workers' compensation claim upon approval of the commissioner or the commissioner's designated representative. (See N.H. Rev. Stat. Ann § 281-A:37).

Are lump sum settlements paid at full value or reduced to present value?

Generally, the settlements are usually negotiated and paid in a single immediate lump sum amount. If a structure of future payments is negotiated, then the full schedule and face-value amounts of those payments are considered.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

Reopening is only permitted upon the grounds of fraud, undue influence or coercion.

Does the employer/insurer remain contingently liable?

Generally, the employer/insurer remains liable indefinitely for 1) future medical treatment that is reasonable and related to the work injury, and 2) ultimate payment of any negotiated and approved lump sum payment(s).

Do structured settlements as previously described result in final release?

Generally, approved lump sum settlements result in a final resolution of the settled benefits except in cases of fraud, undue influence or coercion. If the settlement calls for future payments, the employer/insurer remains ultimately responsible for those payments to occur.

Do all settlements require court approval?

No, generally lump sum settlements are approved administratively by the Commissioner of Labor or his designee.

Who approves settlements?

New Hampshire Department of Labor
95 Pleasant Street
Concord, New Hampshire 03301

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The New Hampshire Department of Labor does not usually inquire as to this point. However, any entity other than the employer/insurer that is responsible in the first instance to pay any future payment must be rated A+ by AM Best.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

NEW JERSEY

<p>State of New Jersey http://www.state.nj.us/</p> <p>Department of Labor & Workforce Development John Fitch Plaza Trenton, New Jersey 08625 Telephone Numbers: Customer Service Section: (609) 292-7060 Board of Review: (609) 292-2665</p> <p>http://lwd.state.nj.us/labor/index.html</p>	<p>Division of Workers' Compensation Tel: (609) 292-2414 (609)292-2515</p> <p>Office of Special Compensation Funds Tel: (609) 292-0165</p> <p>Vocational Rehabilitation Services Tel: (866) VR1-STOP or (609) 292-5987</p> <p>State Board of Mediation Tel: (973) 648-2860 http://lwd.state.nj.us/labor/wc/wc_index.html</p> <p>N.J. Compensation Rating & Inspection Bureau 60 Park Place Newark, New Jersey 07102 Tel: (973) 622-6014 http://www.njcrib.com/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Permanency is only allowed to be resolved via a lump sum settlement. After a petition for compensation or dependency claims has been filed, seeking compensation by reason of accident, injury or occupational disease of any employee, and when the petitioner is represented by an attorney of the State of New Jersey, and when it shall appear that the issue or issues involve the question of jurisdiction, liability, causal relationship or dependency of the petitioner under this chapter, and the petitioner and the respondent are desirous of entering into a lump sum settlement of the controversy, a judge of compensation may with the consent of the parties, after considering the testimony of the petitioner and other witnesses, together with any stipulation of the parties, and after such judge of compensation has determined that such settlement is fair and just under all the circumstances, enter "an order approving settlement." (See N.J.S.A. 34:15-20. Dispute; submission to division; order approving settlement).

At any time after the entry of an award, a sum equal to all future installments of compensation may where death or the nature of the injury renders the amount of future payments certain, by leave of court, be paid by the employer to any savings bank, trust company or life insurance company in good standing and authorized to do business in the state of New Jersey, pursuant to N.J.S.A. 34: 15- 24.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties can settle a workers' compensation claim when the judge has deemed the settlement to be "fair and just under all the circumstances," and approved same. (See *id.*)

Are lump sum settlements paid at full value or reduced to present value?

Compensation may be commuted by the bureau at its present value, when discounted at five per centum simple interest, upon application of either party, with due notice to the other, if it appears that such commutation will be for the best interest of the employees or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, or that the employee or dependent has removed or is about to remove from the United States, or that the employer has sold or otherwise disposed of the greater part of his business or assets. (See N.J.S.A. 34:15-25 – Commutation of award).

Any bills or legislation pending pertaining to settlement of all benefits under the

settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

The decision, award, determination and rule for judgment or order approving settlement shall be final and conclusive between the parties and shall bar any subsequent action or proceeding, unless reopened by the Division of Workers’ Compensation or appealed (see N.J.S.A. 34:15-38) within two years from the date of the last payment or two years from the date of the last treatment, whichever comes first. Reopening is not permitted if the case was settled via a lump sum settlement.

Does the employer/insurer remain contingently liable?

No.

Do structured settlements as previously described result in final release?

Generally, workers’ compensation cases are not structured. However, if a settlement is structured the language of a “full and final release” would be incorporated into the settlement contract.

Do all settlements require court approval?

Yes, all settlements require the approval of the Workers’ Compensation Judge.

Who approves settlements?

The settlements are approved by the Workers’ Compensation Judge in one of the 15 courts throughout New Jersey.

Division of Workers’ Compensation (Main Office)
John Fitch Plaza
Trenton, New Jersey 08625

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

New Jersey Division of Workers’ Compensation does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Division of Workers’ Compensation has stated that the determination for the type of structured settlement product is solely at the discretion of the parties involved and the Workers’ Compensation Judge.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers’ Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

NEW MEXICO

State of New Mexico http://www.newmexico.gov/	Workers' Compensation Administration 2410 Centre Avenue SE P.O. Box 27198 Albuquerque, NM 87125-7198 Tel: (505) 841-6000 In-state Toll Free: (800) 255-7965 http://www.workerscomp.state.nm.us/
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Pursuant to N.M.S.A. 1978, § 52-5-12 - Payment; periodic or lump sum:

- (A) It is stated policy for the administration of the Workers' Compensation Act and the New Mexico Occupational Disease Disablement Law that it is in the best interest of the injured worker or disabled employee that the worker or employee receive benefit payments on a periodic basis. Except as provided in this section, lump-sum payments in exchange for the release of the employer from liability for future payments of compensation or medical benefits shall not be allowed.
- (B) With the approval of the workers' compensation judge, a worker may elect to receive compensation benefits to which he is entitled in a lump sum if he has returned to work for at least six months, earning at least eighty percent of the average weekly wage he earned at the time of injury or disablement. If a worker receives his benefit income in a lump sum, he is not entitled to any additional benefit income for the compensable injury or disablement and he shall only receive that portion of the benefit income that is attributable to the impairment rating as determined in § 52-1-24 NMSA 1978.
- (C) After maximum medical improvement and with the approval of the workers' compensation judge, a worker may elect to receive a partial lump-sum payment of workers' compensation benefits for the sole purpose of paying debts that may have accumulated during the course of the injured or disabled worker's disability.
- (D) The worker and employer may elect to resolve a claim for injury with a lump-sum payment to the worker for all or a portion of past, present and future payments of compensation benefits, medical benefits or both in exchange for a full and final release or an appropriate release of the employer from liability for such compromised benefits. The proposed lump-sum payment agreement shall be presented to the workers' compensation judge for approval, and a hearing shall be held on the record. The workers' compensation judge shall approve the lump-sum payment agreement if the judge finds that:

(1) A written agreement describing the nature of the proposed settlement has been mutually agreed upon and executed by the worker and the employer;

(2) the worker has been fully informed and understands the terms, conditions and consequences of the proposed settlement;

(3) the lump-sum payment agreement is fair, equitable and provides substantial justice to the worker and employer; and

(4) *the lump-sum payment agreement complies with the requirements for approval set forth in Sections 52-5-13 and 52-5-14 NMSA 1978.*

- (E) The workers' compensation judge shall approve a lump-sum payment agreement pursuant to Subsection D of this section by order. Once the agreement has been approved and filed with the clerk of the administration, any further challenge to the terms of the settlement is barred and the lump-sum payment agreement shall not be reopened, set aside or reconsidered nor shall any additional benefits be imposed.
- (F) If a worker and employer elect to enter into a lump-sum payment agreement pursuant to Subsection D of this section, the limit on attorney fees pursuant to Subsection I of Section 52-1-54 NMSA 1978 shall apply.
- (G) If an insurer pays a lump-sum payment to an injured or disabled worker without the approval of a workers' compensation judge and if at a later date benefits are due for the injured or disabled worker's claim, the insurer alone shall be liable for that claim and shall not in any manner, including rate determinations and the employer's experience modifier, pass on the cost of the benefits due to the employer.
- (H) If the compensation benefit to which a worker is entitled is less than fifty dollars (\$50.00) per week, any party may petition the workers' compensation judge to consolidate that payment into quarterly installments.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties can settle a workers' compensation claim, subject to the approval of the workers' compensation judge. (*See id.*)

Are lump sum settlements paid at full value or reduced to present value?

In making lump sum payments, the payment due the worker shall not be discounted at a rate greater than a sum equal to the present value of all future payments of compensation computed at a five percent discount compounded annually (*See N.M.S.A. 1978, § 52-5-14(b) – Order of Approval*).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending as of this writing.

Is reopening permitted?

Except under rare circumstances any judgment for compensation in a workers' compensation case may be reopened during remainder of statutory period after original judgment for purpose of requesting an increase or decrease in compensation benefits (*see N.M.S.A. 1978, § 52-1-56*).

Does the employer/insurer remain contingently liable?

All awards shall be against the employer for the amount then due and shall contain an order upon the employer for the payment to the worker, at regular intervals during the time he is entitled to receive compensation, of the further amounts he is entitled to receive. The awards shall be so framed as to accomplish the purpose and intent of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law in all particulars. (*See N.M.S.A. 1978, § 52-5-15*). Further, when lump sum settlements are to be approved by the workers' compensation judge, there is no contingent liability. (*See N.M.S.A. 1978 § 52-5-12(G) – Payment; periodic or lump sum*).

Do structured settlements as previously described result in final release?

Structured settlements do not result in a final release unless the parties and judge agree that any future medical is waived and the appropriate language is incorporated into settlement agreement.

Do all settlements require court approval?

All settlement agreements need to be approved by the Administrative Law Judge. (See N.M.S.A. 1978, § 52-5-13).

Who approves settlements?

Workers' Compensation Administration
2410 Centre Avenue SE
Albuquerque, New Mexico 87125

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

New Mexico's Workers' Compensation Administration does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Workers' Compensation Administration stated that the determination for the type of structured settlement product is solely at the discretion of the parties involved and at the approval of the Administrative Law Judge. However, if the case is structured, the annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in New Mexico and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and category size VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

NEW YORK

<p>State of New York http://www.ny.gov/</p> <p>New York State Workers' Compensation Board 20 Park Street Albany, NY 12207</p> <p>Telephone Numbers: Toll-Free: (877) 632-4996 Customer Service: (518) 462-8880 Fraud Referral Hotline: (888) 363-6001 Albany: (866) 750-5157 Binghamton: (866) 802-3604 Brooklyn: (800) 877-1373 Buffalo: (866) 211-0645 Hauppauge: (866) 681-5354 Hempstead: (866) 805-3630 Manhattan: (800) 877-1373 Peekskill: (866) 746-0552 Queens: (800) 877-1373 Rochester: (866) 211-0644 Syracuse: (866) 802-3730</p> <p>E-mail the Board: general_information@wcb.state.ny.us</p> <p>http://www.wcb.state.ny.us/</p>	<p>New York State Insurance Fund 199 Church Street New York, NY 10007-1100</p> <p>Telephone Numbers: Safety Office: (212) 587-7358 Brooklyn / Staten Island: (212) 587-9208 Upper Manhattan: (212) 312-0070 Lower Manhattan: (212) 587-5435 Toll-Free: (888) 875-5790</p> <p>http://ww3.nysif.com/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

All claims can be commuted to lump sum payments upon a showing that such commutation is in the interests of justice, in the best interests of all the parties, in the best interests of the claimant, or some such other showing.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Law allows for the settlement of a workers' compensation claims by agreement of the parties, if the agreement is approved by the workers' compensation board. (See McKinney's Workers Compensation Law § 32).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are reduced to present value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

Upon its own motion or upon the application of any party in interest, on the ground of a change in conditions or proof of erroneous wage rate, the board may at any time, subject to the limitations set forth in sections

twenty-five-a and one hundred and twenty-three of this chapter, review any award, decision or order and, on such review, may make an award ending, diminishing or increasing the compensation previously awarded, subject to the maximum or minimum provided in this chapter, and shall immediately send to the parties a copy of its decision, which shall include a statement of the facts which formed the basis of its action. No such review shall affect such award as regards any moneys already paid, except that an award increasing the compensation rate may be made effective from date of injury, and except that if any part of the compensation due or to become due is unpaid, an award decreasing the compensation rate may be made effective from the date of injury, and any payments made prior thereto in excess of such decreased rate shall be deducted from any unpaid compensation, in such manner and by such methods as may be determined by the board. (See McKinney's Workers Compensation Law § 22 – Modifications of Awards, Decisions or Orders).

