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STATE OF WASHINGTON

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**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

BOARD OF INDUSTRIAL INSURANCE APPEALS,

Appellant,

v.

SOUTH KITSAP SCHOOL DISTRICT, DANIEL B. ZIMMERMAN, and
DEPARTMENT OF LABOR AND INDUSTRIES,

Respondents.

BRIEF OF APPELLANT

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I. INTRODUCTION

In 2011 the Legislature authorized, for the first time in history, certain workers' compensation claimants to enter into agreements with either the Department of Labor and Industries or their self-insured employer, in which the injured worker agreed to accept periodic lump sum cash payments in exchange for giving up the worker's right to further workers' compensation benefits (other than medical treatment). The agreements authorized under this recent act are called Claim Resolution Structured Settlement Agreements, or CRSSAs.

The Legislature provided that such agreements are subject to approval by the Board of Industrial Insurance Appeals. The Board is a three-person board, separate from the Department of Labor and Industries, whose duties generally involve adjudicating disputes between an injured worker and either the Department of Labor and Industries or a self-insured employer regarding the worker's entitlement to or amount of workers' compensation benefits.

The issue in this appeal is the standard for the Board to apply in reviewing for approval a Claim Resolution Structured Settlement Agreement involving a worker represented by an attorney. A majority of the Board concluded that in reviewing such an agreement it should determine whether the agreement was, in the words of the statute, "in the

best interest of the worker.” With respect to the agreement involved in this appeal, the Board concluded that the Board had not been provided with enough information to say that the agreement was in the best interest of the worker and rejected it on that basis (subject to being resubmitted for approval with more information).

The dissenting Board member, the worker, and his self-insured employer, and the Department of Labor and Industries all took the position that the “best interest of the worker” standard in the statute applies only when one of the Board’s Industrial Appeals Judges is reviewing an agreement involving an unrepresented worker and cannot be used by the Board to review an agreement involving a worker represented by an attorney. The trial court agreed with this reading of the statute and remanded the matter to the Board to review the agreement without consideration of “the best interest of the worker.” The Board asks this Court to affirm that the Board should consider the best interest of the worker in deciding whether to approve a Claim Resolution Structured Settlement Agreement involving a represented worker.

II. ASSIGNMENT OF ERROR

Assignment of Error: The trial court erred in granting summary judgment to the South Kitsap School District, reversing the decision of the Board of Industrial Insurance Appeals, and remanding the matter to the

Board to review the Claim Resolution Structured Settlement Agreement without considering “the best interest of the worker.” (June 19, 2012, Order Granting Plaintiff’s Motion for Summary Judgment.)

Issues Pertaining to the Assignment of Error:

(1) In deciding whether to approve a Claim Resolution Structured Settlement Agreement pursuant to RCW 51.04.063 involving an injured worker who is represented by an attorney, should the Board of Industrial Insurance Appeals consider “the best interest of the worker”?

(2) In the case of an injured worker who is represented by an attorney, is the Board required to approve a Claim Resolution Structured Settlement Agreement, even though the Board believes that the Agreement is not in the best interest of the worker?

III. STATEMENT OF THE CASE

A. Claim Resolution Structured Settlement Agreements in General

In 2011 the Legislature enacted a statute that made certain reforms to the workers’ compensation system. Laws of 2011, 1st Spec. Sess., ch. 37. The 2011 act had several components, one of which dealt with Claim Resolution Structured Settlement Agreements. *Id.*, §§ 301-306, generally codified as RCW 51.04.062-.069.

In RCW 51.04.062 the Legislature stated, in part:

[T]he legislature recognizes that certain workers would benefit from an option that allows them to initiate claim resolution structured settlements in order to pursue work or retirement goals independent of the [workers' compensation] system, provided that sufficient protections for injured workers are included.

The provisions for a worker to enter into a Claim Resolution Structured Settlement Agreement marked the first time since the inception of the workers' compensation system in Washington that the Legislature authorized any waiver or compromise of workers' compensation benefits. *See* RCW 51.04.060.¹ The 2011 act authorized the new Claim Resolution Structured Settlement Agreements “[n]otwithstanding RCW 51.04.060 or any other provision of this title.” RCW 51.04.063(1).

