

# How to Prepare A Compromise & Release



By Gregory P. Fletcher Bradford & Barthel, LLP



- 1. When off risk
- 2. When wish to settle future medical
- 3. When claim or right to benes is disputed



# Advantages of C&R:

- Resolves all issues (generally)
- No right to reopen
- Issues [such as penalties] resolved without admission of fault or liability

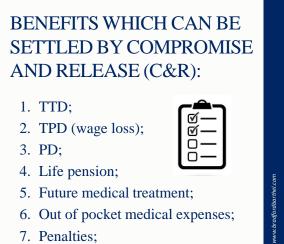


# WHEN NOT TO SETTLE BY COMPROMISE AND RELEASE:

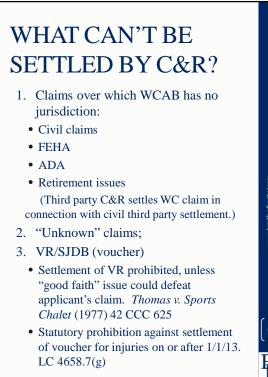
- 1. Still on risk (C&R may duplicate settlement of future claims);
- 2. When a party is unwilling to settle future medical care (e.g., applicant concerned about ability to pay future medical, or defendant does not wish to fund MSA);
- 3. Other party objects (co-def; Death without Dependents Unit).



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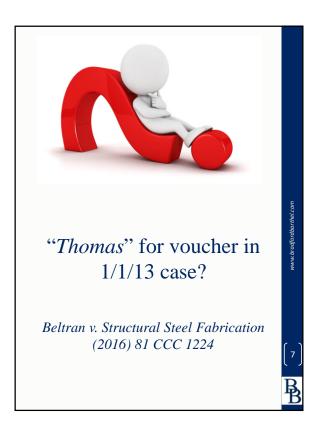


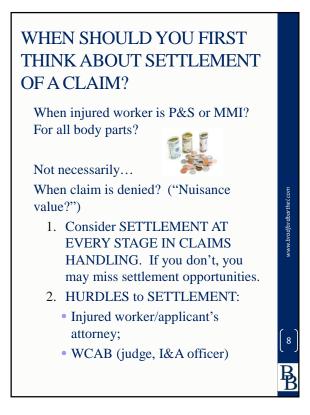
- 8. Interest on delayed payments;
- 9. VR, (under some circumstances; not applicable any more);
- 10.Supplemental job displacement benefits (voucher) for injuries prior to 1/1/13.



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"A Compromise and Release is less about the numbers, and more about who wants it more."

Fletcher's Rule

Can't be forced to settle by C&R. Always by <u>agreement</u> of parties.

Valuing cases and negotiation are an art, outside the scope of this seminar. Each party must determine if settlement is cost-effective in light of risk of proceeding to trial.

Identify areas of agreement, and areas of <u>dispute</u>. <u>Weigh</u> arguments of each party in areas of dispute to determine appropriate compromise of issues in dispute.

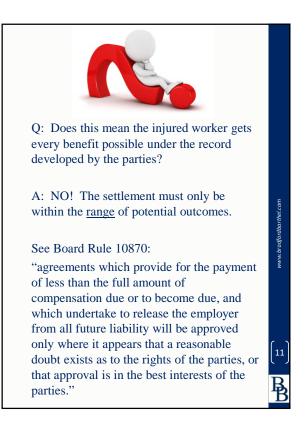
# ALL SETTLEMENT MUST BE APPROVED BY A WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE. LC 5001

• Board Rule 10882 directs the Appeals Board to "inquire into adequacy" of C&R.



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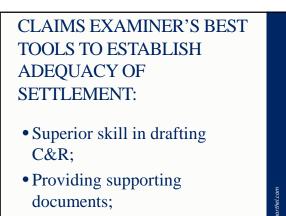
# TOOLS USED BY WORKERS' COMPENSATION ADMINISTRATIVE LAW JUDGE TO ASSESS ADEQUACY:

- 1. DEU (Disability Evaluation Unit);
- 2. I&A (Information and Assistance Officer)



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• Explaining basis of settlement.



# UPON SUBMISSION OF SETTLEMENT JUDGE CAN:

- 1. Approve it;
- 2. Suspend and make inquiries re basis of settlement or missing documents;
- 3. Set hearing on adequacy; or
- 4. Disapprove settlement

The Judge CANNOT make unilateral changes to settlement documents. *Burbank Studios v. WCAB (Yount)*, (1982) 47 CCC 832; *Hodgeman v WCAB*, (2007) 72 CCC 1202.