Does the employer/insurer remain contingently liable?

Upon payment by an employer or insurance carrier into the aggregate trust fund of an amount equal to the present value of all unpaid death benefits or other compensation under any such award together with such additional sum as the board may deem necessary for a proportionate payment of expenses of administering such trust fund including the cost of the actuarial computation by or on behalf of the board of the present value of the award, such employer or insurance carrier shall be discharged from any further liability for payment of such death benefits or other compensation, and payment of the same as provided by this chapter shall be assumed by the fund so created. (See McKinney's Workers Compensation Law § 27(3)).

An employer securing the payment of compensation by contributing premiums to the state fund shall there by become relieved from all liability for personal injuries or death sustained by his employees, and the persons entitled to compensation under this chapter shall have recourse therefor only to the state fund and not to the employer. An employer shall not otherwise be relieved from the liability for compensation prescribed by this chapter except by the payment thereof by himself or his insurance carrier. The provisions of this section shall not apply to the state of New York, as an employer except to the extent that the fund has provided insurance coverage on an actuarially sound basis to the state pursuant to the provisions of section eighty-eight-c of this chapter. To the extent that the fund has not provided insurance coverage on an actuarially sound basis pursuant to section eighty-eight-c of this chapter, any state employee or other person entitled to compensation under this chapter as a consequence of personal injuries or death of a state employee shall have direct recourse therefor only to the state. (See Chapter 67, Workers Compensation, Article 4, McKinney's Workers' Compensation Law § 53 - Release from liability).

Do structured settlements as previously described result in final release?

Yes, there is no contingent liability.

Do all settlements require court approval?

No. Municipalities are not required to obtain court approval for the settlement of claims, and, therefore, a county need not obtain court approval of a lump sum settlement of a Workers' Compensation claim.

Who approves settlements?

As WCLJ hearings are held in all WCB district offices and customer service centers. (The WCB employs over 80 WCLJs statewide).

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The annuity be purchased from a life insurance carrier rated "A" or better by A.M. Best or Standard & Poor.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring

a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

NORTH CAROLINA

<p>State of North Carolina http://www.ncgov.com/</p> <p>Department of Commerce <u>Street Address:</u> 301 North Wilmington Street Raleigh, NC 27601-1058</p> <p><u>Mailing Address:</u> 4301 Mail Service Center Raleigh, NC 27699-4301 Tel: (919) 733-4151 http://www.nccommerce.com/en</p>	<p>North Carolina Industrial Commission 430 N. Salisbury Street Raleigh, NC 27603 Tel: (919) 807-2501 Toll-Free: (800) 688-8349 http://www.ic.nc.gov/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Whenever any weekly payment has been continued for not less than six weeks, the liability therefore may, in unusual cases, where the Industrial Commission deems it to be to the best interest of the employee or where it will prevent undue hardships on the employer or his insurance carrier, without prejudicing the interests of the employee or his dependents by the payment by the employer of a lump sum which shall be fixed by the Commission, but in no case to exceed the uncommuted value of the future installments which may be due under this Article (see § N.C.G.S.A. § 97-44 Lump sums).

The Industrial Commission in its discretion will designate the interest rate and methods of computation to be used in arriving at the commuted value of unaccrued compensation payments. To commute the present value of unaccrued compensation payments, the parties shall utilize the Internal Revenue Service's Applicable Federal Rate or discount rate that is, 1 used to determine the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest, 2 set monthly by the Internal Revenue Service for Section 7520 interest rates, and 3 found in the Index of Applicable Federal Rate (AFR) Rulings. The Index of AFR Rulings is hereby incorporated by reference and includes subsequent amendments and editions.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Law allows for the settlement of a workers' compensation claims by agreement of the parties, if the agreement is approved by the Workers' Compensation Commission. (See N.C.G.S.A. § 97-17).

Are lump sum settlements paid at full value or reduced to present value?

Fixed by the Commission, but not to exceed full value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending pertaining as of this writing.

Is reopening permitted?

Pursuant to N.G.S.A. § 97-17(a) (Settlements allowed in accordance with Article), (a) This article does not prevent settlements made by and between the employee and employer so long as the amount of compensation and the time and manner of payment are in accordance with the provisions of this Article. A copy of a settlement agreement shall be filed by the employer with and approved by the Commission. No party to any agreement for compensation approved by the Commission shall deny the truth of the matters contained in the settlement agreement, unless the party is able to show to the satisfaction of the Commission that there has been error due to fraud, misrepresentation, undue influence or mutual mistake, in which event the Commission may set aside the agreement. Except as provided in this subsection, the decision of the Commission to approve a settlement agreement is final and is not subject to review or collateral.

However, pursuant to N.G.S.A. § 97-85 (Review of award), if application is made to the Commission within 15 days from the date when notice of the award shall have been given, the full Commission shall review the award, and, if good ground be shown therefore, reconsider the evidence, receive further evidence, rehear the parties or their representatives, and, if proper, amend the award. Provided, however, when application is made for review of an award, and such an award has been heard and determined by a commissioner of the North Carolina Industrial Commission, the commissioner who heard and determined the dispute in the first instance, as specified by G.S. 97-84, shall be disqualified from sitting with the full Commission on the review of such award, and the chairman of the Industrial Commission shall designate a deputy commissioner to take such commissioner's place in the review of the particular award. The deputy commissioner so designated, along with the two other commissioners, shall compose the full Commission upon review: Provided further, the chairman of the Industrial Commission shall have the authority to designate a deputy commissioner to take the place of a commissioner on the review of any case, in which event the deputy commissioner so designated shall have the same authority and duty as does the commissioner whose place he occupies on such review.

Does the employer/insurer remain contingently liable?

Unclear. The employer may be subject to contingent liability pursuant to N.C.G.S.A. § 97-6 which states, "that no special contract can relieve an employer of obligations, which states that no contract or agreement, written or implied, no rule, regulation, or other device shall in any manner operate to relieve an employer in whole or in part, of any obligation created by this Article, except as herein otherwise expressly provided."

Do structured settlements as previously described result in final release?

Unclear, as stated above.

Do all settlements require court approval?

Yes.

Who approves settlements?

North Carolina Industrial Commission Dobbs Building (sixth floor)
430 North Salisbury Street
Raleigh, North Carolina 27603-5937

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Structured annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in North Carolina and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and Class VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

Yes.

If yes, or if uncertain, identify any controlling or applicable legal authority?

N.C.G.S.A. § 97-6 which states, "No contract or agreement, written or implied, no rule, regulation, or other device shall in any manner operate to relieve an employer in whole or in part, of any obligation created by this Article, except as herein otherwise expressly provided."

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

Unclear, as an assignment may violate N.C. Gen. Stat. 97-6.

If yes, or if uncertain, identify any controlling or applicable legal authority?

N.C. Gen. Stat. 97-6.

NORTH DAKOTA

<p>State of North Dakota http://www.nd.gov/</p> <p>Workforce Safety & Insurance <u>Street Address:</u> 1600 East Century Avenue, Suite 1 Bismarck, ND 58503-0644</p> <p><u>Mailing Address:</u> PO Box 5585 Bismarck, ND 58506-5585</p> <p>Telephone Numbers: Main Office (Bismarck) Customer Service: (701) 328-3800 Toll-Free: (800) 777-5033 Hearing Impaired: (800) 366-6888 24/7 Claim Reporting: (800) 777-5033 Fraud & Safety HotLine: (800) 243-3331 Medical Provider Assistance Line: (800) 777-5033 Decision Review Office: (701) 328-9900 Toll-Free: (800) 701-4932 Communications: (701) 328-5931 Utilization Review: (701) 328-5990 Toll-Free: (888) 777-5871</p>	<p>Fax Numbers: Main Office – Bismarck: (701) 328-3820 Legal Department: (701) 328-6040 Employer Safety Issues: (701) 328-6028 Decision Review Office: (701) 328-9911 Employer Account Issues: (701) 328-3750 Communications: (701) 328-5956 Utilization Review: (701) 328-3765 Toll-Free: (866) 356-6433</p> <p>Decision Review Office: wsidro@nd.gov Employer Services: wsiemployerservices@nd.gov Preferred Worker Program: wsipworker@nd.gov Safety information: wsisafety@nd.gov Provider Relations: wsipr@nd.gov</p> <p>http://www.workforcesafety.com/</p> <p>Workforce Safety & Insurance Board of Directors P.O. Box 2174 Bismarck, ND 58502-2174 http://www.workforcesafety.com/about-us/boardofdirectors.asp</p>
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Which Workers’ Compensation benefits may be resolved via a lump sum settlement?

If an employee is determined to be permanently and totally disabled, North Dakota’s Workforce Safety and Insurance organization may pay the employee a lump sum settlement. The Workforce Safety & Insurance organization can resolve all disability benefits (permanent partial impairment, partial and total disability, medical expenses and benefits for vocational rehabilitation) via a lump sum settlement. The employee may not be paid a lump sum unless it has first determined that there is clear and convincing evidence that the lump sum payment is in the best interest of the employee. Best interest of the employee may not be deemed to exist because the employee can invest the lump sum in another manner to realize a better yield. The employee must show a specific plan of rehabilitation which will enable the employee to return as a productive member of society. (See NDCC § 65-05-25(1) – Lump sum settlements – Granted in discretion of organization). North Dakota pays for benefits during vocational rehabilitation and all training programs.

Can a workers’ compensation liability carrier settle workers’ compensation claims by way of structured settlements?

The [North Dakota workforce safety and insurance] organization and an employee may compromise to resolve a disputed claim. The contract of settlement made is enforceable by the parties. (NDCC § 65-05-25(2)).

Are lump sum settlements paid at full value or reduced to present value?

The employee may be paid a lump sum equal to the present value of all future payments of

compensation or it can be reduced to present value based upon any disputes in future benefits. The final determination is usually agreed upon by the parties.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending as of this writing.

Is reopening permitted?

Reopening is not permitted and language is inserted into all settlement contracts that it is not to be reopened and that the settlement is full and final. In cases of fraud, however, upon petitioning the court and submitting evidence, the Judge can enter an Order denying benefits and the matter then can proceed to litigation.