The statute has various restrictions. Only workers of a certain age may enter into a Claim Resolution Structured Settlement Agreement. RCW 51.04.063(1) (sliding minimum age scale from 55 in 2012 to 50 in 2016). A certain period of time must have elapsed since the claim was filed, and the order allowing the claim must be final and binding. RCW 51.04.063(2)(a). The injured worker cannot waive his or her rights to medical benefits. RCW 51.04.063(2)(a)(c)(i). In effect, then, the

¹ RCW 51.04.060, originally enacted in 1911, provides:
No employer or worker shall exempt himself or herself from the burden or waive the benefits of this title by any contract, agreement, rule or regulation, and any such contract, agreement, rule or regulation shall be pro tanto void.

statute permits an injured worker to give up all future time loss payments, permanent partial disability awards, and vocational rehabilitation training benefits in exchange for the lump sum periodic payments. The periodic payments made by either the Department of Labor and Industries or the self-insured employer in lieu of workers' compensation benefits must be within a minimum and maximum percentage of the average monthly wage in the state. RCW 51.04.063(2)(c)(ii).

The statute provides that any Claim Resolution Structured Settlement Agreement must be approved by the Board. (The provisions on approval will be discussed in the next section.) When an agreement has been approved by the Board, a party (worker, Department of Labor and Industries, or self-insured employer) has 30 days after approval by the Board to revoke consent to the agreement. RCW 51.04.063(6). After that, the agreement becomes final and binding and "is not subject to appeal." RCW 51.04.063(8).

The 2011 act provided that the Board, as well as the Department of Labor and Industries, should adopt rules necessary to implement the act. Laws of 2011, 1st Ex. Sess., ch. 37, § 305. The Board's rule is WAC 236-12-052. The Department's rules are at WAC 296-14A.

The Department of Labor and Industries is to keep on file copies of all Claim Resolution Structured Settlement Agreements. RCW 51.04.065.

In addition, the Board maintains copies of the orders issued by it and by its Industrial Appeals Judges approving or rejecting Claim Resolution Structured Settlement Agreements. Board of Industrial Insurance Appeals, <http://www.biia.wa.gov/> (last visited Dec.18, 2012). Through 2012, the Department is to report to the Legislature annually “on the implementation of claim resolution structured settlement agreements.” RCW 51.04.069. Beginning in 2015, the Department is also to contract “for an independent study of claim resolution structured settlement agreements approved by the board.” *Id.* Among other things, the study “must evaluate . . . the outcomes of workers who have resolved their claims through the claim resolution structured settlement agreement process.” *Id.*

B. Statutory Process for Approval of Claim Resolution Structured Settlement Agreements

The 2011 act provided that the parties must submit a Claim Resolution Structured Settlement Agreement for approval by the Board. Because the statutory provisions relating to the approval process are at the heart of this case, we set them forth below in full. RCW 51.04.063(2)(h) through (4) read as follows:

(h) If a worker is not represented by an attorney at the time of signing a claim resolution structured settlement agreement, the worker must forward a copy of the signed agreement to the board with a request for a conference with

an industrial appeals judge. The industrial appeals judge must schedule a conference with all parties within fourteen days for the purpose of (i) reviewing the terms of the proposed settlement agreement by the parties, and (ii) ensuring the worker has an understanding of the benefits generally available under this title and that a claim resolution structured settlement agreement may alter the benefits payable on the claim or claims. The judge may schedule the initial conference for a later date with the consent of the parties.

(i) Before approving the agreement, the industrial appeals judge shall ensure the worker has an adequate understanding of the agreement and its consequences to the worker.

(j) The industrial appeals judge may approve a claim resolution structured settlement agreement only if the judge finds that the agreement is in the best interest of the worker. When determining whether the agreement is in the best interest of the worker, the industrial appeals judge shall consider the following factors, taken as a whole, with no individual factor being determinative:

(i) The nature and extent of the injuries and disabilities of the worker;

(ii) The age and life expectancy of the injured worker;

(iii) Other benefits the injured worker is receiving or is entitled to receive and the effect a claim resolution structured settlement agreement might have on those benefits;

(iv) The marital or domestic partnership status of the injured worker.

(k) Within seven days after the conference, the industrial appeals judge shall issue an order allowing or rejecting the claim resolution structured settlement agreement. There is no appeal from the industrial appeals judge's decision.

(l) If the industrial appeals judge issues an order allowing the claim resolution structured settlement agreement, the order must be submitted to the board.

(3) Upon receiving the agreement, the board shall approve it within thirty working days of receipt unless it finds that:

(a) The parties have not entered into the agreement knowingly and willingly;

(b) The agreement does not meet the requirements of a claim resolution structured settlement agreement;

(c) The agreement is the result of a material misrepresentation of law or fact;

(d) The agreement is the result of harassment or coercion; or

(e) The agreement is unreasonable as a matter of law.

(4) If a worker is represented by an attorney at the time of signing a claim resolution structured settlement agreement, the parties shall submit the agreement directly to the board without the conference described in this section.