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# THE FORM:

DWC – CA FORM 10214(c) (The regulation which provides the form to the public). Required contents are provided in LC 5003-5004.

2 other forms not discussed in this seminar:

- a. Death & Dependency Claim
- b. Third Party Compromise and Release.

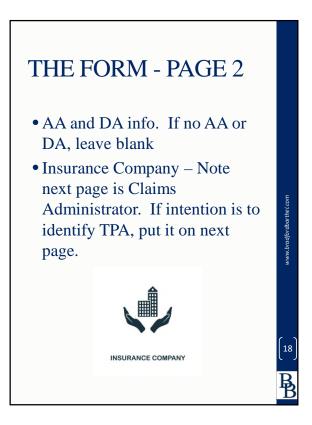
PAGE ONE-

- Include all case #'s
- Applicant's SS #
- VENUE usually based on AA's office or applicant's residence
- Let applicant or attorney fill in applicant's address (so no future argument that check was sent to wrong address)
- Provide ER name and address and accurate insurance info. You can be sanctioned for mistakenly identifying ER as "self-insured."

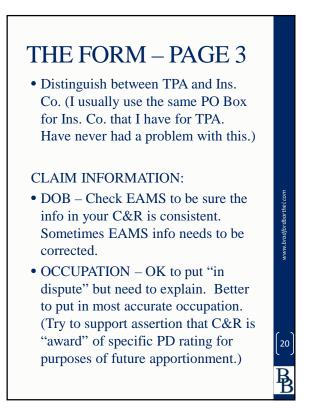
Coldiron v. Compuware (2002) 67 CCC 289 (Now Reg 10390(a)) for dbarthel. a

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WORKERS	IN OF WORKERS' COMPENSATION S' COMPENSATION APPEALS BOARD COMPROMISE AND RELEASE		1
Include all cases settled			
Case Number 1	Case Number 4		
Case Number 2	Case Number 5		
	Applicant's SS#		
Case Number 3	SSN (Numbers Only)	_	
Venue Choice is based upon: (Completion of	of this section is required)		
County of residence of employee (Labor Co	ode section 5501.5(a)(1) or (d).)		
County where injury occurred (Labor Code	section 5501.5(a)(2) or (d).)		
County of principal place of business of em	nployee's attorney (Labor Code section 5501.5(a)(3) o	r (d).)	
VENUE			
Select 3 Letter Office Code For Place/Venue of Employee(Completion of this section is requ First Name			_
Employee(Completion of this section is requ	uired)		
Employee(Completion of this section is requ	uired)		
Employee(Completion of this section is requ First Name Last Name	uired)		
Employee(Completion of this section is requ First Name Last Name	FOR APPLICANT TO FILL OUT		
Employee(Completion of this section is requ First Name Last Name LEAVE ADDRESS BLANK F Address/PO Box (Please leave blank spaces b City	FOR APPLICANT TO FILL OUT etween numbers, names or words) Bitete	Zip Code	
Employee(Completion of this section is requ First Name Last Name LEAVE ADDRESS BLANK 1 Address/PO Box (Please leave blank spaces b	FOR APPLICANT TO FILL OUT Petween numbers, names or words) State Section is required)	Zip Code	
Employee(Completion of this section is requ First Name Last Name LEAVE ADDRESS BLANK If Address/PO Box (Please leave blank spaces b City Employer Information (Completion of this se Insured Set-Insured BE ACCURATE REGARDIN	Interviewen numbers, names or words)  FOR APPLICANT TO FILL OUT  eetveen numbers, names or words)  State Cons is required)  G EarS INSURANCE SITUATIC	nsured	
Employee(Completion of this section is requ First Name Last Name LEAVE ADDRESS BLANK If Address/PO Box (Please leave blank spaces b City Employer information (Completion of this se Insured Self-insured	Interviewen numbers, names or words)  FOR APPLICANT TO FILL OUT  eetveen numbers, names or words)  State Cons is required)  G EarS INSURANCE SITUATIC	nsured	
Employee(Completion of this section is requ First Name Last Name LEAVE ADDRESS BLANK I Address/PO Box (Please leave blank spaces b Coy Employer Information (Completion of this es insurd Get-Insured BE ACCURATE REGARDIN BE ACCURATE REGARDIN OR RISK SANCTIONS	Interviewen numbers, names or words)  FOR APPLICANT TO FILL OUT  eetveen numbers, names or words)  State Cons is required)  G EarS INSURANCE SITUATIC	nsured	