Does the employer/insurer remain contingently liable?

Neither the employer nor the insurer remains contingently liable after payment of a lump sum settlement. In all other incidences, the employer remains liable for the claim in effect for 5 years thereafter.

Do structured settlements as previously described result in final release?

Structured settlements do not result in a final release until the last payment is received by the claimant.

Do all settlements require court approval?

No, all settlements do not require court approval. Settlements can be finalized with just the approval of the agency and the injured worker (claimant).

Who approves settlements?

Settlements are approved by the Chief of Claims, CEO or legal department of the Workforce Safety & Insurance. No court needs to approve the settlements.

Workforce Safety & Insurance
1600 East Century Avenue, Ste. One
Bismarck, North Dakota 58506-5585

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

North Dakota Workforce Safety and Insurance Commission does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Commission has stated that the determination for the type of structured settlement product is solely at the discretion of the parties involved and the agency. However, if the case is structured, the annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in North Dakota and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and category size VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring

a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

COMMENTS

NDCC § 65-05-25(4) notwithstanding any other provision of law, structured settlements may be used to resolve a dispute or to provide for payment of ongoing future benefits. The organization may contract with a third-party vendor to provide structured settlement payments.

North Dakota is one of four monopolistic states – the other three are Ohio, Washington and Wyoming.

OHIO

<p>State of Ohio http://www.ohio.gov/</p> <p>Ohio Bureau of Workers' Compensation <u>Mailing address:</u> BWC 30 W. Spring St. Columbus, OH 43215-2256 Toll-free: (800) OHIOBWC (800-644-6292) TTY: (800) BWC-4-TDD (800-292-4833) Fax: (877) 520-OHIO (6446)</p> <p>Ombudsman Toll free (nationwide): (800) 335-0996 Fax: (877) 321-9481 Email: ombudsperson@bwc.state.oh.us</p> <p>http://www.ohiobwc.com/</p>	<p>Industrial Commission of Ohio William Green Building 30 West Spring Street, 7th Floor Columbus, OH 43215-2233 Tel: (614) 466-4683 Fax: (614) -644-8373 https://www.ohioic.com/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

A state fund employer or the employee of such an employer may settle all Workers' Compensation benefits via a lump sum settlement pursuant to RC § 4123.64.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties can settle a workers' compensation claim subject to the approval of the staff hearing officer. (*See id.*).

Are lump sum settlements paid at full value or reduced to present value?

Bureau of Workers' Compensation ("BWC") current policy is that any form of payment made by the BWC which occurs over time shall be reduced to Net Present Value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

A settlement entered into under R.C. § 4123.65 is not appealable under §§ 4123.511 or 4123.512 of the Revised Code.

Does the employer/insurer remain contingently liable?

No. Unless the settlement is subject to the Medicare Secondary Payer Act which is a superseding Federal Statute.

Do structured settlements as previously described result in final release?

Ohio law does not prohibit structured settlements. However, the State Fund does not enter into structured settlements. The BWC enters into Lump Sum Settlements. Self-insured employers occasionally do.

Do all settlements require court approval?

No.

Who approves settlements?

Ohio BWC initially approves with a statutory review from the Ohio Industrial Commission.

Industrial Commission of Ohio
30 West Spring Street
Columbus, Ohio 43215-2256

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The type of structured settlement products that may be used are at the discretion of the insurer, the claimant and claimant's counsel. The Workers' Compensation Commission has no rules and/or statutes regulating the type of structured settlements products that may or may not be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes to 10, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes to 12, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Comments

Ohio is one of four monopolistic states – the other three are North Dakota, Washington and Wyoming.

OKLAHOMA

<p>State of Oklahoma http://www.ok.gov/</p> <p>Oklahoma Workers' Compensation Court <u>Oklahoma Location:</u> 1915 N. Stiles Avenue Oklahoma City, OK 73105</p> <p><u>Tulsa Location:</u> 440 South Houston, Ste. 210 Tulsa, OK 74127</p> <p>Telephone Numbers: Administration: (405) 522-8600 Court Clerk: (405) 522-8630</p> <p>Questions about WC issues: Tel: (405) 522-8600 Toll-Free: (800) 522-8210 http://www.owcc.state.ok.us/</p> <p>Department of Labor 3017 N Stiles, Suite 100 Oklahoma City, OK 73105 Telephone Numbers: Local: (405) 521-6100 Toll Free: (888) 269-5353 Fax: (405) 521-6018 E-mail: labor.info@labor.ok.gov http://www.ok.gov/odol/</p>	<p>CompSource Oklahoma <u>Oklahoma Street Address:</u> 1901 N. Walnut Ave Oklahoma City, OK 73105-3295</p> <p><u>Oklahoma Mailing Address:</u> CompSource Oklahoma PO Box 53505 Oklahoma City, OK 73152-3505</p> <p><u>Tulsa Street Address:</u> 1305 S. Denver Ave Tulsa, OK 74119-3040</p> <p><u>Tulsa Mailing Address:</u> CompSource Oklahoma PO Box 50580 Tulsa, OK 74150-0580</p> <p>Telephone Numbers: Local: (405) 232-7663 Toll-Free: (800) 347-3863 Teleclaim (Report an Injury): (800) 872-7015 Fraud Hotline: (800) 899-1847 Email: fraud@compsourceok.com</p> <p>Claim Information: (405) 962-3872 Toll-Free: (800) 462-7966 Email: claims@compsourceok.com Tulsa Office: (918) 295-1500 Toll-Free: (800) 347-3863</p> <p><u>Local Fax Numbers:</u> Underwriting/Policyholder Services: (405) 962-3001 Premium Billing (Payroll Reports): (405) 962-3001 Claims: (405) 962-3000</p> <p><u>Statewide Toll-Free Fax Number:</u> Underwriting/Policyholder Services: (866) 211-6989 Premium Billing (Payroll Reports): (866) 211-6989 Claims: (866) 894-5410</p> <p>http://www.compsourceok.com/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

All claims can be settled via lump sum settlement if agreed upon in a joint petition settlement pursuant to 85 Okl.St. Ann. §§ 26 and 41.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties can settle a workers' compensation claim subject to the approval of the workers' compensation court judge or the court administrator. (See 85 Okl.St. Ann. § 26).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid based on a percentage of the disability and future medical treatment.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

At present, there are no bills or legislation pending as of this writing.

Is reopening permitted?

The jurisdiction of the Court to reopen any cause upon an application based upon a change in condition for the worse shall extend for three (3) years from the date of the last order, and unless filed within said period of time, shall be forever barred. An order denying an application to reopen a claim shall not extend the period of the time set out herein for reopening the case. (See 85 Okl.St. Ann. § 43(C)).

Does the employer/insurer remain contingently liable?

No, if the claimant agrees to accept a full and final release.

Do structured settlements as previously described result in final release?

Yes. The language, "here are the terms . . ." needs to be added into the joint petition.

Do all settlements require court approval?

Yes, all settlements require court approval.

Who approves settlements?

The administrative law judge in Oklahoma Workers' Compensation Court approves settlements.

Oklahoma City Location:
Denver N. Davison Court Building 1915 North Stiles Avenue
Oklahoma City, Oklahoma 73105

Tulsa Location:
440 South Houston, Suite 210 Tulsa, Oklahoma 74127

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The type of structured settlement products that may be used are at the discretion of the insurer, the claimant and claimant's counsel. The Workers' Compensation Commission has no rules and/or statutes regulating the type of structured settlements products that may or may not be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a CL to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

OREGON

<p>State of Oregon http://www.oregon.gov/</p> <p>Workers' Compensation Division 350 Winter St. NE P.O. Box 14480 Salem 97309-0405 Tel: (503) 947-7810 Toll-free: (800) 452-0288 Fax: (503) 947-7581 E-mail: workcomp.questions@state.or.us http://www.cbs.state.or.us/wcd/</p> <p>Workers' Compensation Board 2601 25th St SE, Ste 150 Salem, OR 97302-1280 Phone: (503) 378-3308 Toll free: Salem: (877) 311-8061 - Salem Portland: (866) 880-2078 - Portland http://www.cbs.state.or.us/external/wcb/index.html</p>	<p>Workers' Compensation Management-Labor Advisory Committee 350 Winter St. NE P.O. Box 14480 Salem, OR 97309-0405 Tel: (503) 947-7866 Win Lombardi: (503) 947-7866 Fax: (503) 378-6444 http://www.oregon.gov/DCBS/MLAC/index.shtml</p> <p>Department of Consumer & Business Services 350 Winter Street NE P.O. Box 14480 Salem, OR 97309-0405 Tel: (503) 378-4100 Fax: (503) 378-6444 http://egov.oregon.gov/DCBS/contact_us.shtml</p> <p>Ombudsman for Injured Workers P.O. Box 14480 Salem, OR 97309-0405 Tel: (503) 378-3351 Toll-free: (800) 927-1271 http://www.oregon.gov/DCBS/OIW/index.shtml</p> <p>Ombudsman for Small Business 350 Winter Street NE P.O. Box 14480 Salem, OR 97309-0405 Tel: (503) 378-4209 Fax: (503) 373-7639 http://www.oregon.gov/DCBS/SBO/index.shtml</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Where there is a bona fide dispute over compensability of a claim the parties may, with the approval of an Administrative Law Judge, the board or the court, by agreement make such disposition of the claim as is considered reasonable. (See O.R.S. § 656.289).

Unless otherwise specified, a disposition resolves all matters and all rights to compensation, attorney fees and penalties potentially arising out of claims, except medical services, regardless of the conditions stated in the agreement. Each disposition shall be filed with the board for approval by the Administrative Law Judge who mediated the agreement or by the board. (See O.R.S. § 656.236).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties can settle a workers' compensation claim, subject to the approval of an Administrative Law Judge. (See O.R.S. § 656.289).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at full value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

The insurer or self-insured employer may voluntarily reopen any claim to provide benefits allowable under this section or to grant additional medical or hospital care to the claimant (for up to 5 years). The board shall establish procedures for the resolution of disputes arising out of a voluntary reopening of a claim under this section. (See O.R.S. § 656.278 (5)).

Additionally, there is established a Reopened Claims Program for the purpose of reimbursing the additional amounts of compensation payable to injured workers that results from any award made by the Workers' Compensation Board or voluntary claim reopening pursuant to O.R.S. § 656.278 after January 1, 1988. (See O.R.S. § 656.625(1) - Reopened Claims Program).

Does the employer/insurer remain contingently liable?

The insurer remains contingently liable as the medical portion of a claim remains open for the life of the claimant, unless the claimant waives his rights to receive future medical expenses or a DCS is entered. (See *In The Matter of Thomas H. Kisstler, DCD*, 55 Van Natta 331 (2003), 2003 WL 22664439; and *In The Matter of William I. Tarr*, 54 Van Natta 2071 (2002), 2002 WL 31439252).

Do structured settlements as previously described result in final release?

Structured settlements do not result in a final release as the insurer remains contingently liable as the medical portion for the life of the claimant, unless the claimant waives his rights to receive future medical expenses.

Do all settlements require court approval?

The Workers' Compensation Board currently approves all CDAs and the Administrative Law Judge approves all Doss's. (Note: This process of approval is currently undergoing review, as they wish to have either the Workers' Compensation Board or ALJ's approve all settlements).