Thus, under these provisions, a Claim Resolution Structured Settlement Agreement that involves a worker not represented by an attorney is first submitted to one of the Board's industrial appeals judges. RCW 51.04.063(2)(h). The industrial appeals judge is to confer with the parties, RCW 51.04.063(h)-(j), and may either reject the agreement, after which there is no appeal, RCW 51.04.063(2)(k), or may approve the agreement, after which the agreement goes to the Board for approval. RCW 51.04.063(2)(k),(l). A settlement agreement in which the worker is represented by an attorney goes directly to the Board for approval without going through an industrial appeals judge. RCW 51.04.063(4).

The issue in this case is whether the Board, in considering a Claim Resolution Structured Settlement Agreement involving a represented worker, should consider the same factors that an industrial appeals judge is required to consider in reviewing an agreement involving an unrepresented worker to determine if “the agreement is in the best interest of the worker.” RCW 51.04.063(2)(j).

C. Proceedings Before the Board

In February 2012, injured worker Daniel B. Zimmerman, represented by an attorney, entered into a Claim Resolution Structured Settlement Agreement with the workers’ compensation fund for the South Kitsap School District, a self-insured employer. CP 56-58, AR 10-12.² (Copy attached to Board order in Appendix.) Pursuant to the statute, the Agreement recited the general nature of Mr. Zimmerman’s injuries, the treatment and workers’ compensation benefits that had been provided to him, and the status of his workers’ compensation claim. Specifically, the Agreement recited that Mr. Zimmerman received medical treatment and other benefits for a low back injury. The non-medical benefits included

² The Board certified the administrative record to the superior court, which transmitted it to this Court. The administrative record was numbered by the Board but was not given Clerk’s Papers numbers. For convenience, this brief will provide both a Clerk’s Papers (CP) citation and an administrative record (AR) to any documents that are part of the administrative record.

time loss compensation, a permanent partial disability award, and vocational training benefits. CP 56, AR 10.

The Agreement recited that Mr. Zimmerman was single with one dependent and had a life expectancy of 24.01 more years as of the date of the Agreement.

The Agreement provided that the employer would pay Mr. Zimmerman a total of \$60,000 to resolve his workers' compensation claim, paid in an initial installment of \$24,000, followed by six monthly installments of \$6,000 each. CP 57, AR 11. In exchange, Mr. Zimmerman agreed to "forfeit[] his rights to the receipt of further permanent partial disability benefits, . . . time loss benefits . . . , and vocational training benefits beyond those already received." CP 56, AR 10. Thus, Mr. Zimmerman would be giving up all his future workers' compensation benefits other than for medical treatment. CP 56, AR 10.

The parties submitted the Claim Resolution Structured Settlement Agreement to the Board for approval. CP 59-60, AR 13-14. In a 2 to 1 decision, the Board rejected the Agreement on the basis that the Board did not have sufficient information to approve it. CP 47-55, AR 1-9 (Board order is attached as Appendix). The majority stated:

In determining whether to approve the parties' agreement, RCW 51.04.063(3) directs us to consider the five factors listed above. We are particularly concerned

with the second criteria, the question of whether the agreement meets the requirements of a claim resolution structured settlement agreement. RCW 51.04.063(3)(b). As part of that determination, we believe we must evaluate whether the agreement is in the best interest of the worker. We are unable to make that determination based on the information that has been provided to us.

CP 49, AR 3.

Specifically, the Board felt it lacked information about why Mr. Zimmerman would be willing to give up his future workers' compensation benefits in exchange for the lump sum payments in the Agreement. The Board noted that Mr. Zimmerman had had almost 19 years of time loss compensation through April 2011 and that "[t]he parties have provided no explanation for why those benefits were terminated at that point." CP 51, AR 5. The Board indicated that if "there is a genuine dispute, based on specific opposing medical or vocational opinions, regarding Mr. Zimmerman's entitlement to continuing total disability benefits . . . that might explain why he is willing to relinquish a claim for such benefits in exchange for \$60,000." CP 51, AR 5. However, the Board did not have that information. Nor did the Board have an "estimate of the value of the claim or the pension reserve." CP 51, AR 5.

The Board further noted that "[a]lternatively, if he now has some other source of income to support him or anticipates a reduction in his compensation rate as a result of receiving other benefits, perhaps this

would explain why this settlement is in his best interest.” CP 51, AR 5. Again, the Board had not been provided with any information in this regard. The Board concluded:

[W]ithout further information, we cannot say it would be in his best interest to forego total disability benefits in light of his life expectancy, particularly with such a rapid pay out and no explanation of how Mr. Zimmerman will support himself thereafter.