Applicant's Attorney or Authorized Representative:			_
Law Firm/Attorney Non Attorney Representative			
LEAVE ADDRESS BLANK IF NO AA			
First Name			
Last Name			
Law Firm Number			
Law Firm Name			
Address/PO Box (Please leave blank spaces between numbers, names or words)			
City	State	Zip Code	
Defendant's Attorney or Authorized Representative:			
Law Firm/Attorney Non Attorney Representative	-	+	
First Name LEAVE ADDRESS BLANK IF NO DA			
Law Firm Number			
Law Firm Name			
Address/PO Box (Please leave blank spaces between numbers, names or words)			
City	State	Zip Code	
nsurance Carrier Information (if known and if applicable - include even if ca	rier is adjusted by	y claims administr	ator)
DISTINGUISH FROM TPA (NEXT PAGE)			
Insurance Carrier Name (Please leave blank spaces between numbers, names or words)			
insurance Carrier Street Address/PO Box (Please leave blank spaces between numbers, r	ames or words)		
City	State	Zip Code	-,



Claims Administrator Information (if known and if applicable)
ТРА
Name (Please leave blank spaces between numbers, names or words)
Street Address/PO Box (Please leave blank spaces between numbers, names or words)
City State Zip Code
IT IS CLAIMED THAT: CHECK EAMS  1. The injured employee, born  (DATE OF BIRTH: WADDAYYY) - , alleges that while employed as a(n)
"IN DISPUTE", OCC FROM YOUR RATING, OR BY AGMT
(OCCUPATION AT THE TIME OF INJURY) arising out of and in the course of employment at the locations and during the dates listed below:
(State with specificity the date(s) of injury(les) and what part(s) of body, conditions or systems are being settled.)
ADJXXXXXX1 04/01/2014
Case Number 1 (Start Date: MM/DD/YYYY) (End Date: MM/DD/YYYY)
Body Part 1: 100 HEAD Body Part 2: 540 TOES Body Part 3: 420 BACK
Body Part 4: 318 ARM Other Body Parts: 842 NERVOUS SYSTEM -
The injury occurred at [JOB SITE - IF KNOWN] PSYCHIATRIC/PSYCH (Binest AddressPO Box: Please laws blink spaces between rumbers, names or words)
City 'State Zip Code Body parts, conditions and systems may not be incorporated by reference to medical reports.
<u>WC-CA</u> form 10214 (c) (Rev. 110208) (Page 3 of 9)

ADJXXX Case Number 2	Specific injury         04/02/2013         04/02/2014           X         Cumulative injury         Specific injury         04/02/2014           Bis Toke: MonONYON (Specific injury)         Cerro Toke: MonONYON (Specific injury)         Cerro Toke: MonONYON (Specific injury)
Body Part 1:	145 TEETH Body Part 2: 110 BRAIN Body Part 3: 140 FACE
Body Part 4:	320 WRIST Other Body Parts: 840 NERVOUS SYSTEM - STRESS
The injury occur	red at 111 NORMAL STREET (Street Address <sup>IPO</sup> Box - Please leave blank spaces between numbers, names or words)
ANYTO	
Bod	City State Zip Code parts, conditions and systems may not be incorporated by reference to medical reports.
	Specific Injury
Case Number 3	Cumulative Injury (Bart Date: MMDD/YYYY) (End Date: MMDD/YYYY) (If Specific Injury, use the start date as the specific date of Injury)
Body Part 1:	Body Part 2: Body Part 3:
Body Part 4:	Other Body Parts:
-	
The injury occur	(Street Address/PO Box - Piezse leave blank spaces between numbers, names or words)
	City , State Zip Code
Bod	y parts, conditions and systems may not be incorporated by reference to medical reports.
	Specific Injury
Case Number 4	Cumulative Injury (Start Date: MMOD/YYYY) (End Date: MMOD/YYYY) (#Specific injury; use the stort date as the specific date of injury)
Body Part 1:	Body Part 2: Body Part 3:
Body Part 4:	Other Body Parts:
The injury occur	red at
	(Street Address/PO Box - Please leave blank spaces between numbers, names or words)
	City State Zip Code
Bod	parts, conditions and systems may not be incorporated by reference to medical reports.
DWC-CA form 10214	(c) (Rev. 11/2008) (Page 4 of 9)