Who approves settlements?

Workers' Compensation Board
2601 25th Street SE, Suite 150
Salem, Oregon 97302-1282

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Oregon does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Workers' Compensation Board stated that the determination for the type of structured settlement product is solely at the discretion of the insurance carrier and parties involved.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

PENNSYLVANIA

<p>State of Pennsylvania http://www.state.pa.us</p> <p>Department of Labor & Industry Room 1700 651 Boas Street Harrisburg, PA 17121 Telephone Numbers: General Information: (717) 787-5279 Personnel Information: (717) 787-6374 Press Office" (717) 787-7530</p> <p>http://www.dli.state.pa.us/portal/server.pt/community/li_home/5278</p> <p>Bureau of Workers' Compensation 1171 S. Cameron Street, Room 324 Harrisburg, PA 17104-2501 Tel: (717) 783-5421 Claims Assistance: (717) 772-44447 Employer Hotline: (717) 772-3702 Email: ra-li-bwc-helpline@state.pa.us</p> <p>http://www.portal.state.pa.us/portal/server.pt/community/workers%27_compensation/10386</p>	<p>State Workers' Insurance Fund 100 Lackawanna Avenue P.O. Box 5100 Scranton, PA 18505-5100 Telephone Numbers: Administration: (570) 963-4635 Anti-Fraud: (570) 941-1959 Claims: (570) 963-4621 Underwriting: (570) 963-4630 Legal: (570) 963-4603</p> <p>Fax Numbers: Administration: (570) 963-4261 Anti-Fraud: (570) 963-4261 Claims: (570) 963-3402 Underwriting: (570) 963-3079 and (570) 941-2109 Legal: (570) 963-4262</p> <p>http://www.portal.state.pa.us/portal/server.pt/community/state_workers_insurance_fund_%28swif%29/10436</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Wage loss and/or medical benefits can be resolved by a Compromise and Release Agreement via a lump sum settlement. The claims can be settled in its entirety (the indemnity and medical portion together) or just the indemnity portion for a lump sum payment. If the indemnity is settled, the medical portion can be left open indefinitely. There is no statute or rules that state the claimant has to sign off on medical.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The parties can submit the proposed compromise and release by stipulation signed by both parties to the workers' compensation judge for approval. The workers' compensation judge shall consider the petition and the proposed agreement in open hearing and shall render a decision. The workers' compensation judge shall not approve any compromise and release agreement unless he first determines that the claimant understands the full legal significance of the agreement. The agreement must be explicit with regard to the payment, if any, of reasonable, necessary and related medical expenses. (*See* 77 P.S. § 1000.5).

Are lump sum settlements paid at full value or reduced to present value?

All lump sum settlements are paid at full value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

Yes, the board . . . may grant a rehearing of any petition upon which the board has made an award or disallowance of compensation . . . or reversed any action of a referee; but such rehearing shall not be granted more than eighteen months after the board has made such award, disallowance, or other order or ruling, or has sustained or reversed any action of the referee. Provided, however, that nothing . . . shall limit or restrict the right of the board, or a referee to review, modify, set aside, reinstate, suspend, or terminate, an original or supplemental agreement, or an award. (See 77 P.S. § 871; *Paxos v. W.C.A.B. (Frankford-Quaker Grocery)*, 631 A.2d 826, 158 Pa.Cmwlt. 355, Cmwlt.1993).

Does the employer/insurer remain contingently liable?

No. At any time after the approval of an agreement or after the entry of the award, a sum equal to all future installments of compensation may (where death or the nature of the injury renders the amount of future payments certain), with the approval of the board, be paid by the employer to any savings bank, trust company, or life insurance company, in good standing and authorized to do business in this Commonwealth, and such sum, together with all interest thereon, shall thereafter be held in trust for the employee or the dependents of the employee, who shall have no further recourse against the employer. (See 77 P.S. § 603).

Do all settlements require court approval?

Yes.

Who approves settlements?

The workers' compensation judge or hearing officer shall attempt to resolve the issues in dispute between the parties, but in no event shall any recommendations or findings made by the workers' compensation judge or hearing officer be binding upon the parties unless accepted in writing by a Compromise & Release Agreement. (See 77 P.S. § 1000.5). In the event that the parties cannot resolve their dispute, the petition will be reassigned to a different workers' compensation judge for adjudication of the dispute, or, by joint agreement of the parties, the workers' compensation judge who was originally assigned the matter will proceed with the adjudication of the petition.

Bureau of Workers' Compensation
1171 South Cameron Street, Room 324
Harrisburg, Pennsylvania 17104-2501

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

No applicable authority on this issue.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No statute, case law, or regulation directly on point. Statute is silent on the issue of whether Workers' Compensation insurer must have a contingent liability.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

RHODE ISLAND

<p>State of Rhode Island http://www.ri.gov/</p> <p>Workers' Compensation Court One Dorrance Plaza Providence, RI 02903 Tel: (401) 458-5000 Fax: (401) 222-3121 TTY: (401) 462-8420</p> <p>http://www.courts.ri.gov/workers/defaultnew-workers.htm</p>	<p>Department of Labor & Training Center General Complex 1511 Pontiac Avenue Cranston, RI 02920 Tel: (401) 462-8000 Fax: (401) 462-8872 TTY via RI Relay: 711 General questions/comments:mmadonna@dlt.ri.gov http://www.dlt.ri.gov/</p> <p>Workers' Compensation Division 1511 Pontiac Avenue, Building 71-1 First Floor P.O. Box 20190 Cranston RI 02920-0942 Tel: (401) 462-8100 TTY via RI Relay: 711 Email: WCEdcUnit@dlt.ri.gov http://www.dlt.ri.gov/wc/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

The 1992 Reform of the Workers' Compensation Law (P.L. 1992, Ch. 31) eliminated a unilateral petition to commute future benefits and authorized the Court to hear petitions for approval of a settlement only when they are filed jointly. This rule, recognizing that such petitions are now filed only when the parties have agreed to settle a case, now requires that the parties submit sufficient documentary evidence with the petition to allow the Court to review the matter and determine if the proposed settlement meets the standard enunciated in Rhode Island Gen. Laws § 28-33-25.

R.I.G.L. § 28-33-25. Settlement for lump sum or structured-type payment

(a)(1) In case payments have continued for not less than six (6) months, the parties may petition the workers' compensation court for an order approving a settlement of the future liability for a lump sum or structured-type periodic payment over a period of time.

(c) No case may be settled to a lump sum or structured-type periodic payment while the Rhode Island temporary disability insurance fund and/or the department of social and rehabilitative services has a claim for payments made under chapter 41 of this title unless agreement is made to pay any claim from the lump sum or structured-type periodic payments.

(e) No case shall be settled for a lump sum or structured-type periodic payment unless it is placed upon the record in open session, that the employer, if insured, has been advised by the insurer or its agent of the potential effect of the settlement on its workers' compensation premium, and has the opportunity to appear and state its disapproval of the settlement.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Workers' compensation claims can be settled by agreement of the parties. In case payments have continued for not less than six (6) months, the parties may petition the workers' compensation court for an order approving a settlement of the future liability for a . . . structured-type periodic payment over a period of time. (See Rhode Island Gen. Laws § 28-33-25(a)(1).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at full value (less attorneys' fees).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

Yes.

Does the employer/insurer remain contingently liable?

Compliance under Workers' Compensation Court, Rules of Practice, Rule 2.26 requires that fourteen (14) days of the date the order is entered, the parties are required to appear and present a pleading indicating that all required payments have been made prior to the entry of a decree discharging the employer from all future liability.

Do structured settlements as previously described result in final release?

Yes.

Do all settlements require court approval?

All settlements must be decided by the Rhode Island Workers' Compensation Court.

Who approves settlements?

Workers' Compensation Court
One Dorrance Plaza
Providence, Rhode Island 02903

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Structured annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in Arkansas and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities; (C) Determined to be financially sound and having an A.M. Best rating of A+ and Class VIII or greater, or equivalent independent industry rating; and (D) Be rated AA+ or better by Standard and Poor's, Moody's, or an equivalent rating by an equivalent rating service.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

SOUTH CAROLINA

State of South Carolina

<http://www.sc.gov>

Workers' Compensation CommissionStreet Address:

1333 Main Street, Suite 500
Columbia, SC 29201

Mailing Address:

P.O. BOX 1715
Columbia, SC 29202-1715
Tel: 803-737-5700

Fax Numbers:

Claims Department: (803) 737-1234
Insurance & Medical Services Department: (803) 737-1258
Judicial Department: (803) 737-1281
All Other Departments: (803) 737-5768

<http://www.wcc.state.sc.us/>

Which Workers' Compensation benefits may be resolved via a lump sum settlement?

All benefits may be resolved via a lump sum settlement and must be administered according to the provisions as outlined in S.C. Code 1976 §§ 42-9-301 or 42-9-310.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Voluntary settlements for workers' compensation claims can be entered into by the parties, however, the settlements must be approved by the workers' compensation commission. (See S.C. Code 1976 §§ 42-9-390 and 42-17-10).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are reduced to present value of at least two percent and based on the 5 year treasury as published on January of each year, but not more than five percent.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

Reopening is not permitted as all claims are full and final unless "clincher" language is added whereby the claimant has one year to reopen if there has been a change in condition.

Does the employer/insurer remain contingently liable?

No, the employer and/or insurer do not remain contingently liable. An Agreement and Final Release relieves the employer and its representative(s) from any further responsibility for payment of compensation or medical expenses, unless the Agreement and Final Release specifically provides otherwise. When the claimant signs the Agreement and Final Release and it is approved, the claimant does not have the right to ask for additional payments in the future even if the claimant's medical condition worsens, unless otherwise specifically provided in the document.

Do structured settlements as previously described result in final release?

Yes, all structured settlements result in a final release.

Do all settlements require court approval?

Yes, all settlements require court approval.

Who approves settlements?

Hearings are conducted by one of seven commissioners who rotate between seven regional districts every two months. Informal conferences, also referred to as "views" or "viewings," are generally convened by a claims mediator.

Workers' Compensation Commission (main)
1612 Marion Street
Columbia, South Carolina 29201

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

South Carolina does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Commission stated that the determination for the type of structured settlement product is solely at the discretion of the insurance carrier, parties involved and the Commissioner.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

SOUTH DAKOTA

<p>State of South Dakota http://sd.gov/</p> <p>Department of Labor 700 Governors Drive Pierre, SD 57501-2291 Tel: (605) 773-3101 Fax: (605) 773-6184 http://dol.sd.gov/</p>	<p>Workers' Compensation Division of Labor & Management South Dakota Department of Labor Kneip Building 700 Governors Drive Pierre, SD 57501-2291 Tel: (605) 773-3681 Fax: (605) 773-4211 http://dol.sd.gov/workerscomp/default.aspx</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

An employer or employee who desires to have any unpaid compensation paid in a lump sum may petition the Department of Labor asking that the compensation be paid in that manner. If, upon proper notice to interested parties and proper showing before the department, it appears in the best interests of the employee that the compensation be paid in lump sum, the secretary of labor may order the commutation of the compensation to an equivalent lump-sum amount. That amount shall equal the total sum of the probable future payments capitalized at their present value on the basis of interest calculated at a rate per year set by the department with annual rests in accordance with rules promulgated pursuant to chapter 1-26. If there is an admission or adjudication of permanent total disability, the secretary may order payment of all or part of the unpaid compensation in a lump sum under the following circumstances: (1) if the employee has exceptional financial need that arose as a result of reduced income due to the injury; or (2) if necessary to pay the attorney's fees, costs and expenses approved by the department under SDCL § 62-7-36. (See SDCL § 62-7-6). A death benefit CANNOT be resolved via a lump sum settlement.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

If the employer and employee reach an agreement in regard to the compensation under this title, a memorandum of the agreement shall be filed with the department by the employer or employee. Unless the department within twenty days notifies the employer and employee of its disapproval of the agreement by letter sent to their addresses as given in the memorandum filed, the agreement shall stand as approved and is enforceable. (See SDCL § 62-7-5).