CP 51, AR 5.

The Board indicated that the parties could re-file the Agreement with the necessary information. CP 51, AR 5. However, “[w]ithout sufficient information regarding Mr. Zimmerman’s best interests, particularly his financial status, we do not approve the CRSSA in this case.” CP 52, AR 6.

The third member of the Board dissented. That member took the position that the “best interest of the worker” language in RCW 51.04.063 applied only to an industrial appeals judge considering a Claim Resolution Structured Settlement Agreement involving an unrepresented worker and did not apply when the Board was considering an agreement involving a represented worker. CP 52-53, AR 6-7. The dissenting Board member also felt that requiring information of the type the Board majority indicated could invade the worker’s right to privacy and felt that the ethical obligations of an attorney representing a worker “provide[d]

consistent safeguards of an injured worker's interest in the negotiation of a structured settlement," and that there was "no reason . . . for the Board to also seek to separately determine whether the CRSSA is in the best interest of a worker represented by an attorney." CP 53, AR 7. The dissenting member would have approved the Agreement. CP 54, AR 8.

Upon rejection of the Claim Resolution Structured Settlement Agreement by the Board, the employer filed a notice of appeal to Kitsap County Superior Court. CP 1-2. Although not a party to this Agreement, the Department of Labor and Industries appeared and submitted written and oral argument. CP 27-31, RP 29-30.³ The worker, Mr. Zimmerman, was a party and appeared at argument through counsel but did not submit any written material. The trial court gave the Washington State Labor Council permission to participate as an amicus.

The trial court granted summary judgment to the employer. CP 104-105. In its order the court stated that the Board's order "is reversed and the Agreement is remanded to the Board to review the agreement under RCW 51.04.063(3) with the caveat that subsection (3)(b) does not include a finding of best interest of the worker but only those requirements that apply to all CRSSAs." CP 104.

The Board filed a timely appeal to this Court. CP 106-111.

³ Under RCW 51.52.110, in cases involving a self-insured employer, "the department [of Labor and Industries] may appear and take part in any proceedings."

IV. STANDARD OF REVIEW

A threshold matter is what judicial review provisions apply to this matter. The Board's role in considering Claim Resolution Structured Settlement Agreements for approval is different from the Board's usual role. Usually the Board is adjudicating a dispute over workers' compensation benefits involving an injured worker, the worker's employer (whether a self-insured employer or not), and the Department of Labor and Industries (or self-insured employer). *See* RCW 51.52.060. In that situation, the Board is reviewing a decision awarding or denying benefits made by another entity, the Department of Labor and Industries, with which either a worker or employer disagrees. RCW 51.52.060(1)(a) (appeal to Board is by "person aggrieved by an order, decision, or award of the department").

By contrast, in considering a Claim Resolution Structured Settlement Agreement, the Board (or in the case of an unrepresented worker, an industrial appeals judge, then the Board) is considering a matter in which the parties are in agreement and which the Board (or industrial appeals judge) is the initial entity to determine the appropriateness of the agreement.

In the 2011 act, the Legislature did not specify how decisions of the Board regarding Claim Resolution Structured Settlement Agreements

are to be reviewed by the courts.⁴ In general, decisions by the Board involving workers' compensation benefits are not subject to the Administrative Procedure Act. RCW 34.05.030(2)(a) ("The provisions of RCW 34.05.410 through 34.05.598 shall not apply: (a) To adjudicative proceedings of the board of industrial insurance appeals, except as provided in RCW 7.68.110 and 51.48.131"); *Hill v. Dep't of Labor & Indus.*, 161 Wn. App. 286, 292 n.5, 253 P.3d 430 (2011). Rather, decisions of the Board involving workers' compensation determinations are reviewed pursuant to RCW 51.52.110-.135.

In the present case, all parties operated in the trial court under the assumption that the matter is being reviewed pursuant to the usual workers' compensation review statutes. See CP 5 (employer School District states in memorandum in support of summary judgment that procedure for court review is in RCW 51.52.115).⁵ Accordingly, the Board will assume that these are the governing review provisions for decisions involving Claim Resolution Structured Settlement Agreements.⁶

⁴ The Legislature did provide that a decision by an industrial appeals judge rejecting a Claim Resolution Structured Settlement Agreement involving an unrepresented worker is not subject to appeal. RCW 51.04.063(2)(k). Since the statute does not contain a parallel provision regarding a decision by the Board to reject an Agreement, one must conclude that a rejection by the Board is subject to judicial review.

⁵ In addition, the Board certified to the superior court the administrative record, as provided in RCW 51.52.110, and the Department of Labor and Industries was served by the employer and exercised its right to participate, as provided in RCW 51.52.110.

