
In the Matter of the Compensation of
JEFF SHADDON, Claimant
WCB Case No: C061078
ORDER APPROVING CLAIM DISPOSITION AGREEMENT
Lavis & DiBartolomeo, Claimant Attorneys
Johnson Nyburg & Andersen, Defense Attorneys

Reviewing Panel: Members Lowell and Biehl.

On May 11, 2006, the Board received the parties' claim disposition agreement (CDA) in the above-captioned matter. Pursuant to that agreement, in consideration of the payment of a stated sum, claimant releases certain rights to future workers' compensation benefits, except medical services, for his compensable injury. We approve the proposed disposition.

On May 18, 2006, the Board's staff wrote the parties regarding the proposed CDA. The proposed CDA explains that the obligation to make periodic payments may be assigned and further provides, in part:

“Any such assignment, if made, shall be accepted by the Claimant without right of rejection and shall completely release and discharge the Defendant and/or Insurer from the Periodic Payments obligation assigned to the Assignee. The claimant recognizes that, in the event of such an assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of the Defendant and/or the Insurer shall thereupon become final, irrevocable and absolute.”

The parties were further advised that a CDA containing such a provision was unlikely to receive Board approval because, in the event of a future dispute regarding the processing of the CDA, the Board would have jurisdiction to consider the “enforcement” of the settlement. *See William I. Tarr*, 54 Van Natta 2071, 2072 (2002); *cf. Howard v. Liberty Northwest Ins.*, 94 Or App 283 (1988). The letter further explained:

“Nevertheless, the Board's authority would be confined to the conduct of ‘parties,’ who are defined as claimants, employers, and their insurers. *See* ORS 656.005(21). Consequently, if the

CDA fully released the insurer and its insured from further responsibility, there would no longer be a ‘party’ over which a Board could order ‘enforcement’ of the agreement.

“Accordingly, any settlement in which the insurer and its insured may be *fully* and *unconditionally* released from any further obligations or payments under the agreement is inconsistent with the statutory scheme. Therefore, an agreement containing such a provision will not be approved. This conclusion, however, should not be interpreted as prohibiting the insurer from assigning the *primary* responsibility for making periodic CDA payments to another entity (provided that the insurer remains ultimately responsible should the assignee be unable to fulfill its obligations). See *David E. Johnston*, 58 Van Natta 514 (2006); *Thomas H. Kistler*, 55 Van Natta 3310 (2003).”

The parties responded with an addendum to the CDA, which requires further discussion.¹ The addendum provides, in part:

“The parties agree and stipulate, however, that if the Assignee is unable to meet its obligations to the claimant, the insurer and the claimant agree to submit to the jurisdiction of the Workers’ Compensation Board of the State of Oregon to resolve all issues related to the payment of this claim.”

We construe the aforementioned language in the addendum to mean that, notwithstanding the other provisions in the CDA transferring the obligations to pay claimant from the insurer to “the Assignee,” the insurer will remain ultimately responsible should “the Assignee” be unable to fulfill its obligations. See *David E. Johnston*, 58 Van Natta at 515; *Harold W. Gillaspie, Jr., Dcd*, 58 Van Natta 233 (2006). In other words, based on the parties’ CDA addendum, the insurer is *not* “completely release[d] and discharge[d]” from all liabilities and obligations to make periodic payments in the event that “the Assignee” is unable to fulfill its obligations.

¹ The proposed addendum also changed the subsection numbers of paragraph 16, which are now inconsistent with the original CDA. In granting this approval, we have construed the subsections as follows: the references in the addendum to subsection (b) (Right to Purchase an Annuity), subsection (c) (Discharge of Obligation), and subsection (d) (Warranty of Capacity to Execute Agreement), are interpreted as subsections (d), (e) and (f) respectively, in order to be consistent with the original CDA.

The amended agreement, as clarified by this order, is in accordance with the terms and conditions prescribed by the Board. *See* ORS 656.236(1). Accordingly, the parties' claim disposition agreement is approved.

If the parties disagree with our interpretation of the CDA, they may move for reconsideration by filing a motion for reconsideration within 10 days of the date of mailing of this order. OAR 438-009-0035.

IT IS SO ORDERED.

Entered at Salem, Oregon on June 2, 2006