

# **BEST PRACTICES**

## **STIPULATED SETTLEMENTS**

Pursuant to O.C.G.A. §34-9-15, the State Board of Workers' Compensation is authorized to approve Stipulated Settlements. The parties to a claim may enter into a lump sum compromise settlement to resolve all issues of the claim. Board Rule 15 details the general procedures to be followed when submitting Stipulated Settlements to the Board. There are two types of stipulated settlements:

- **Liability** – Claim compensability has been established. The employer/insurer have paid indemnity benefits and the parties are compromising a bona fide dispute.
- **No-Liability** – Claim compensability has not been established. The employer/insurer have not paid income benefits to the employee, but the parties agree, for consideration, not to pursue the claim under workers' compensation law.

### **Liability Stipulated Settlements**

#### ***Captions, copies and envelopes***

The caption on the first page of the Stipulated Settlement must include the name, address and phone number of each named party. Employee's attorney must also provide his or her Federal Tax I.D. number.

If filing electronically, submit one copy of the Stipulation and one copy of the Supporting Documents to the Board. Separate the Stipulation from the Supporting Documents.

If not filing electronically, submit the original Stipulation and one copy for each party and date of injury. (For example, if there are 5 parties and 3 dates of injury are resolved by the Stipulated Settlement, submit the original and 8 copies of the Stipulation.) Do not forget to submit one 9 1/2" x 12 1/2" envelope for each party.

***Employer notification***

The cover letter, or the Stipulated Settlement itself, must contain certification that a copy of the agreement has been sent to the employer prior to any party having signed it.

***Bona fide dispute***

Stipulated Settlements must state with specificity the legal and/or factual matters about which the parties cannot agree. Issues such as length of disability, degree of disability, ability of employee to return to regular duty work, need for further medical expenses, liability, permanent partial disability, and dependency may be considered.

***Future medical expenses***

Stipulated Settlements must state that all incurred medical expenses, which were reasonable and necessary, have been or will be paid by the employer/insurer. The need for future medical treatment must be addressed. If future medical treatment will not be made available, a rationale for closing medical treatment must be provided. The Stipulated Settlement must provide that the parties will petition the Board for a change of physician in the event that a specifically named physician is

unable to render services or if the parties cannot agree on a change of physician.

***Attorney fees & expenses***

All fees must conform to O.C.G.A. §34-9-108 and Board Rule 108. If expenses are to be collected from the settlement, then the attorney fee contract must also have a provision for payment of expenses. Expenses must be itemized, and this itemization must be provided to the Board in the Stipulated Settlement. In structured settlements, attorney fees are based on present value. The cost of the structure/annuity is required. No attorney fee can be calculated on money designated for medical expenses. Pursuant to Board Rules, the 25% attorney fee is based solely on income benefits, reduced to present value.

***General releases***

The Stipulated Settlement must refer to a specific incident or alleged incident. The Board will not approve a Stipulated Settlement containing a general release from any and all claims, or purporting to settle matters other than workers' compensation benefits.

***Resignations***

Do not reference resignations in the Stipulated Settlement.

***Social Security disability benefits***

Federal law contains an offset for workers' compensation income benefits against Social Security disability benefits. Therefore, it is often useful to project the portion of settlement proceeds that represent income benefits over the employee's remaining life expectancy and thereby

allowing the employee to keep most, if not all, of his Social Security benefits.

It is important to remember that the offset applies only to the combination of workers' compensation benefits and Social Security disability benefits. Briefly, the offset rule provides that no combination of workers' compensation and Social Security disability benefits can exceed 80% of pre-injury earnings.

Remember, however, that if the Stipulation contains language that divides the settlement amount into various categories (e.g., income benefits, future medical benefits, administrative costs of managing the claim, etc.) then attorney fees may only be taken on that portion of the settlement representing income benefits.

### ***Structured Settlements***

If a settlement includes a structure/annuity that is to be paid by a party other than the employer or the insurer, then the Stipulated Settlement must contain a provision that the employer and insurer will be liable for the agreement in the event of default or failure of that third party to pay. Additionally, the cost of the structure/annuity must be provided.

### ***Medicare Set Asides***

If the parties would like a Medicare Set Aside (MSA) reviewed by the Board as part of a Stipulated Settlement, the MSA should be attached to the Stipulated Settlement. If a structure/annuity is used to fund the MSA, remember to submit the cost of the structure/annuity.

### ***Subsequent Injury Trust Fund (SITF)***

Determine whether SITF has an interest in the claim. If so, be certain to make the SITF a party-at-interest to the settlement and have a SITF representative sign the Stipulated Settlement before submitting it to the Board for approval.

### **Supporting Documents for Liability Stipulated Settlements**

The following documents/information must be ***submitted at the same time*** that the Liability Stipulated Settlement is submitted, ***but should not be attached*** to the Liability Stipulated Settlement:

- WC-1 for each date of injury
- Attorney fee contract
- Final WC 4
- Most recent medical report, including the permanent partial disability rating. The entire medical history should not be included. Do not include medical reports as “exhibits”
- PPD rating and return to work status

***Do not submit employee general releases, resignations or covenants not to sue with Liability Stipulated Settlements submitted to the Board for approval.***

### **No-Liability Stipulated Settlements**

Note: A No-Liability Stipulated Settlement cannot be considered if liability on the part of the employer/insurer has been established, or where, absent extraordinary justification, approval of the settlement would be contrary to the Board's previous findings and Award.