Are lump sum settlements paid at full value or reduced to present value?

Insurance companies are entitled to settle Permanent Partial Disability at a reduced rate which is calculated from the injury date and remaining weeks along with the current interest rate at the time but not lower than five and a half percent when calculated.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

The right to compensation under this title shall be forever barred unless a written petition for hearing pursuant to SDCL § 62-7-12 is filed by the claimant with the department within two years after the self-insurer or insurer notifies the claimant and the department, in writing, that it intends to deny coverage in whole or in part under this title. If the denial is in part, the bar shall only apply to such part. (See SDCL § 62-7-35 - Limitation of action on claim for compensation).

In any case in which any benefits have been tendered pursuant to this title on account of an injury, any

claim for additional compensation shall be barred, unless the claimant files a written petition for hearing pursuant to SDCL § 62-7-12 with the department within three years from the date of the last payment of benefits. The provisions of this section do not apply to review and revision of payments or other benefits under SDCL § 62-7-33. (*See* SDCL § 62-7-35.1 - Time limitation for claiming additional compensation- - Application of limit).

Does the employer/insurer remain contingently liable?

No.

Do structured settlements as previously described result in final release?

Yes, structured settlements result in final release.

Do all settlements require court approval?

All settlement agreements require court approval.

Who approves settlements?

Division of Labor and Management Kneip Building, Third Floor
700 Governors Drive
Pierre, South Dakota 57501-2291

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

South Dakota Division of Labor and Management do not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The Industrial Commission stated that the determination for the type of structured settlement product is solely at the discretion of the insurance carrier and parties involved.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No laws, administrative regulations or judicial rulings have been issued permitting the assignment of a contingent liability to an annuity company.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

TENNESSEE

State of Tennessee http://www.tennesseeanytime.org Department of Labor & Workforce Development 220 French Landing Drive Nashville, TN 37243 Tel: (615) 741-6642 http://www.tn.gov/labor-wfd	Workers' Compensation Division 220 French Landing Drive Nashville, TN 37243-1002 Tel: (615) 532-4812 Toll-free (within Tennessee): (800) 332-2667 Fax: (615) 532-1468 E-mail: wc.info.tn.gov http://www.tn.gov/labor-wfd/wcomp.html
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

All claims can be resolved via a lump sum settlement. The amounts of compensation payable periodically hereunder may be commuted to one (1) or more lump sum payments. These may be commuted upon motion of any party subject to the approval of the circuit, chancery or criminal court. No agreed stipulation or order or any agreement by the employer and employee or any other party to the proceeding shall be a prerequisite to the court's approval or disapproval of the award being paid in one (1) or more lump sum payments. In making such commutation, the lump sum payment shall, in the aggregate, amount to a sum of all future installments of compensation. No settlement or compromise shall be made except on the terms herein provided. In determining whether to commute an award, the trial court shall consider whether the commutation will be in the best interest of the employee, and such court shall also consider the ability of the employee to wisely manage and control the commuted award, regardless of whether special needs exist. (See T.C.A. § 50-6-229(a) - Lump sum payments; commutation).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Tennessee law allows that "[t]he interested parties shall have the right to settle all matters of compensation between themselves, but all settlements, before the same are binding on either party, shall be reduced to writing and shall be approved by the judge of the circuit court or chancery court of the county where the claim for compensation is entitled to be made. It shall be the duty of the judge of the circuit court or chancery court, to whom any proposed settlement shall be presented for approval under this chapter, to examine the proposed settlement to determine whether the employee is receiving, substantially, the benefits provided by the Workers' Compensation Law, compiled in this chapter. To this end, such judge may call and examine witnesses." (See T.C.A. § 50-6-206(a)(1)).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at full value not including interest.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

All settlements of compensation by agreement of the parties and all awards of compensation made by the court, where the amount paid or to be paid in settlement or by award does not exceed the compensation for six (6) months' disability, shall be final and not subject readjustment. (See T.C.A. § 50-6-230 - Finality of awards and settlements).

Does the employer/insurer remain contingently liable?

Yes, the employer and insurer remain contingently liable as the medical is open on the specific injury for the life of the claimant. (See T.C.A. §§ 50-6-230 and 50-6-231).

Do structured settlements as previously described result in final release?

Structured settlements do not result in a final release as the medical portion remains open for the life of the claimant.

Do all settlements require court approval?

Yes, all settlements require the approval of the Administrative Law Judge or the State Specialist.

Who approves settlements?

Workers' Compensation Division
710 James Robertson Parkway Gateway Plaza, Second Floor
Nashville, Tennessee 37243-0665

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Tennessee does not have any Rules or Statutes pertaining to the type of structured settlement products that may be used. The determination for the type of structured settlement product is solely at the discretion of the parties involved and they give final approval if in the best interest of the claimant and whose policyholders' and financial ratings, as reported in A.M. Best's Insurance Reports, Property-Liability, are not less than "A" and "V", respectively.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

There is no statute or regulations requiring a workers' compensation insurer to hold a contingent liability on a structured settlement but they may do so by approval of the court.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

There is no statute or regulations requiring a workers' compensation insurer to hold a contingent liability on a structured settlement but they may do so by approval of the court.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

COMMENTS

Tenn. Code Ann. § 50-6-231 - Finality of lump sum payments; modification of periodic payments

All amounts paid by the employer and received by the employee or the employee's dependents, by lump sum payments, shall be final, but the amount of any award payable periodically for more than six (6) months may be modified as follows: (1) At any time by agreement of the parties and approval by the court; or (2) If the parties cannot agree, then at any time after six (6) months from the date of the award an application may be made to the courts by either part, on the ground of increase or decrease of incapacity due solely to the injury. In those cases, the same procedure shall be followed as in T.C.A. § 50-6-225 in case of a disputed claim for compensation.

TEXAS

<p>State of Texas http://www.state.tx.us</p> <p>Department of Insurance <u>Street Address:</u> 333 Guadalupe Austin, Texas 78701</p> <p><u>Mailing Address:</u> P.O. Box 149104 Austin, TX 78714 Tel: (512) 463-6169 Consumer Help: (800) 252-3439 Report Fraud: (888) 327-8818 http://www.tdi.state.tx.us/</p>	<p>Division of Workers' Compensation 7551 Metro Center Drive, Suite 100 Austin, TX, 78744-1645 Tel: (512) 804-4000 Toll-free: (800) 7713 Self-Insurance: (512) 804-4775 http://www.tdi.state.tx.us/wc/index.html</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Workers' compensation benefits may only be resolved via a lump sum settlement if the impairment rating is 15% or more and the employee elects to commute the remainder of the impairment income benefits . . . has returned to work for at least three months, earning at least 80% of the his average weekly wage. An employee who elects to commute impairment income benefits is not entitled to additional income benefits for the compensable injury (see V.T.C.A., Labor Code § 408.128). Death benefits may be substituted through an annuity using DWC Form 31.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Parties can settled a workers' compensation claim, however, an employee's right to medical benefits as provided by § 408.021 may not be limited or terminated. In addition, the settlement must be signed by the commissioner and all parties to the dispute. The commissioner shall approve a settlement if the commissioner is satisfied that the settlement accurately reflects the agreement between the parties; the settlement reflects adherence to all appropriate provisions of law and the policies of the division and under the laws and facts, the settlement is in the best interest of the claimant. (See V.T.C.A., Labor Code § 408.005).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at seventy percent.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

House Bill 1872 – Sponsored by Giddings

Summary: Relating to requirements regarding information to be provided to employees covered by workers' compensation health networks.

House Bill 1870 – Sponsored by Giddings

Summary: Relating to judicial review in district court of certain workers' compensation disputes.

Senate Bill 809 – Sponsored by Seliger

Summary: Relating to judicial review in district court of certain workers' compensation disputes.

Is reopening permitted?

A case can only be reopened on application of an aggrieved party, a court of competent jurisdiction shall vacate an arbitrator's award on a finding that: (1) the award was procured by corruption, fraud, or misrepresentation; (2) the decision of the arbitrator was arbitrary and capricious; or (3) the award was outside the jurisdiction of the division. The suite must be filed no later than the 30th day after the date of the award or the date the appealing party knew or should have known of a basis for suit, but in no event later than 12 months after an order was entered. (*See* V.T.C.A., Labor Code § 410.121).

Does the employer/insurer remain contingently liable?

The insurer remains contingently liable (*see* V.T.C.A., Labor Code § 406.031). A proceeding before the division to determine the liability of an insurance carrier for compensation for an injury or death under this subtitle is governed by this chapter (*see* V.T.C.A., Labor Code § 410.002).

Do structured settlements as previously described result in final release?

Yes, the board's approval of a structured settlement shall be final at the time the approval is signed by the board unless the board has received a request in writing prior to entry of the approval order that one or more parties to the agreement wishes to withdraw their consent to the settlement, and the board permits the withdrawal of such consent. Any such written request to the board for permission to withdraw consent to a settlement must fully set out the reason or reasons for such request. (*See* Title 28, Part 2, Chapter 56, Rule § 56.30).

Do all settlements require court approval?

The trial court must approve a settlement made by the parties after judicial review of an award is sought and before the court enters judgment (*see* V.T.C.A., Labor Code § 410.256 – Court approval of settlement).

Who approves settlements?

Division of Workers' Compensation
7551 Metro Center Drive, Suite 100
Austin, Texas 78744-1609

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

An annuity company providing an annuity under the terms of a structured settlement must be licensed to do business in Texas and must have a Best's rating of A+, Class VII or above, according to the most recent information available. (*See* Texas Administrative Code, Title 28, Part 2, Chapter 56, Rule § 56.55).

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

Yes.

If yes, or if uncertain, identify any controlling or applicable legal authority?

The workers' compensation carrier shall guarantee the payments provided by the annuity company in the event of default. (*See* Title 28, Part 2, Chapter 56, Rule § 56.60).

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

Yes.

If yes, or if uncertain, identify any controlling or applicable legal authority?

The workers' compensation carrier shall guarantee the payments provided by the annuity company in the event of default. (See Title 28, Part 2, Chapter 56, Rule § 56.60).

