
In the Matter of the Compensation of
ANTHONY R. WILLIAMS, Claimant
WCB Case No: 15-03207C
ORDER APPROVING CLAIM DISPOSITION AGREEMENT
Rose Senders & Bovarnick, Claimant Attorneys
Sheridan Levine LLP, Defense Attorneys

Reviewing Panel: Members Curey and Lanning.

On December 28, 2015, the Board received the parties' claim disposition agreement (CDA). In consideration of the payment of a stated sum, claimant releases certain rights to future workers' compensation benefits, except medical services-related benefits, for his compensable injury. We approve the proposed disposition.

The proposed CDA provides that the consideration to claimant includes \$20,000 of "new money," consisting of \$15,375 due claimant and \$4,625 due claimant's attorney, and the waiver of a "third party" lien. Paragraph 12 of the agreement recites that claimant has settled a "third party" claim for \$40,000, the attorney fee from the settlement is \$13,333 and incurred litigation costs are \$9,000. Paragraph 12 also recites that the carrier "retains a third party lien equal to \$100,000 for its payment of workers' compensation benefits," that the "statutorily recoverable" third party lien is \$11,778, and that the carrier waives the lien "in full and equal to \$11,778." However, Paragraph 13 states that the carrier waives the entirety of its lien, "equal to \$100,000 in total, but allowable to only \$17,778."

A carrier's "statutorily recoverable" third party lien is that portion of the carrier's lien that can be satisfied from the carrier's share of the third party recovery, once attorney fees, litigation costs, and the claimant's statutory one-third share have been deducted. *See* ORS 656.593(1), (3); *Daniel J. Cossette*, 54 Van Natta 139 (2002). A carrier's waiver of its "statutorily recoverable" third party lien may provide valid consideration for the CDA. *E.g.*, *Anthony G. Allen*, 49 Van Natta 460 (1997). However, a carrier's waiver of a portion of its lien that is not "statutorily recoverable" does not constitute consideration. *Daniel S. Livingston*, 67 Van Natta 1690, 1691 n 1. (2015).

Here, the CDA is inconsistent regarding whether the "statutorily recoverable" third party lien is \$11,778 or \$17,778. Nevertheless, the CDA provides the total "third party" claim settlement is \$40,000, that claimant's attorney's fee from the settlement is \$13,333, and his incurred costs are \$9,000.

This information allows us to determine that the “statutorily recoverable” third party lien is \$11,778.¹ *See Michael Von Poppenheim*, 62 Van Natta 551 (2010) (although CDA did not accurately identify the amount of the “statutorily recoverable” third party lien, it provided sufficient information for the Board to calculate the “statutorily recoverable” third party lien and determine that the partial waiver of the lien was valid consideration). Accordingly, we conclude that the CDA’s consideration includes waiver of the carrier’s “statutorily recoverable” third party lien, equal to \$11,778.

The 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’ CDA 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 January 13, 2016

¹ Costs and attorney fees incurred are first paid from the third party settlement or judgment. ORS 656.593(1)(a), (3). Claimant’s attorney’s fee of \$13,333 is consistent with OAR 438-015-0095, which provides that, absent extraordinary circumstances, the attorney fee for the “third party” action may not exceed one third of the gross recovery. The \$13,333 attorney fee and the \$9,000 costs incurred are paid first from the \$40,000 third party settlement. ORS 656.593(1)(a), (3). Of the remaining \$17,667, claimant is statutorily entitled to one-third, which is \$5,889, resulting in a “statutorily recoverable” third party lien of \$11,778. ORS 656.593(1)(b), (c).