⁶ While it does not matter in this case, the Board notes that some of the provisions of RCW 51.52.110-.135 do not seem to fit well with the Claim Resolution

Where the issue before this Court is one of interpretation of law and where the trial court granted summary judgment, as in this case, this Court will review the Board's decision de novo. *Singletary v. Manor Healthcare Corp.*, 166 Wn. App. 774, 781, 271 P.3d 356 (2012); *Hill v. Dep't of Labor & Indus.*, 161 Wn. App. at 292. While the court reviews issues of law de novo, the court will give substantial weight to the Board's interpretation of the statutes it is charged with administering. *Hill*, 161 Wn. App. at 293; *Rhoades v. Dep't of Labor & Indus.*, 143 Wn. App. 832, 837, 181 P.3d 843 (2008).

V. ARGUMENT

The employer School District (and the Department of Labor and Industries) make two basic arguments in support of their position that the Board erred in taking into account "the best interest of the worker" in considering whether to approve the Claim Resolution Structured Settlement Agreement involving Mr. Zimmerman, a represented worker. First, the employer argues that the plain language of the statute does not support the Board's consideration of "the best interest of the worker" because that language appears only in the section of the statute dealing with an industrial appeals judge's consideration of a Claim Resolution Structured Settlement Agreement involving an unrepresented worker.

Structured Settlement Agreement process, and it may be appropriate for the Legislature to consider clarifying how the Board's decisions in this type of case are to be reviewed.

Second, the employer argues that when an injured worker is represented by an attorney, this representation provides adequate protection of the worker's interests and that allowing the Board to inquire about why the injured worker wants to settle the claim improperly invades the worker's privacy. Neither of these arguments withstands scrutiny.

A. The Board's Consideration of the Best Interest of the Worker Furthers the Goals of the Statute

RCW 51.04.063 is ambiguous as to whether or not the Board should consider the best interest of the worker in reviewing a Claim Resolution Structured Settlement Agreement involving a worker represented by an attorney.⁷ Nothing in RCW 51.04.063 expressly states that only an industrial appeals judge may consider the best interest of the worker. The provision in the subsection dealing with Board review upon which the Board majority relied in rejecting the Agreement here, that "[t]he agreement does not meet the requirements of a claim resolution

⁷ Even if this Court were to use a "plain meaning" analysis, such an analysis, properly applied, would result in upholding the Board's interpretation of the statute. As recently stated by our Supreme Court in *In re Custody of E.A.T.W.*, 168 Wn.2d 335, 227 P.3d 1284 (2010), at 343-44:

The plain meaning of a statute is discernible by examining everything the legislature has said in the statute itself and any related statutes that reveal legislative intent regarding the provision at issue. . . . The meaning of words in a statute is not determined from those words alone but from all the terms and provisions of the act as they relate to the subject of the legislation, the nature of the act, the general subject to be accomplished and consequences that would result from construing the particular statute in one way or another.

(Citations and internal quotes omitted.) *Accord, Probst v. Washington State Dep't of Retirement Sys.*, 167 Wn. App. 180, 186, 271 P.3d 966 (2012).

structured settlement agreement,” RCW 51.04.063(3)(b), is phrased broadly enough to encompass the best interest of the worker as a criterion.

In addition, other sections of the 2011 act suggest that “the best interest of the worker” standard should be applied by the Board in its review. In RCW 51.04.069 the Legislature directed that an outside researcher conduct a study of the effectiveness of Claim Resolution Structured Settlement Agreements, including evaluating “the outcome of workers who have resolved their claims” through the agreement process. It is difficult to see how the effectiveness of such agreements can be determined if the Board is precluded from considering the fundamental legislative objective these Agreements are intended to serve—the best interest of the worker.

The Claim Resolution Structured Settlement Agreement process in the 2011 act represented the first time in the history of the state’s workers’ compensation system that a worker has been authorized to waive in any manner his or her right to benefits. The non-waiver principle has been in the workers’ compensation statutes since their inception and has been upheld consistently by the courts. *See* RCW 51.04.060 (enacted as Laws of 1911, ch. 74, § 11); *Hicks v. Dep’t of Labor & Indus.*, 1 Wn.2d 686, 97 P.2d 111 (1939); *Koreski v. Seattle Hardware Co.*, 17 Wn.2d 421, 436, 135 P.2d 860 (1943) (and cases cited therein); *Mandery v. Costco*

Wholesale Corp., 126 Wn. App. 851, 110 P.3d 788 (2005). In light of this, the provisions of RCW 51.04.063 should be strictly construed to prevent an injured worker from imprudently waiving his or her right to workers' compensation benefits.