	Head - not specified
	Brain
	Ear - not specified
	Ear - external
	Ear - internal including hearing
	Eye - including optic nerves and vision
	Face - not specified
	Jaw - including chin and mandible
	Mouth - including lips, tongue, throat and taste
	Teeth
	Nose - including nasal passages, sinus and smell
	Face - multiple parts any combination of above parts
	Face - forehead, cheeks, eyelids
	Scalp
	Skull
	Head - multiple injury any combination of above parts
	Neck
	Upper extremities - not specified
	Arm - above wrist not specified
	Arm - upper arm humerus
	Arm - elbow head of radius Arm - forearm radius and ulna
	Arm - multiple parts any combination of above parts Arm - not specified
	Wrist
	Hand - not wrist or fingers
	Fingers
	Upper extremities - multiple parts any combination of above parts
	Trunk - not specified
	Abdomen - including internal organs and groin
	Hernia
	Back - including back muscles, spine and spinal cord
	Chest - including ribs, breast bone and internal organs of the chest
	Hips - including pelvis, pelvic organs, tailbone, coccyx and buttocks
	Shoulders - scapula and clavicle
	Trunk - use for side; multiple parts any combination of above parts
	Lower extremities - not specified
	Legs - above ankles, not specified
	Thigh femur
	Knee Patella
	Lower leg tibia and fibula
010	Lower reg tible and hours

518	Leg -	multiple	parts	any	combination	of	above	parts	
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- 518 Leg multiple parts any combination of above parts
  519 Leg not specified
  520 Ankle malleolus
  530 Foot not ankle or toe
  540 Toes
  540 Lower extremities multiple parts any combination of above parts
  700 Multiple parts more than five major parts use only in fifth position of listing of body parts
  800 Body system not specific
  801 Circulatory system heart other than heart attack, blood, arteries, veins, etc.
  802 Circulatory system Heart attack
  803 Digestive system kidneys, bladder, intestines, etc.
  804 Musculo-skeletal system bones, joints, tendons, muscles, etc.
  804 Nervous system not specified
  814 Nervous system Stress
  824 Nervous system Stress
  825 Kin dermatitis, etc.
  826 Reproductive systems
  830 Other body systems
  999 Unclassified insufficient information to identify body parts

# THE FORM – PAGE 3 cont'd CLAIM INFORMATION: Applies to all claims with ADJ#'s. SPECIFIC INJURY: Use "state date" CUMULATIVE TRAUMA: Start and end dates. Q: Stick to 1 year CT period? A: Customary, but not necessary. What were allegations? If only end date alleged, generally provide start date 1 year earlier.

# THE FORM – PAGE 3 cont'd

BODY PARTS: Use EAMS codes. Include every injured body part alleged, or <u>you may not have settled</u> <u>that part of the claim</u>!

ISSUE: EAMS does not specify right or left extremity, only "arm", "leg", or "wrist." Clarify in comment section if any ambiguity.

The electronic form does not provide enough characters to provide the entire description in the EAMS body codes. Clarify in comment section if needed. w.bradfordbarthel.co

# THE FORM – PAGE 5 – PAYMENTS MADE

- Provide AWW for "earnings". If in dispute, so indicate and describe resolution of dispute in comments section. If dispute resolved via compromise AWW, list that as the AWW.
- Provide payments of TTD, PD and medical expenses in lines provided. Should conform to the printout of benefits. If multiple periods, 3 options:
  - 1. List all periods in comments section;
  - List first period in spaces allotted on form and <u>additional</u> period(s) in comments section;
  - 3. Put first and last date of payment on form and indicate in comments section that payments were made during "broken periods" or "various periods."

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# THE FORM – PAGE 5 – PAYMENTS MADE

EXAMPLES:

- "TTD paid 01/01/2012 through 04/01/2012 at a rate of \$400 per week; 01/01/2013 through 06/01/2013 at rate of \$400 per week."
- "TTD paid in broken periods."
- "PD paid in lump sum in amount of \$5,000.00 04/01/2013."
- "TD paid as wage loss at varying rates 01/01/2012 through 06/01/2012."