UTAH

<p>State of Utah http://www.utah.gov</p> <p>Division of Industrial Accidents <u>Street Address:</u> 160 East 300 South, 3rd Floor, Salt Lake City, UT 84111</p> <p><u>Mail Address:</u> P.O. Box 146610 Salt Lake City, UT 84114-6610 Tel: (801) 530-6800 In-State Toll Free: (800) 530-5090 http://laborcommission.utah.gov/IndustrialAccidents/index.html</p>	<p>Labor Commission of Utah 160 E. 300 S. Ste. 300 Salt Lake City, UT 84111 Tel: (801) 530-6800 Toll-free: (800) 530-5090 laborcom@utah.gov http://www.laborcommission.utah.gov/</p> <p>Workers' Compensation Fund of Utah <u>Salt Lake City, Utah</u> 800.446.2667 100 West Towne Ridge Parkway Sandy, Utah 84070 Tel: (800) 446-2667</p> <p><u>Ogden, Utah</u> 1186 East 4600 South #400 Ogden, Utah 84403 Tel: (800) 611-4550</p> <p><u>St. George, Utah</u> 1453 South Dixie Drive Suite 100 St. George, Utah 84770 Tel: (800) 324-9470 https://www.wcfgroup.com/about-wcf</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

An administrative law judge, under special circumstances and when the same is deemed advisable, may commute periodic benefits to one or more lump sum payments. (See U.C.A., 1953 § 34A-2-421 - Lump sum payments).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

The administrative law judge shall review and may approve the agreement of the parties to enter into a full and final settlement. (See U.C.A., 1953 34A-2-420(4)).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements can be reduced eight percent from full value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

An employee may petition to reopen his or her claim to secure an increase or rearrangement of compensation or additional benefits on the basis of a new, additional or previously undiscovered temporary or permanent condition. The petition must be accompanied by a physician's statement setting forth the employee's physical condition relating to the claim. A motion to reopen an award based on grounds other than a physical deterioration should be supported by affidavits. On application to the commission, and for good cause shown, a document filed as a claim may be designated a petition to reopen, and vice versa. When the appropriate remedy in a workers' compensation case is uncertain,

the claimant should file both a petition to reopen a previous claim and a new injury claim, and request consolidation. A reopened claim is processed as a new claim.

Does the employer/insurer remain contingently liable?

Provided that the employee is fully advised and the settlement agreement is clear, there is no contingent liability for the workers' compensation carrier. (See U.C.A., 1953 34A-2-417).

Do structured settlements as previously described result in final release?

Structured settlements result in final release if it is agreed upon and the language is inserted into the settlement agreement whereby the claimant waives his rights to any future medical treatment.

Do all settlements require court approval?

Yes, all settlements require court approval.

Who approves settlements?

Division of Industrial Accidents
160 East 300 South, 3rd Floor
Salt Lake City, Utah 84111

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Utah doesn't regulate the type of structured settlement products that are used. The types of products are at the discretion of the insurer. The Labor Commission's role is to verify that the claimant is aware that they are entering into a structured settlement agreement and that it is in their best interest. Therefore, at the insurer's discretion in an effort to obtain the best possible structure for the claimant, a Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity can be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

VERMONT

<p>State of Vermont http://vermont.gov/</p> <p>Department of Labor <u>Street Address:</u> 5 Green Mountain Drive Montpellier, Vermont 05601-0488</p> <p><u>Mailing Address:</u> P.O. Box 488 Montpellier, Vermont 05601-0488 Tel: (802) 828-4000 Fax: (802) 828-4022</p> <p>http://www.labor.vermont.gov/</p>	<p>Workers' Compensation Division <u>Street Address:</u> 5 Green Mountain Drive Montpellier, Vermont 05601-0488</p> <p><u>Mailing Address:</u> P.O. Box 488 Montpellier, Vermont 05601-0488 Tel: (802) 828-2286 Fax: (802) 828-2195</p> <p>E-mail: labor-wccomp@state.vt.us</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Pursuant to Section 652 if the commissioner finds it to be in the best interest of the employee or the employees dependents the commissioner may order the payment of permanent disability benefits to be paid in a lump sum. Under Section 662(a) an employer and an injured employee or the dependents of a deceased employee may enter into an agreement in regard to compensation payable under the provisions of this chapter.

A lump sum payment shall not be approved if: the award was based upon a hearing decision for which an appeal has been filed and the employer or insurer objects to the payment of the lump sum (Rule 19.5010); or the claimant is best served by receipt of periodic income benefits (Rule 19.5011); or The payment is intended to pay everyday living expenses (Rule 19.5012); or the lump sum payment is intended to pay past debts (Rule 19.5013).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

If the employer and an injured employee or the dependents of a deceased employee enter into an agreement in regard to compensation payable under the provisions of this chapter, a memorandum thereof shall be filed with the commissioner. If approved by the commissioner, such agreement shall be enforceable and subject to modification as provided by 21 V.S.A. §§ 668 and 675. The commissioner shall approve such an agreement only when the terms thereof conform to the provisions of this chapter. However, a compromise agreement may be approved by the commissioner when he or she is clearly of the opinion that the best interests of such employee or such dependents will be served thereby. A compromise settlement during pendency of an appeal to superior court or to supreme court shall be effective only with the approval of the commissioner in accordance with this section. (See 21 V.S.A. § 662).

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at full value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

An award of the commissioner shall, in the absence of fraud, be conclusive between the parties except as provided in section 668 of this title, unless an appeal is taken there from as hereinafter provided (see 21 V.S.A. § 669 – Finality of award).

Does the employer/insurer remain contingently liable?

The employer/insurer remains contingently liable depending on the type of settlement that was entered. A Form 15 closes out everything, Form 14 leave the medical portion open and a Form 22 leaves everything open pertaining to PPD.

Do structured settlements as previously described result in final release?

Depending on the terms of the settlement, a structured settlement may or may not result in a final release based on the type of Forms (14, 15 or 22) used.

Do all settlements require court approval?

Settlements pertaining to Forms 14 and 15 require the approval of the Commissioner or Commissioner Designee (which is Director of Workers' Compensation and Safety). If Form 22 is used for the settlement the approval can be done by any of the Workers' Compensation Specialists.

Who approves settlements?

Workers' Compensation Division
P.O. Box 488
5 Green Mountain Drive
Montpelier, Vermont 05601-0488

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Vermont doesn't regulate the type of structured settlement products that are used. The types of products are at the discretion of the insurer. The Commission's role is to verify that the claimant is aware that they are entering into a structured settlement agreement and that it is in their best interest. Therefore, at the insurer's discretion in an effort to obtain the best possible structure for the claimant, a Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity can be used.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

VIRGINIA

Commonwealth of Virginia

<http://www.virginia.gov/cmsportal3/>

Workers' Compensation Commission

1000 DMV Drive

Richmond, VA 23220

Toll-Free: (877) 664-2566

Fax Numbers

Clerk's office: (804) 367-9740

Claims Services Dept: (804) 367-6124

Insurance Department: (804) 367-2239

E-mail: Questions@workcomp.virginia.gov

<http://www.vwc.state.va.us/portal/vwc-website>

Which Workers' Compensation benefits may be resolved via a lump sum settlement?

If the proposed settlement contemplates payment in a lump sum, the petition shall set forth in detail the facts relied upon to show that the best interests of the employee or the dependents will be served thereby. If the proposed settlement contemplates an annuity, the petition shall state that the company issuing the annuity is authorized by the State Corporation Commission to transact the business of insurance in the Commonwealth and that, in case of default, the employer or carrier shall remain responsible for payment. (See Rules of the Virginia Workers' Compensation Commission 1.7 (D)).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Any proposed compromise settlement of workers' compensation claims must be approved by the workers' compensation commission. (See VA Code Ann. § 65.2-701 and Workers' Compensation Commission Rule 1.7).

Are lump sum settlements paid at full value or reduced to present value?

The approval of a compromise settlement by the Commission depends on the circumstances of each case individually. If the present value is used as a tool in a settlement, the Commission would have to determine if such a valuation is in the best interest of the claimant.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

It is possible to "reopen" a case that was formerly settled by compromise, if there was fraud, mistake, misrepresentation or the like.

A request for review of a decision or award of the Commission shall be filed by a party in writing with the Clerk of the Commission within 20 days of the date of such decision or award. A request for review should assign as error specific findings of fact and conclusions of law. Failure of a party to assign any specific error in its request for review may be deemed by the Commission to be a waiver of the party's right to consideration of that error. The Commission may, however, on its own motion, address any error and correct any decision on review if such action is considered to be necessary for just determination of the issues. A copy of the request for review shall be furnished to the opposing party. Upon request to the Clerk, a party

may obtain a copy of the hearing transcript subject to an appropriate charge. (See Worker's Compensation Commission Rule 3.1 - Request for Review).

Does the employer/insurer remain contingently liable?

In any settlement involving the transfer of responsibility of payment for the claimant to another entity, the employer/carrier will continue to be liable for payment should the transferee entity fail to pay. (See Workers' Compensation Commission Rule 1.7(D)).

Do structured settlements as previously described result in final release?

In any settlement involving the transfer of responsibility of payment for the claimant to another entity, the employer/carrier will continue to be liable for payment should the transferee entity fail to pay.

Do all settlements require court approval?

Yes, all settlements require court approval.

Who approves settlements?

Virginia Workers' Compensation Commission
1000 DMV Drive
Richmond, Virginia 23220

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Structured annuity contracts shall be purchased only from insurance companies: (A) Licensed to do business in Virginia and authorized to write annuities as regulated by the State Insurance Department; (B) Experienced in the business of writing and administering structured annuities.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

Yes.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Rule 1.7D of the Rules of the Virginia Workers' Compensation Commission states, "If the proposed settlement contemplates an annuity, the petition shall state that the company issuing the annuity is authorized by the State Corporation Commission to transact the business of insurance in the Commonwealth and that, in case of default, the employer or carrier shall remain responsible for payment."

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

WASHINGTON

<p>State of Washington http://access.wa.gov/</p> <p>Department of Labor & Industries <u>Street Address:</u> 7273 Linderson Way SW Tumwater, WA 98501-5414</p> <p><u>Mailing Address:</u> PO Box 44810 Olympia, WA 98504-4810 Tel: (360) 902-5799 Fax: (360) 902-5792 Claims-only Fax: (360) 902-4567 Contractor Reg. Fax: (360)902-5812 TDD: (360) 902-4637 http://www.lni.wa.gov/</p> <p>Workers' Compensation Claims Telephone Numbers: L&I Claims: (800) LISTENS (547-8367) Self-Insured Claims Related: (360) 902-6901 Provider Hotline: (800) 848-0811 Drug Policy: (360) 902-6792 Interpreter Services: (360) 902-5161</p> <p>http://www.lni.wa.gov/claimsins/claims/</p>	<p>Board of Industrial Insurance Appeals <u>Street Address (Olympia):</u> 2430 Chandler Court SW PO BOX 42401 Olympia, WA 98504-2401</p> <p><u>Mailing Address:</u> PO Box 42401 Olympia WA 98504-2401 Tel: (360) 753-6823 Toll-Free: (800) 442-0447 Fax: (360) 586-5611 http://www.biaa.wa.gov/</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

PPD benefits may be resolved via a lump sum settlement. If the PPD is less than three times the states average – the payment can be paid out in a full lump sum settlement. If, however, the PPD is greater than three times the states average – then a down payment will be made and the remaining monies will be paid out in monthly installments. If the claimant petitions the court, to receive all the monies via a lump sum the court will issue an order after 70 days and review if it is in the claimant's best interest.

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

Washington law does not appear to contemplate the settlement of workers' compensation claims. It is also noted that Washington is a monopolistic state.

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at eight percent per annum and paid according to time loss compensation rate. (If any monies are paid in installments – determination will be made as to the monthly time loss rate.)

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

House Bill 1686 (Companion bill SB 5566) – sponsored by Governor Gregoire

Summary: Concerning long-term disability for injured workers and costs to the workers' compensation program.