The Board's application of the statute furthers the goals of the Legislature in enacting the Claim Resolution Structured Settlement process. The language in the intent sections of the 2011 act supports the Board's interpretation. The finding section of the 2011 act states, in part: "The legislature finds that Washington state's workers' compensation system should be designed to focus on achieving the best outcomes for injured workers." Laws of 2011, 1st Spec. Sess., ch. 37, § 1. This language is repeated in RCW 51.04.062, the findings section related to Claim Resolution Structured Settlement Agreements, which goes on to provide that certain workers would benefit from such agreements "provided that sufficient protections for injured workers are included." The Legislature's stated statutory goals of "achieving the best outcomes for injured workers" and ensuring that there are "sufficient protections for injured workers" are best advanced by having the Board consider whether a Claim Resolution Structured Settlement Agreement is in the best interest of the worker, including those workers who are represented by an attorney, because Board review provides a second, independent look at the

Agreement. Presumably, the Legislature intended that all Claim Resolution Structured Settlement Agreements be in the best interest of the workers who are entering into them. No reason exists to believe that the Legislature wanted to make any distinction between represented and unrepresented workers in this regard.⁸

In RCW 51.04.063, the Legislature provided that the Board is to approve all Claim Resolution Structured Settlement Agreements. Presumably, the Legislature entrusted this responsibility to the Board because the Board is impartial and has expertise in workers' compensation matters. As the courts have recognized, the Board is an independent agency from the Department of Labor and Industries. *See Parks v. Dep't of Labor & Indus.*, 46 Wn.2d 895, 896-97, 286 P.2d 104 (1955) (Board "is a separate and independent board of review"); *Karniss v. Dep't of Labor & Indus.*, 39 Wn.2d 898, 901, 239 P.2d 555 (1952) (Board is "disassociated from the department"); *City of Spokane v. Dep't of Labor & Indus.*, 34 Wn. App. 581, 583, 663 P.2d 843, *review denied*, 100 Wn.2d

⁸ Although not before the Court in this appeal, it should be noted that the dissenting Board member's position is that the Board may not consider "the best interest of the worker" in *any* case, even including cases where the Board is reviewing a decision by an industrial appeals judge to approve a Claim Resolution Structured Settlement Agreement involving a worker who is not represented by an attorney, under RCW 51.04.063(2)(l). Decision 20120424 (Harry T. Murphy) (4-24-12), at [http://www.bia.wa.gov/SSAOrders/12S0008_ORD_20120424_Board_Reject%20\(HARRY%20T.%20MURPHY\).PDF](http://www.bia.wa.gov/SSAOrders/12S0008_ORD_20120424_Board_Reject%20(HARRY%20T.%20MURPHY).PDF). This position leads to the untenable situation in which the Board must defer to the decision of its industrial appeals judge as to what is in "the best interest of the worker," without any ability to evaluate on its own whether that determination is correct.

1007 (1983) (Board “is an independent agency and is not part of, or connected with, the Department of Labor and Industries”). The Board and its industrial appeals judges adjudicate over 3100 appeals involving worker’s compensation benefits a year.⁹

Interpreting RCW 51.04.063 as limiting the Board to verifying that a Claim Resolution Structured Settlement Agreement conforms to the technical requirements of the statute (such as that the worker has reached the required age and that the required time has passed since the claim was filed with the Department of Labor and Industries or self-insured employer) reduces the Board’s role to a largely ministerial one and fails to use the Board’s expertise in any meaningful way. As the Board noted in its decision here:

[O]ur obligation is not limited to those types of matters, all of which could be gleaned by anyone reviewing the paperwork, and none of which would require the Board’s particular expertise. Rather, we are asked to exercise our judgment and determine if the agreement is in the worker’s best interest; the question that is at the core of the approval process.

AR 5, CP 51.

In his dissent, the dissenting Board member argued: “Although the Board has special expertise in the area of worker’s compensation, it does not have special expertise in other disciplines, such as financial planning,

⁹ *State of Washington Board of Industrial Insurance Appeals Monthly Statistical Report for October 2012*, http://www.biia.wa.gov/documents/411_MonthlyStatistics.pdf.

counseling or life planning.” AR 8, CP 54. This argument is misplaced for several reasons. First, the Board majority is not claiming to have expertise in all matters. It is claiming to have expertise in the area of workers’ compensation, which the dissent acknowledges. With respect to the Claim Resolution Structured Settlement Agreement involved here, for example, the Board felt it needed information about why the benefits that Mr. Zimmerman had been receiving for 19 years had been terminated, as well as an estimate of the value of the claim or pension reserve to compare this to the amount of money the employer would be providing in the Claim Resolution Structured Settlement Agreement. AR 5, CP 51. As the Board noted, “Mr. Zimmerman must be aware of the potential benefits he forfeits by entering into this agreement.” AR 5, CP 51.