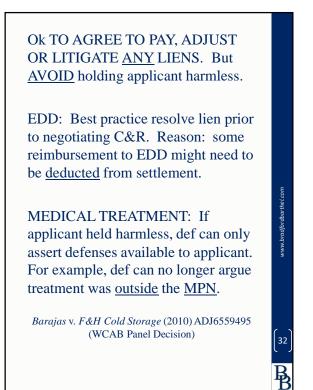
MEDICAL PAYMENTS: Provide <u>total</u> payments for medical treatment. Not medical-legal costs or medical management costs (nurse case manager; bill review). This item rarely questioned. for dbarthe l. cor

	Specific Injury	
Case Number 5	Cumulative Injury	(Start Data: MM/DD/YYYY) (End Data: MM/DD/YYYY) (If Specific Injury, use the start date as the specific date of injury)
Body Part 1:	Body Part 2:	Body Part 3:
Body Part 4:	Other Body Par	ts:
The injury occurred at	(Street Address/PO Box - Please	e leave blank speces between numbers, names or words)
City		tate Zip Code
Body parts, condit	tions and systems may not be	incorporated by reference to medical reports.
idministrative law judge an lischarges the above-name or ascertained or which may ability of the employer(s) a epresentatives, administrat he scope of the workers' co	d payment in accordance with 1 ed employer(s) and insurance of y hereafter arise or develop as and the insurance carrier(s) and tors or assigns of the employee	torken' Compensation Appeals Board or a worken' compensation the provision breach, the employee releases and forever amire(s) from all claims and causes of action, whether now known a result of the above-referenced (n)ur(se), including and all each of them to the dependents, heirs, executions, Execution of this from has no effect on claims that are not within are not subject to the exclusivity provisions of the workers'
Paragraph No. 1 and furthe ny addendum. Unless otherwise express DEPENDENTS TO DEATH GREEMENT. The parties	r explained in Paragraph No. 9 sly stated, approval of this agre BENEFITS RELATING TO TH have considered the release of	s, conditions, or systems and for the datase of hiµury set forth in i despite any language to the contrary elsewhere in this document or sement RELEASES ANY AND ALL CLAIMS OF APPLICANTS IE INJURY OR INJURIES COVERED BY THIS COMPROMISE if these benefits in arriving at the sum in Pangraph 7. Any addendum 859 48 CCC 395 is unnecessary and shall not be attached.
dministrative law judge, ap		empensation Appeals Board or a workers' compensation not release any claim applicant may have for vocational enefits.
i. The parties represent tha Paragraph No. 9.)	it the following facts are true: (I	If facts are disputed, state what each party contends under
EARNINGS AT TIME OF I		
TEMPORARY DISABILITY	INDEMNITY PAID TO	TAL] Weekky Rate \$ [RATE]
Period(s) Paid(Start D	Date: MIWDD/YYYY)	(End Dele: MMDD/YYYY)
PERMANENT DISABILITY	Y INDEMNITY PAID [T	OTAL] Weekly Rate \$ [RATE]
Period(s) Paid(Sta		d date(End Date: MM/DD/YYY)
TOTAL MEDICAL BILLS PAIL Inless otherwise specified		tal Unpaid Medical Expense to be Paid By: <u>PER P 8</u>
WC-CA form 10214 (c) (Rev. 11/		

## UNPAID MEDICAL EXPENSES: • If claim denied, or in nuisance settlement, indicate medical bills to be paid by "applicant." Judge may question this! • In most cases, put "per paragraph 8 [liens] below." EAMS will only allow a few characters, so it is compressed www.bradfordbarthel.com to: "per p 8." • Explanation can be included on page 6, para 8. • Note resolution of all liens. Generally EDD rep signs C&R noting settlement agreement. • Resolutions of liens can be in separate

Stip and Orders, typically approved by WCJ. Informal agreements can be noted in C&R. Confirmation letters can be retained to show judge.