Date of last action: Jan. 28, 2011 - referred to Labor & Workforce Development

Senate Bill 5566 (Companion bill HB 1686) – Sponsored by Senators Kohl-Welles & Kline at the request of Governor Gregoire

Summary: Concerning long-term disability for injured workers and costs to the workers' compensation program.

Date of last action: February 21, 2011 - Executive action taken in the Senate Committee on Labor and Commerce & Consumer Protection at 10:00 AM. LCCP - Majority; without recommendation. Passed to Rules Committee for second reading.

House Bill 1868 – sponsored by Representative Sells

Summary: Concerning long-term disability for injured workers.

Date of last action: Feb. 9, 2011 - Public hearing in the House Committee on Labor & Workforce Development.

House Bill 1910 – sponsored by Representative Sells

Summary: Concerning long-term disability for injured workers.

Date of last action: Feb. 9, 2011 - First reading, referred to Labor & Workforce Development.

Is reopening permitted?

The medicals can remain open for the life of the claimant. (*i.e.*, if the claimant needs medication for the rest of his life as a result of the injury, etc.). The claimant can petition within seven years of settlement and request a review and subsequently receive all benefits accrued, medical, PPD, vocational and time loss. Beyond seven years it would be medical only. However, if claimant proves worsening of condition, claimant can then receive full benefits at the approval of the director.

Does the employer/insurer remain contingently liable?

The insurer remains contingently liable.

Do structured settlements as previously described result in final release?

Monopolistic state – Washington does not do structured settlements.

Do all settlements require court approval?

No. Settlements require the approval of the Mediation Judge. If no agreement is reached then the claim goes to the Industrial Appeals Judge (IAJ) and the matter is heard where the claimant was injured. The IAJ can enter an Order on the agreement of the parties. If no agreement can be reached, however, the matter would then proceed to the Appeals Board which is a three panel board consisting of one representative from Labor, one representative from Business and one representative is an attorney. If not agreement can be reached by the Appeals Board, the matter would then proceed to the Court of Appeals and then to the Washington State Supreme Court.

Who approves settlements?

Board of Industrial Insurance Appeals
2430 Chandler Court, SW
Olympia, Washington 98504-2401

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

None. Washington is state funded (monopolistic state) and they do not do structured settlements.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Comments

Washington is one of four monopolistic states – the other three are North Dakota, Ohio and Wyoming.

On May 24, 2011, HB 2123 passed both the House and Senate. On May 25, 2011, HB 2123 was delivered to the governor for signature. Section 301 is a new section that has been added to Chapter 51.04, which states, "The legislature finds that Washington state's workers' compensation system should be designed to focus on achieving the best outcomes for injured workers. Further, the legislature recognizes that controlling pension costs is key to a financially sound workers' compensation system for employers and workers. To these ends, the legislature recognizes that certain workers would benefit from an option that allows them to initiate claim resolution structured settlements in order to pursue work or retirement goals independent of the system, provided that sufficient protections for injured workers are included."

WEST VIRGINIA

<p>West Virginia http://www.wv.gov/</p> <p>Industrial Commission <u>Street Address:</u> 1124 Smith St. Charleston, WV 25301</p> <p><u>Mailing Address:</u> P.O. Box 50540 Charleston, WV 25305-0540</p> <p><u>Telephone Numbers:</u> General Consumer Service: (304) 558-3386 Toll Free: (888) TRY-WVIC (888-879-9842) Agent Licensing and Education: (304)558-0610 Claims Services: (304) 558-5838 Consumer Advocacy: (304) 558-3864 Executive Offices: (304) 558-3354 Financial Conditions: (304) 558-2100 Legal Services: (304) 558-0401 Toll-Free: (800) 732-9562 Investigations: (304) 558-5241 Toll-Free: (800) 779-6853 Complaints: (304) 558-9065 Toll-Free: (888) 372-8392 Office of Judges: (304) 558-0852 Revenue Recovery: (304) 558-1200 Self Insurance: (304) 558-1207 Workers' Comp Board of Review: (304) 558-5230</p> <p>http://www.wvinsurance.gov/</p>	<p>Workers' Compensation – Office of Judges <u>Street Address (Main):</u> One Players Club Drive Charleston, West Virginia 25311-1638</p> <p><u>Mailing Address:</u> P.O. Box 2233 Charleston, West Virginia 25328-2233 Tel: (304) 558-1686 Fax: (304) 558-1021</p> <p><u>Beckley Field Office:</u> 109 East Main Street Beckley, West Virginia 25801 Tel: (304) 256-6730</p> <p><u>Fairmont Field Office:</u> Veterans Square 320 Adams Street, Suite 102 Fairmont, West Virginia 26554 Tel: (304) 363-8239 http://www.wvinsurance.gov/oofj/OfficeofJudges.aspx</p> <p>Workers' Compensation Industrial Council WV Offices of the Insurance Commissioner Attn: Claims Services PO Box 50541 Charleston, WV 25305 Tel: (304) 558-5838 Fax: (304) 558-8948, Attn: Claims Services</p> <p>http://www.wvinsurance.gov/IndustrialCouncilWVWCC/claimsIndex/tabid/399/Default.aspx</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Any settlement agreement may provide for a lump sum payment or a structured payment plan, or any combination thereof, or any other basis as the parties may agree. (See W. Va. Code, § 23-5-7).

If the claim is in the review or appellate process, all claim issues, except for medical benefits for non-orthopedic occupational disease claims, may be settled, even though the issues may not be currently contested. These issues include, but are not limited to, temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, vocational rehabilitation and any other issues within the settlement provisions of W. Va. Code § 23-5-7. (See WV ADC § 85-12-5 - Issues Subject to Settlement).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

With the exception of medical benefits for nonorthopedic occupational disease claims, the law permits the parties to settle workers' compensation claims. Such settlement is subject to the approval of the workers' compensation commission. Any settlement agreement may provide for a lump sum payment or a structured payment plan, or any combination thereof, or any other basis as the parties may agree. (See W. Va. Code § 23-5-7). Further, under the terms of the agreement, the claimant shall be provided five (5) business days to revoke the executed settlement agreement. In addition and in accordance with the

provisions of W. Va. Code § 23-5-7, each settlement agreement shall provide the toll free number of the West Virginia State Bar. (See W. Va. Code § 85-12-13).

Are lump sum settlements paid at full value or reduced to present value?

The parties to any settlement may arrange for any amount to be paid to the claimant or for the benefit of the claimant in a lump sum or in incremental payments or in any manner as agreed upon by the parties. If no mention is made in the settlement agreement regarding a permanent disability percentage, the claim record will not reflect a percentage for the settlement award. (See WV ADC § 85-12-6 - Manner of Payment).

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending. .

Is reopening permitted?

Except in cases of fraud, no issue that is the subject of an approved settlement agreement may be reopened by any party, including the commission, the successor to the commission, other private insurance carriers and self-insured employers, whichever is applicable (see W. Va. Code, § 23-5-7).

However, any claimant who believes that a settlement entered into while the claimant was unrepresented by counsel is unconscionable may, within one hundred-eighty (180) calendar days of the date of the settlement, file with the Insurance Commissioner, on a form prescribed by the Insurance Commissioner, a request for review of settlement. The one hundred-eighty (180) day time limitation is jurisdictional, and a claimant may under no circumstances have a settlement reviewed beyond the time limitation. (See WV ADC § 85-12-14.4(a)).

Does the employer/insurer remain contingently liable?

Neither the employer nor the insurer remains contingently liable.

Do structured settlements as previously described result in final release?

Not applicable.

Do all settlements require court approval?

Settlements must be filed with the Office of Judges.

Who approves settlements?

Workers' Compensation Office of Judges
One Players Club Drive
Charleston West Virginia 25311-1638

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The determination for the type of structured settlement product is solely at the discretion of the parties involved.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

COMMENTS

On July 1, 2008 West Virginia moved from being included as a Monopolistic State to a state governed by the rules and regulations of NCCI. It was a move that began several years ago in the planning stages. The transition began with the West Virginia State Legislature understanding and buying into the benefits of making the move to a competitive workers compensation market within their state. Three years ago West Virginia's plan was put in place and the privatization process was phased in. 147 insurance companies filed rates to provide workers compensation insurance. A private mutual insurance company was created in 2005 and once conversion of the state fund was complete on July 1, 2008 the conversion to an open market system was complete allowing West Virginia employers to purchase workers compensation insurance from whatever admitted carrier they wished.

WISCONSIN

<p>State of Wisconsin http://www.wisconsin.gov/state/index.html</p> <p>Department of Workforce Development Workers' Compensation Division <u>Street Address (Main):</u> Room C100 201 E. Washington Ave. Madison, WI 53703</p> <p><u>Mailing Address (Main):</u> P.O. Box 7901 Madison, WI 53707-7901 Tel: (608) 266-1340 (Main Number) Fax: (608) 267-0394 TTY: (866) 265-3142</p> <p><u>Milwaukee:</u> State Office Building Room 330 819 N. 6th St. Milwaukee WI 53203 Tel: (414) 227-4381 Fax: (414) 227-4012</p> <p><u>Appleton:</u> Fidelity Bank Bldg. Room 310 1500 N. Casaloma Drive Appleton WI 54913-8200 Tel: (920) 832-5450 Fax: (920) 832-5355 http://dwd.wisconsin.gov/wc/</p>	<p>Workers Compensation Rating Bureau <u>Street Address:</u> 20700 Swenson Drive, Ste. 100 Waukesha, WI 53186</p> <p><u>Mailing Address:</u> P.O. Box 3080 Milwaukee, WI 53201-3080 Tel: (262) 796-4540 Fax: (262) 796-4400</p> <p>https://www.wcrb.org/WCRB/wcrbhome.htm</p> <p>Wisconsin Labor & Industry Review Commission <u>Street Address:</u> Wisconsin Public Broadcasting Building 3319 West Beltline Highway Madison, Wisconsin</p> <p><u>Mailing Address:</u> P. O. Box 8126 Madison WI 53708-8126 Tel: (608) 266-9850 Fax: (608) 267-4409</p> <p>http://dwd.wisconsin.gov/lirc/</p> <p>Workers' Compensation Advisory Council http://dwd.wisconsin.gov/wc/councils/wcac/default.htm</p>
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Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Disputes are resolved through hearing or a compromise. The compromise may be limited or full and final as to all issues. All compromises must be approved by the Department via an order. The compromise proceeds may be paid as a lump sum; however, if the amount of the compromise is more than \$10,000 over the accrued benefits, the balance must be paid to a restricted account and withdrawn monthly. Sometimes parties purchase an annuity, but this also must be approved by the Department.

Can a workers' compensation liability carrier settle workers' compensation claims by way of

structured settlements?

Appropriate structured settlements will be approved. (See WI ADC § DWD 80.03(f)). It should be noted, however, that unless the word "compromise" appears in a stipulation of settlement, the settlement shall not be deemed a compromise, and further claim is not barred except as provided in § 102.17(4) regardless of whether an award is made. The employer, insurer or dependent under § 102.51(5) shall have equal rights with the employee to have review of a compromise or any other stipulation of settlement. (See W.S.A. 102.16(1)).

Are lump sum settlements paid at full value or reduced to present value?

It is at the discretion of the parties – they determine the amount paid in a compromise.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are no bills or legislation pending as of this writing.

Is reopening permitted?