#### ***Captions, copies and envelopes***

The caption on the first page of the Stipulated Settlement must include the name, address and phone number of each named party. Employee's attorney must also provide his or her Federal Tax I.D. number.

If filing electronically, submit one copy of the Stipulation and one copy of the Supporting Documents to the Board. Separate the Stipulation from the Supporting Documents.

If not filing electronically, submit the original Stipulation and one copy for each party and date of injury. (For example, if there are 5 parties and 3 dates of injury are resolved by the Stipulated Settlement, submit the original and 8 copies of the Stipulation.) Do not forget to submit one 9 1/2" x 12 1/2" envelope for each party.

#### ***Employer notification***

The cover letter, or the Stipulated Settlement itself, must contain certification that a copy of the agreement has been sent to the employer prior to any party having signed it

## **Supporting Documents for No-Liability Stipulated Settlements**

The following documents/information must be ***submitted at the same time*** that the No-Liability Stipulated Settlement is submitted, ***but should not be attached*** to the No-Liability Stipulated Settlement:

- WC-1 for each date of injury
- Attorney fee affidavit (Board Form WC-15) certifying that fees will not exceed those allowed by Board Rule 108
- Memorandum or “throw-away” sheet to show the consideration paid to the employee and who will be responsible for any incurred medical expenses
- Final WC-4
- Documentation indicating the resolution of child support or attorney fee liens

***Do not submit employee general releases, resignations or covenants not to sue with No-Liability Stipulated Settlements submitted to the Board for approval.***

**Additional Considerations for  
Liability and No-Liability Stipulated Settlements**

***Guardianship Issues***

The Board's jurisdiction to appoint a temporary guardian for a minor or an incapacitated adult is limited. The Board has jurisdiction to appoint a temporary guardian for a period not to exceed 52 weeks and for settlements with a net settlement amount of under \$50,000. Copies of the most current Board Forms WC-226a (Petition for Appointment of Temporary Guardianship of Minor(s)) and WC-226b (Petition for Appointment of Temporary Guardianship of Legally Incapacitated Adult) are included in the Forms Section at the end of this paper.

**Death Claims**

In settlements involving a dependent minor child of a deceased employee, a guardian for the property of the minor child must be appointed by the appropriate Probate Court (or other court of competent jurisdiction) when the net settlement amount is \$50,000 or greater. (O.C.G.A. §34-9-226 and Board Rule 226)

**Incapacitated Adults**

In settlements involving an incapacitated adult, a guardian for the property of the incapacitated adult must be appointed by the appropriate Probate Court (or other court of competent jurisdiction) when the net settlement amount is \$50,000 or greater. (O.C.G.A. §34-9-226 and Board Rule 226)

## ***Liens***

### **Child Support Liens**

All child support liens on record at the Board must be resolved before the Stipulated Settlement will be approved. The parties must provide documentation, from the Support Enforcement Agency or Assistant District Attorney in charge of Support Enforcement, indicating that the lien is withdrawn, satisfied in full, or reduced by a specified amount. Make sure that it is clear in the Stipulated Settlement (or in the Throw Away Sheet for a No-Liability Stipulated Settlement) which party is going to write the check to satisfy the child support lien.

### **Attorney Fee Liens**

All attorney fee liens on record at the Board must be resolved before the Stipulated Settlement will be approved. Liens based on prior representation are to be negotiated to agreement prior to the Stipulated Settlement being submitted to the Board for approval, or, in the alternative, the amount of the lien should be held in escrow by the employer/insurer pending resolution by the Board through mediation or hearing.

Parties negotiating a Stipulated Settlement cannot unilaterally extinguish an award of assessed fees payable to claimant's previous attorney. In the case of assessed fees, the original attorney has a "vested interest" in those fees, and he or she should be made a party-at-interest.

### ***Signatures***

Verify that the Stipulated Settlement is signed by all parties and parties-at-interest before submitting the agreement to the Board.

### ***Rejected agreements***

The Board may request additional information or documentation on any Stipulated Settlement filed or may send a rejection notice if the Stipulated Settlement does not comply with Board Rule 15. Even though a Stipulated Settlement is not approved by the Board upon submission, the Board reserves the right to reconsider and approve the Stipulated Settlement at any time within 30 days from the date of the rejection notice unless it appears in the file that one of the parties has withdrawn consent.

### ***Disbursements***

Upon approval, the Stipulated Settlement becomes an Order/Award of the Board, therefore, all aspects of the agreement must be met. Checks must be disbursed/mailed in the specified manner, and payment made within the 20-day period specified in O.C.G.A. §34-9-221(f), or a 20 percent penalty will be added to the amount due.