7. The parties agree to settle the above claim(s) on account of the injury(ies) by the payment of the SUM OF g GROSS AMOUNT
Satisment Amount The following amounts are to be deducted from the settlement amount: TOTAL PDA'S TOTAL PDA'S for permanent disability advances through EXPLAINI Conservation in the provided in the settlement recommend of any
payable to CHILD SUPPORT (DOCUMENT RESOLUTION)
payable to LIEN FOR LIVING EXPENSES
<pre>\$ payable to EDD (?)</pre>
spayable toMSA (?)
sLEAVE FOR ATTY equested as applicant's attorney's fee.
LEXIVING A BALANCE OF \$ NET TO APPLICANT, after deducing the amounts set forth above and less turther permanent disability advances made after this disa let find above. Interest under Landor Code section 5800 is included if the sums set forth herein are paid within 30 days after the date of approval of this agreement.
8. Liens not mentioned in Paragraph No. 7 are to be disposed of as follows (Attach an addendum if necessary):
EDD HAS AGREED TO ACCEPT AS FULL AND FINAL
SATISFACTION OF ITS LIEN IN THE AMOUNT OF \$,
FOR PERIOD(S) THROUGH
[GET EDD REP SIGNATURE]
THE LIENS OF DR. X, HOSPITAL Y, AND HEALTHCARE PROVIDER Z HAVE BEEN RESOLVED. [BE READY TO PROVIDE DOCUMENTATION OF AGREEMENTS.]
DEFENDANT(S) AGREE TO PAY, ADJUST OR LITIGATE ALL UNPAID BILLS AND LIENS FOR MEDICAL TREATMENT THROUGH THE
DATE OF APPROVAL OF THIS COMPROMISE AND RELEASE.
[AVOID "HOLD HARMLESS" LANGUAGE!]
<u>WK-CA</u> form 10214 (c) (Rev. 112008) (Rege 6 of 6)



# C&R FORM – PAGE 6, PARAGRAPH 7

- Start with GROSS AMOUNT of settlement, then work through deductions.
- PDAs: use most current printout and provide total. Include PD paid out on <u>all claims</u> being settled. Provide date of calculation of PDAs (typically date of printout).
- Form provides credit for any PD paid <u>after</u> the date given in paragraph 7.

### IF AMOUNT OF PDAS ON FORM IS INCORRECT DEFENDANT WILL PROBABLY LOSE CREDIT FOR AMOUNT NOT INCLUDED!

County of San Joaquin v. WCAB (Oaks), 76 CCC 169 (Writ Denied – 2011)

Q: "Subject to proof"? Will this protect defendant?

# C&R FORM – PAGE 6, PARAGRAPH 7, cont'd

- TD OVERPAYMENTS Form provides for deduction for TD overpayments, but DON'T BE FOOLED! This does not automatically mean the judge will allow it. Be sure injured worker or attorney is aware of the claimed overpayment and agrees to credit. EXPLAIN basis for credit in COMMENTS section of C&R.
- If credit is due to an error by claims examiner, WCAB may not allow credit even if agreed upon by parties.
- *J.C. Penney* case: overpayment was due to retroactive P&S date by AME. Payment based on PTP. Credit NOT allowed for overpayment because no <u>objection</u> per LC 4062 to issue of TTD status!

J.C. Penney v. WCAB (2009) 74 CCC 826

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# C&R FORM – PAGE 6, PARAGRAPH 7, cont'd

- Other deductions may include liens for child support or liens for living expenses. These are typically settled by applicant, but deducted from settlement. Be sure judge is provided sufficient documentation of agreement with lien claimant to be satisfied lien is resolved.
- If settlement of EDD lien includes payment by applicant, this is the place to note the deduction from the settlement.
- ATTORNEY FEE Leave blank for applicant's attorney to fill out. Or if applicant unrepresented, leave blank, but fill in balance owed to applicant.

# C&R FORM – PAGE 6, PARAGRAPH 7, cont'd



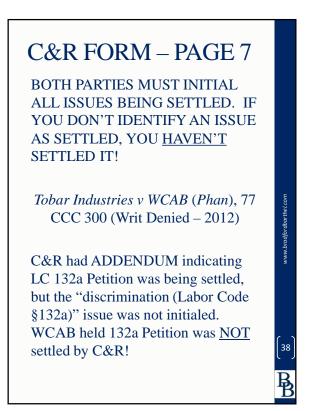
A: Depends on how MSA is being handled in settlement. If actual trust is being created, probably deduct amount

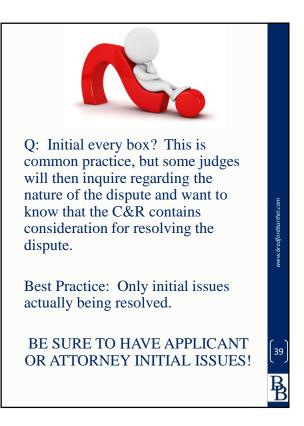
If applicant is self-administering MSA, probably best to rely solely on language in COMMENTS or separate MSA addendum.

going into trust.