Second, RCW 51.04.063 gives the Board’s industrial appeals judges the initial responsibility for determining whether a Claim Resolution Structured Settlement Agreement should be approved when the injured worker is not represented by an attorney. It is anomalous to argue that an industrial appeals judge, who is appointed by and reports to the Board, has greater expertise than the Board itself. Third, no reason exists to believe that an attorney retained by an injured worker has “special expertise in other disciplines, such as financial planning, counseling or life planning” any more than the Board.

For all these reasons, RCW 51.04.063 should be read as requiring the Board to consider “the best interest of the worker” when it carries out its responsibility to consider for approval a Claim Resolution Structured Settlement Agreement involving a worker not represented by an attorney.

B. The Board’s Consideration of “the Best Interest of the Worker” Claim Resolution Structured Settlement Agreements Involving a Worker Represented by an Attorney Does Not Improperly Invade the Worker’s Privacy or Infringe on the Attorney-Client Relationship, and Should Not Be a Disincentive to Attorneys Agreeing to Represent Injured Workers

1. The Board’s Requesting Additional Information to Evaluate Claim Resolution Structured Settlement Agreements Does Not Violate Any Privacy Rights of Workers’ Compensation Claimants

The employer here and the Department of Labor and Industries argued that the Board’s considering “the best interest of the worker” in deciding whether to approve a Claim Resolution Structured Settlement Agreement involving a represented worker improperly intrudes on the worker’s privacy.

The employer’s and Department’s concerns in this regard do not appear to be shared by the Legislature. There is nothing in RCW 51.04.063 that evidences any general concern by the Legislature about the privacy of worker’s compensation claimants who enter into Claim Resolution Structured Settlement Agreements. With respect to

unrepresented workers, whose agreements are reviewed initially by an industrial appeals judge, the statute provides that they must indicate “[t]he nature and extent of the injuries and disabilities of the injured worker,” RCW 51.04.063(2)(j)(i), “[t]he age and life expectancy of the injured worker,” RCW 51.04.063(2)(j)(ii), “[o]ther benefits the injured worker is receiving or is entitled to receive,” RCW 51.04.063(2)(j)(iii), and “[t]he marital and domestic partnership status of the injured worker.” RCW 51.04.063(2)(j)(iv).

The Board’s rule, WAC 263-12-052, which Mr. Zimmerman has not challenged, requires the above information with respect to all workers who are seeking approval of a Claim Resolution Structured Settlement Agreement. Thus, in the situation of a represented worker, like Mr. Zimmerman, most, if not all, of the same information as that required of an unrepresented worker is routinely included in the Claim Resolution Structured Settlement Agreement. Compare RCW 51.04.063(2)(j)(i)-(iv) with Mr. Zimmerman’s Agreement, AR 10-11, CP 56-57 (reciting Mr. Zimmerman’s birth date and life expectancy, marital status and dependents, and nature and history of worker’s compensation claims and benefits).

Moreover, the rule adopted by the Department of Labor and Industries, WAC 296-14A-010, provides that, in considering whether or

not it will enter into negotiations with an injured worker, whether represented or not, the Department will consider all of the above factors, WAC 296-14A-010(2)(a)-(j), as well as others, including the worker's employment history and education history. WAC 296-14A-010(2)(k), (l). While the Department might have some of this information in its own records, presumably much of it will have to be supplied, or verified, by the injured worker.

Thus, neither the Legislature, nor the Board, nor the Department of Labor and Industries considers information about a workers' compensation claimant who is seeking to enter into or obtain approval of a regarding a Claim Resolution Structured Settlement Agreement private or confidential. This is consistent with the workers' compensation laws in general. Just as an injured worker waives any right to privacy when the worker files a claim for workers' compensation benefits, so also an injured worker who seeks to resolve his or her worker's compensation claim through a Claim Resolution Structured Settlement Agreement in lieu of receiving additional workers' compensation benefits waives any right to the information needed regarding the Agreement. *See Jeffers v. City of Seattle*, 23 Wn. App. 301, 311, 597 P.2d 899 (1979) ("The right to privacy, like any other personal right, may be waived . . .") (applicant for retirement disability pension); *Mayer v. Huesner*, 126 Wn. App. 114, 121-

22, 107 P.3d 152, *review denied*, 155 Wn.2d 1019 (2005) (privacy rights waived by worker's claiming workers' compensation benefits and seeking return to work under collective bargaining agreement).

