

Why and When the Adjuster Should Hire an Attorney

Moderator:

Hon. George W. Mason, Compensation Mediation & Arbitration Services

Panelists:

Therese M. da Silva, Staff Counsel III, State Fund

David DePaolo, President & CEO WorkCompCentral.com (*Los Angeles*)

James E. Latimer, Law Offices of James E. Latimer & Associates (*Oakland*)

*DWC 19th Annual Educational Conference
Los Angeles February 23-24, 2012
Oakland March 5-6, 2012*

A Survey of Adjusters:

Why and when should the Adjuster hire an attorney?

Results clustered in 3 categories...

1. Immediately at the filing of an application....

- ▶ Right away as this sets the tone for the whole case.
- ▶ So we can file something—an answer, denial, notices—immediately.
- ▶ To deal with the Employer.
- ▶ Because this builds confidence with the Employer.
- ▶ I like having access to legal advice from the beginning so we can work as a team.

2. Sometime during the course of the case...

- ▶ At the one year mark: to get another set of eyes to review the case.
- ▶ When specific issues arise such as compensable consequences.
- ▶ If the case is potentially 100% PD.
- ▶ To help deal with my supervisor's requests.
- ▶ Because Legal "knows when we are being set up for the kill."

3. Wait until the last possible moment...

- ▶ Only when something is pending before a judge.
- ▶ When I need to file a legal document like a DOR.
- ▶ I prefer to negotiate with AA's on my own.
- ▶ Sometimes my attorney does not see it the way I do and I don't like that!

Problem Areas: A Perspective from the Bench

1. Referrals on the eve of trial
2. Sanctions
3. Personal involvement can cloud professional judgment



A Team Vision Toward Claim Resolution

1. The Attorney-Client Relationship
2. Billing Practices



Making the Case

1. Privileges in discovery
2. Depositions
3. Ex Parte Communications



Other Situations to Consider

1. Pro Per Cases
2. Lien Cases



An Applicant Attorney's Opinion:

"It is my hope that the Adjuster never hires an attorney. That way, I can control everything."

**Why and When the Adjuster
Should Hire an Attorney**

We thank you for attending
the DWC 19th Annual
Educational Conference!

✓ LIST FOR SUBMITTING C&R's and STIPULATIONS



(From a Survey of Oakland and San Francisco Judges)

- If the Stipulations are based on a final report of the treater, include a copy of the notice to applicant of his or her right to a panel QME.
- If you have broken periods of T.D. paid, include the reports that support the stopping of the T.D. payments.
- If pay at maximum T.D. rate, no need to include wage statements. If less than maximum, please include wage statements; and if you have the tape used to calculate the rate, please attach.
- If the QME's report described the treating doctor's reports, there is no need to include those reports.
 - Except if T.D. is paid in broken periods.
 - If treater and QME differ on issue of apportionment.
- If you are going to take the 15% bump down, please attach copy of offer of regular alternative/modified work (4658.1) and the proof of service, or your cover letter with the date of service.
 - The offer of regular, alternative, or modified work must be made within 60 days of the P&S report, in order to qualify for decreasing the level of P.D. This is 60 days after P & S and not 60 days before.
- If you have rated the QME report or had a private or Board rating, attach a copy for the Judge.
- If you have a good reason for what appears to be a low or questionable amount for setting future medical treatment, explain the reason in your cover letter – Not just say, "That was applicant's demand."
- If you have made no advances and there is undisputed P.D., and there is a valid legal reason for not paying, tell the judge in your cover letter.

Check List For Submitting C&R's and Stipulations



- If the QME gives his final opinion on apportionment in a supplemental report, attach the original report that he/she was supplementing. Judge wants complete history of the QME's medical opinion.
- Make sure applicant's signature is witnessed on the C&R and that you also sign the C&R and/or Stipulation.
- If overpayment of T.D. or PD is claimed, attach a benefit printout and reports that support your position. Direct the judge's attention to page and line of the printout, plus page and line of the medical report or reports.
- If facts of your case raise an Almaraz/Guzman issue, mention your analyses of how the rating agreed upon is proper. Also, if the issue was considered by the doctor, make reference to page and line.
- If applicant has not returned to his or her regular/modified work or work with a different employer because of the industrial injury, discuss your Ogilvie analyses and why the rating agreed upon is fair and adequate.
- If there are other cases or dates of injuries that are being settled, include the medicals for those injuries and the reasons why the settlement figure is fair for all injuries included.
- If the treater or QME apportions a significant percentage of applicant's PD to non-industrial causes, and you base your C&R or Stipulation on this figure, read the doctor's analysis carefully to make sure it makes sense. If you have questions, discuss it with your supervisor or your attorney – will it fly?
- Fill in all of the blanks. (i.e. TD paid, at what rate; amount of P.D. paid, etc.)
- In the blank for "Total Unpaid Medical Expense to be Paid By", don't write "by applicant", if you mean bills incurred AFTER the approval of the Compromise and Release to be paid by applicant.
 - Acceptable language would be, "By defendant for reasonable and necessary expenses through the date of the O.A.C.R."
 - On the C&R, you may write in "By applicant" if the claim is denied.
- Mention or take care of the lien in the Stipulation or C&R (i.e. all liens resolved, pay or adjust, or hold applicant harmless, etc.)
- If the settlement involves a date of injury prior to 2005 and settlement is based on the 2005 rating schedule, explain why it is inappropriate to use the 1997 schedule.



THINGS TO REMEMBER

1. If the Judge or the secretary for the Judge calls and asks for wage statements, QME reports, etc., please call them back. If not, the matter may get set for adequacy.
2. If “walk-through”, no need to bring the applicant to the Board, unless the judge asks for him or her. Have a good reason if you do decide to bring them.
3. If you get Order Suspending, read and determine what judge wants, and only bring what is asked for. Should decide if you can appear or should you hire an attorney.
4. For E or Jet Filers – you may walk a case through – just check the walk-through box **WHEN YOU FILE YOUR DOCUMENTS**. Then walk through your settlement once it is in the system.
5. If you E or Jet File and you check the walk-through box, the papers are processed, but are not assigned to a specific judge. They are placed in a queue and wait for the person to walk them through.
6. If the judge makes a finding or a penalty, he or she must send it to the audit division.
 - o If you settle the penalty, the judge is not required to make the same report.
7. If the judge issues an Order Suspending Action, and a conference is set because of your not responding/or an inadequate response, the judge may order “reasonable cost” to applicant for appearing (i.e. lost wages, mileage and parking).