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ppicant	earnings	
	GPF temporary disability	
	jurisdiction	
	GPF apportionment	
	employment	
	injury AOE/COE	
	serious and willful misconduct	
	discrimination (Labor Code §132a)	
	statute of limitations	
	GPF future medical treatment	
	other	
	GPF permanent disability	
	GPF self-procured medical treatment, except as provided in	Paragraph 7
	GPF vocational rehabilitation benefits/supplemental job disp	
COMMEN		NAMES OF THE PARTY
	S SETTLEMENT IS BASED ON THE	
OF I	DR. PHIBES, RATED BY THE DEU A	T 10% PD
(\$8,	,772.50).	
Any accr	rued claims for Labor Code section 5814 penalties are included in th	is settlement unless expressly excluded.
mpensati rties the i plication, cument, a	reed by all parties hereto that the filing of this document is the filing of fon administrative law judge may in its discretion set the matter for h right to put in issue any of the facts admitted herein and that if hearin the definition of the standard admitted here in a difference that the admitted in the standard admitted here and individual and that the worker's comparation administrative law judge may the disapprove it and issue Findings and Award after hearing has been	earing as a regular application, reserving to the ng is held with this document used as an available as of the date of filing of this ereafter either approve this Compromise and
cision.		





# C&R FORM – PAGE 7 cont'd

### COMMENTS:

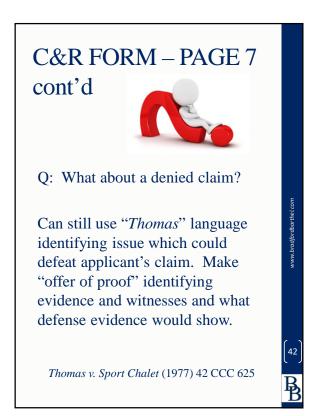
Your opportunity to explain basis for settlement and clarify any points not clear in rest of settlement documents.

Don't worry if explanation doesn't fit the box. Put the extra comment in Addendum. Note "Addendum A is incorporated into this agreement." Judges don't like boiler-plate addenda that attempt to over-reach. They do appreciate simple explanations of what is being settled and WHY IT IS ADEQUATE.

Recite basis for settlement of PD. Consider providing rating string. Whenever possible give % of PD being settled. Give dollar value. (Make it EASY for judge to evaluate settlement). www.bradfordbarthel.com

# C&R FORM – PAGE 7cont'dCOMMENTS, cont'd:COMMENTS, cont'd:Q: Will % of PD be sufficient for LC4664 apportionment in future claims?A: Unknown. We only know that an<br/>Order Approving C&R without more is<br/>not an "Award" for purposes of LC 4664<br/>apportionment.Pasquotto v. Hayward Lumber (2006) 71 CCC 223

Why not try? If it becomes common practice we may see a trend of cases allowing apportionment to earlier C&R. (But watch for whether PD is really for same body parts.)



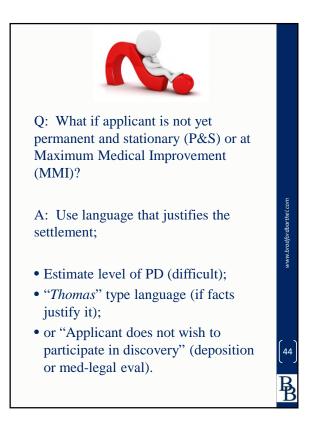
# For Example:

"The WCAB could find of no injury based on testimony of employer witnesses Pat Sajak and Vanna White, who will testify applicant said injured himself at home jumping up and down in front of television."

*Thomas* was about settling voc rehab which no longer exists, so no need to ask for a "*Thomas*" finding.

But explanation can justify settlements at "nuisance" value, and can be used to negotiate with lien claimants.





# Additional Attachments:

### When to include "ADDENDUM"?

- Lengthy, boilerplate addenda are disfavored. When C&R form was revised and expanded, one reason given was to eliminate need for addenda.
- This does NOT mean that addenda are prohibited. But ask whether it is necessary. Many boilerplate addenda contain provisions which will not be allowed.

### Examples:

- "This agreement resolves all injuries, known or unknown."
- Settlement of civil, employment, FEHA or ADA claims.
- "This agreement settles all injuries to body parts mentioned in the medical record."

# STRUCTURED SETTLEMENT

• When using structured settlement, provide addendum outlining terms of structure. Be sure that comment section indicates payment will be made in accordance with terms of the structure.