If a case is closed via a compromise agreement, a party may file an application for reopening within one year of the Department’s order, but the chances of the case being reopened are very slim – there are only certain circumstances that would warrant reopening.

Does the employer/insurer remain contingently liable?

Yes, if an annuity is used.

Do structured settlements as previously described result in final release?

If an annuity is purchased and approved to pay out the compromise proceeds, one of the requirements is that it is not an assignment of liability. If the annuity carrier becomes insolvent, the carrier remains liable for those payments.

Do all settlements require court approval?

Yes, all settlements require court approval.

Who approves settlements?

An Administrative Law Judge of the Wisconsin Workers’ Compensation Division.

Workers’ Compensation Division Room C100
201 East Washington Avenue
Madison, Wisconsin 53703

What type of structured settlement products may be used (i.e., Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

The determination for the type of structured settlement product is solely at the discretion of the parties involved.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers’ Compensation Insurer to hold a contingent liability on a structured settlement?

Yes. Department of Work Force Development has developed a policy that mandates that Workers’ Compensation insurers hold a contingent liability on structured settlements. The Policy is not codified.

If yes, or if uncertain, identify any controlling or applicable legal authority?

WI admin code section DWD 80.03; and WI Statutes 102.18(1), (4)(a) unless the liability under §§ 102.35(3), 102.43(5), 102.49, 102.57, 102.58, 102.59, 102.60 or 102.61 is specifically mentioned, the order, findings or award are deemed not to affect such liability.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No assignment of liability is allowed.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

WYOMING

State of Wyoming

<http://www.wyoming.gov/>

Workers' Safety & Compensation Division

Street Address:

1510 E. Pershing Blvd.
Cheyenne, WY 82002

Mailing Address:

P.O. Box 20207
Cheyenne, WY 82003

Telephone Numbers:

Claims: (307) 777-7441
Customer Service: (307) 777-5476
Employer Services: (307) 777-6763
OSHA: (307) 777-7786
Fraud: (888) 996-9226

Fax Numbers:

Claims: (307) 777-6552
Employer Services: (307) 777-5298
Fraud: (307) 777-6552
E-mail: fraudhotline.state.wy.us

<http://doe.wyo.gov/aboutus/safetyandcompensation/Pages/default.aspx>

<http://doe.wyo.gov/Pages/default.aspx>

Which Workers' Compensation benefits may be resolved via a lump sum settlement?

Awards to an employee or a spouse for permanent partial disability, permanent total disability or death may, upon application to the division with a showing of exceptional necessity and notice to the employer, be paid in whole or in part in a lump sum. In no event shall an award for permanent partial impairment under W.S. § 27-14-405 be paid in a lump sum. (*see* W.S. 1977 § 27-14-403(f) – Awards generally; method of payment).

Can a workers' compensation liability carrier settle workers' compensation claims by way of structured settlements?

As Wyoming is a monopolistic state, it will not enter into structured settlements of workers' compensation claims.

Are lump sum settlements paid at full value or reduced to present value?

Lump sum settlements are paid at present value.

Any bills or legislation pending pertaining to settlement of all benefits under the settlement agreement?

There are currently no bills or legislation pending.

Is reopening permitted?

No.

Does the employer/insurer remain contingently liable?

No.

Do structured settlements as previously described result in final release?

Wyoming is a monopolistic state.

Do all settlements require court approval?

Yes, all settlements require court approval. There are exceptions to this rule, however, as it is determined on a case-by-case basis and needs the approval of the Assistant Administrator of Workers' Compensation.

Who approves settlements?

Workers' Safety and Compensation
Division Cheyenne Business Center
1510 East Pershing Boulevard
Cheyenne, Wyoming 82002

What type of structured settlement products may be used (*i.e.*, Qualified Assignment, Non-Qualified Assignment, Reinsurance or Unassigned Annuity)?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, requiring a Workers' Compensation Insurer to hold a contingent liability on a structured settlement?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Has the jurisdiction enacted a law or administrative regulation, or issued a judicial ruling, permitting the assignment of a contingent liability to an annuity company?

No.

If yes, or if uncertain, identify any controlling or applicable legal authority?

Not applicable.

Comments:

Wyoming is one of four monopolistic states – the other three are North Dakota, Ohio and Washington.

State	If a dispute arises over compensability, degree of disability, jurisdiction, or dependency of a claim, can a lump sum settlement be agreed to by the parties, resulting in a final release of the claim?	Are structured settlements resolving both the indemnity and medical benefits allowed, even on claims involving paraplegia, quadraplegia, multiple amputations, serious burns or serious head injuries?	Do Structured Settlements as previously described result in a final release?	Whose approval is necessary for a lump sum settlement (the Court, Worker's Comp. Bd., or an Administrative Law Judge)?	Does the jurisdiction now allow qualified assignments? (per the amended section 130 of the IRS code effective August 5, 1997)	Rating Requirments
Alabama	Yes.	Yes.	Yes.	Circuit Court Judge.	Yes.	
Alaska	Yes.	Yes	Yes, but may require original insurer to back-up payments.	Workers' Comp Board	Assignments are not expressly prohibited, but insuring entity has, in the past, needed to remain as a contingent obligor.	
Arizona	Yes - although see response to question regarding a "final release."	Yes.	It is doubtful the Industrial Commission would approve a full and final release which would prevent the claimant from re-opening the claim at a later date should the need arise.	Industrial Commission of AZ	Qualified assignments may be allowed, if approved by the Commission on settlements, but they are not allowed on indemnity cases where the structure is used as an alternative funding vehicle.	
Arkansas	Yes	Yes	Yes	ALJ	Yes	A+
California	Yes.	Yes.	Not really. WCAB maintains jurisdiction if payments were not made but employer gets a Compromise and Release.	Workers' Compensation Appeals Board (WCAB).	Yes. If the Life Insurance Company defaults, the carrier/employer remains liable for the continuing obligation.	A+
Colorado	Yes.	Yes.	Yes.	Administrative Law Judge.	No if the employer/insurer has complied with Articles 40 - 47	
Connecticut	Yes.	Yes, only in very rare instances are medicals "left open" in this venue.	Yes, full and final Stipulation of Settlement.	WC Commissioner.	Yes, however the local rules require contingent liability	
Delaware	Yes	Yes	Yes	WC Commission	Yes But all aspects of the case must be settled.	
District of Colombia	Yes	Yes	Yes	WC Commission	Yes	
Florida	Yes.	Yes.	Yes.	Judge of WC approves. Court order needed to make sure there are no issues w/ child support.	Yes.	
Georgia	Yes	Yes	Yes	WC Judge	Yes. If the Life Insurance Company defaults, the carrier/employer remains liable for the continuing obligation.	
Hawaii	Yes.	Yes.	Yes.	Director of Labor and Industrial Relations	Yes if Indemnity and Medical are both resolved.	

Idaho	Yes.	Yes, both the Indemnity and Medical portions can be structured.	Yes, as permitted by law.	Industrial Commissioner	Assignment is allowed, but the IC may still require the transfer of the obligation "to the extent permitted by law" language.	
Illinois	Yes.	Yes.	Yes.	Commissioner.	Yes.	
Indiana	Yes	Yes	Yes	WC Board	Yes	A+
Iowa	Yes.	Yes.	Yes.	Industrial Commissioner.	Yes.	
Kansas	Yes.	Yes.	Yes.	Special Administrative Law Judge.	Yes But The Division of Workers' Compensation has verbally stated it will not approve a settlement if buying an annuity or other instrument if it extinguishes ultimate responsibility	
Kentucky	Yes.	Yes.	Yes.	ALJ	Yes.	
Louisiana	Yes	Yes	Yes	Office of WC	Yes	A+
Maine	Yes.	Yes.	Yes.	WC Board	Yes.	
Maryland	Yes.	Yes.	Yes.	WC Commission	Yes - If the insurer makes an assignment of any of its obligations to a third party, the agreement must contain affirmative language confirming that the Employer/Insurer shall resume its obligation for all remaining payments in the event of a default by the third party	
Massachusetts	Yes.	No, you cannot close out the medicals. However, claims are regularly settled on the indemnity portion with the meds remaining open.	Yes, for indemnity portion.	Workers' Compensation Court	Yes. If the Life Insurance Company defaults, the carrier/employer remains liable for the continuing obligation.	
Michigan	Yes.	Yes.	Yes.	Workers' Comp Judge.	Yes. Unless a Non-Redemption claim	
Minnesota	Yes, if it is a disputed claim. No medical settlement if not disputed.	Yes, if it is a disputed claim.	Yes, but case can be reopened if there has been a major change of condition.	Workers' Comp Judge.	Yes.	
Mississippi	Yes	Yes	No - Rule 15 - Until all payments are completed, employer/carrier remains liable	Commission or ALJ	No - Rule 15 - Until all payments are completed, employer/carrier remains liable	
Missouri	Yes.	Yes.	Yes	Administrative Law Judge	Yes.	A+
Montana	Yes.	Yes	Yes, as permitted by law.	Department of Labor and Industry.	No.	A+
Nebraska	Yes.	Yes.	Yes.	Workers' Compensation Court.	No	
Nevada	Yes	Yes	Yes	No Approval needed		A+
New Hampshire	Yes	Cannot settle the medical portion of the claim.	Yes, for the indemnity portion.	NH DOL	No statutory provision.	A+
New Jersey	Yes unless claimant is determined to be a PT	Yes	Yes	WC Judge	Yes	
New Mexico	Yes.	Yes.	Yes.	Workers' Comp Judge.	Yes.	A+
New York	Yes.	Yes.	Yes.	Workers' Comp Board Commissioner.	Yes.	

North Carolina	Yes.	Yes.	Yes.	North Carolina Industrial Commission.	Not specifically addressed in the Workers' Compensation Act. The NCIC routinely approves settlements with qualified assignments.	A+
North Dakota	Yes	Yes	No. Until last payment is received	Court Approval	No.	A+
Ohio	Yes -Self-insured only	Yes	Yes	WC Judge	Yes	
Oklahoma	Yes.	Yes.	Yes.	ALJ	Yes.	
Oregon	Yes.	Yes - Indemnity Only unless the claimant waives his rights to receive future medical expenses or a DCS is entered	Yes.	Workers' Comp Board.	Yes.	
Pennsylvania	Yes.	Yes.	Yes.	Workers' Compensation Judge.	Yes	
Rhode Island	Yes.	Yes.	Yes.	Workers' Compensation Judge.	Yes.	A+
South Carolina	Yes.	Yes.	Yes.	South Carolina Workers' Compensation Commission.	Yes.	
South Dakota	Yes.	Yes.	Yes.	Workers' Compensation Director.	Yes.	
Tennessee	Yes	Yes -	Yes	WC Judge	Yes	
Texas	NO	NO	NO	NO	No.	
Utah	Yes.	Yes.	Yes.	ALJ	Yes.	
Vermont	Yes	Yes	Yes	Commission	No	
Virginia	Yes.	Yes.	No, the carrier remains as a secondary or tertiary obligor.	VA Workers' Compensation Commission.	No.	
Washington	Cannot Compromise and Release a claim.	No.	No.	N/A	No.	
West Virginia	Yes	Yes	Yes	Office of Judges	Yes	
Wisconsin	Yes, if it is a disputed claim. No medical settlement if not disputed.	Yes, if it is a disputed claim.	Yes.	Dept. of Work Force Development	Yes.	
Wyoming	No.	No.	No.	N/A	No.	