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# MSA (Medicare Set-Aside) Addendum:

Some clients require addenda setting forth requirements of applicant to self-administer MSA. For example, keeping receipts, depositing payments into MSA account, regular reporting to CMS.

Probably OK, but WCALJ will probably not approve language requiring applicant to hold def harmless if CMS increases MSA amount.

Ask if anything more is required than standard language:

"This settlement contemplates funding of a Medicare Set-Aside in the amount of \_\_\_\_\_\_ out of the proceeds of the settlement. Applicant agrees to administer the Medicare Set-Aside trust."

# www.bro

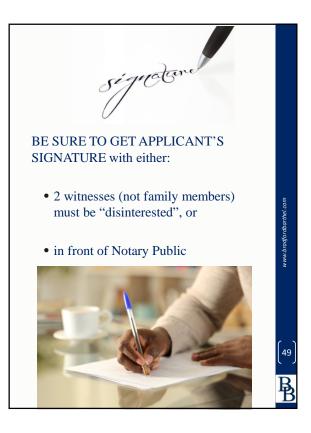
[<sup>‡</sup>″ ₽

# MSA Addendum cont'd

If settling by C&R without Medicare Set-Aside:

"Applicant represents he/she is not presently eligible for Medicare and not anticipated to become eligible for Medicare within the next 30 months. Medicare's interests are protected in this settlement."

If settling under CMS review threshold, simply indicate that "Medicare's interests are protected in this settlement." Technically, if applicant is eligible for Medicare, MSA required but submission of MSA to CMS is not required. bradfordbarthel.com



		E ATTESTED TO BY TWO DISINTERES ORE A NOTARY PUBLIC		
	e had about this agreem	s that he/she has read and understands this agreement and nent answered to his/her satisfaction. _,atat		
Wtress 1	(Date)	Applicant (Employee)	(Date)	
Witness 2	(Date)	Attorney for Applicant	(Date)	
Interpreter	(Date)	Attorney for Defendant	(Date)	
		Attorney for Defendant	(Date)	
		Attorney for Defendant	(Date)	
		Attorney for Defendant	(Date)	
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	ACKNOWLE	DGMENT
State of California County of		
On	before me,	(insert name and title of the officer)
subscribed to the within his/her/their authorized of	instrument and acknowled capacity(ies), and that by	dence to be the person(s) whose name(s) is/are dged to me that he/she/they executed the same in his/her/their signature(s) on the instrument the erson(s) acted, executed the instrument.
I certify under PENALTY paragraph is true and co		a laws of the State of California that the foregoing
WITNESS my hand and	official seal.	
Signature		(Seal)

# Labor Code Section 5814(c)

"Upon the approval of a compromise and release, findings and award, or stipulations and orders by the appeals board, it shall be conclusively presumed that any accrued claims for penalty have been resolved, regardless of whether a petition for penalty has been filed, unless the claim for penalty is expressly excluded by the terms of the order or award."

If the potential claim for penalty for unreasonable delay in any benefits being settled, the penalty issue <u>must</u> be <u>expressly</u> deferred or it will be deemed resolved.

"All other issues are deferred" will probably not be good enough to preserve claim of penalty!

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# WHAT TO INCLUDE WITH C&R WHEN SUBMITTED (PRO-PER SETTLEMENT):

- 1. All benefits notices as required by Rule 9812;
- 2. Copy of PTP P&S report;
- 3. Info about who objected to PTP, if anyone, and why;
- 4. Notice of right to QME, as req'd by Rule 9812;
- 5. Copies of all AME/QME reports;
- 6. All wage documentation and calculations to determine TD and PD;
- 7. Info that the injured worker was given a choice and explanation of Stip vs. C&R;
- 8. Copies of all available DEU ratings;
- Proofs of Service that all proposed settlement and medical records have been served on all lien claimants;
- All letters providing notice of potential eligibility for supplemental job displacement benefits per Labor Code §4658; and
- 11. Fully completed settlement documents.
- 12. Stockton WCAB: letter from opposing side with permission to walk through ex parte

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# WHAT TO INCLUDE WITH C&R WHEN SUBMITTED (PRO-PER) cont'd

NOT NECESSARILY REQUIRED IN EVERY CASE.

All that is required are:

- executed (signed & initialed) settlement doc
- supporting med report
- proof of service on lien claimants
- other supporting documents, i.e., if less than max earner, provide wage statement

CONSIDER <u>COVER</u> LETTER WITH C&R PACKAGE OUTLINING BASIS FOR SETTLEMENT