The Employer argues that a workers' compensation claimant retains an attorney expressly so that the worker's private affairs will not become public. Setting aside that there is no privacy in this regard for a workers' compensation claimant, the assumption that a worker's decision whether or not to retain an attorney is based on keeping the worker's affairs private is purely speculative. Much more likely, a worker retains an attorney for the attorney's knowledge of the law and skill in negotiations.

For these reasons, the Board's order here, rejecting the settlement between the Employer and Mr. Zimmerman absent being provided additional information to evaluate whether the settlement is in the best interest of the worker, does not violate any right to privacy of Mr. Zimmerman.

2. The Board's Request for More Information Does Not Impermissibly Interfere With the Attorney-Client Relationship Nor Act as a Disincentive to Attorneys to Accept Workers' Compensation Cases

The Board's request for more information before it can determine whether or not to approve a Claim Resolution Structured Settlement

Agreement does not impermissibly interfere with the attorney-client relationship. In this matter, the Board has not asked anything about communications between Mr. Zimmerman and his attorney. Rather, the Board is seeking an understanding of the reasons why a claimant, in this case, Mr. Zimmerman, who had been living on workers' compensation payments for nearly 20 years, is willing to forego additional workers' compensation benefits in exchange for lump sum periodic payments that will presumably total less than he is likely to receive in workers' compensation benefits over the remaining, nearly 25 years of his expected life.

The Employer here, as well as the dissenting Board member, assert that the statutory scheme of RCW 51.04.063 is premised on the interest of the injured worker being adequately protected by the worker's attorney. Even assuming that the attorney is well versed in the specialized field of workers' compensation law, reasonable people can differ over what is in "the best interest of the worker." And, of course, this assumes that the attorney has in fact advised the worker that the Claim Resolution Structured Settlement Agreement is a good deal; the worker may be seeking to enter into the agreement despite being advised against it by the attorney.

In any event, RCW 51.04.063 assigns to the Board the responsibility of approving the agreement, and, as discussed above, this calls upon the Board to exercise its own independent judgment, not simply defer to the claimant and the claimant's attorney. As the Board majority stated in its decision here:

[T]he attorney's ethical obligations do not relieve the Board of the duty to make its own independent determination regarding all of those [statutory] criteria, as directed by the Legislature. . . . The Legislature gave oversight to the Board, not the parties' attorneys, requiring that all claim resolution structured settlement agreements must be approved by us, regardless of whether the worker is represented.

CP 50, AR 4.

Nor does the Board's consideration of Claim Resolution Structured Settlement Agreements under the "best interest of the worker" standard act as a disincentive for attorneys to accept workers' compensation cases. The trial court here expressed concern that the Board's having an opinion on an Agreement different from that of the worker's attorney could result in bar complaints against attorneys, which could dissuade attorneys from wanting to represent worker's compensation claimants in settlement agreements. RP 17.

No legitimate basis exists for concluding that an attorney erred in any way merely because the Board rejected a Claim Resolution Structured

Settlement Agreement that the attorney had recommended the worker accept. A mere error in judgment does not subject an attorney to liability for legal malpractice. *Halvorsen v. Ferguson*, 46 Wn. App. 708, 717, 735 P.2d 675 (1986). And, of course, here we would not be talking about an error in judgment but merely a difference of opinion. An attorney “is not a guarantor of results.” *Ward v. Arnold*, 52 Wn.2d 581, 584, 328 P.2d 164 (1958). The worker’s attorney can alleviate any sense of surprise or disappointment the worker might have should the Board reject an Agreement by explaining beforehand that the Agreement requires Board approval and that the Board may reject the Agreement even if the parties consider it to be reasonable.

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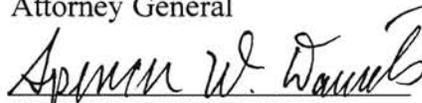
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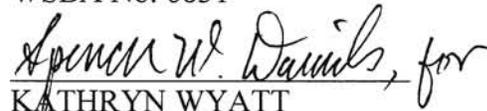
VI. CONCLUSION

For the reasons set forth above, this Court should reverse the order of the trial court and should reinstate the Board's Decision and Order Rejecting Claim Resolution Structured Settlement Agreement.

RESPECTFULLY SUBMITTED this 18th day of December, 2012.

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CERTIFICATE OF SERVICE

I certify that on the 18th day of December 2012, I caused a copy of the *Brief of Appellant* to be served on the date below as follows:

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STATE OF WASHINGTON
BY _____
DEPUTY

I certify that on the 18th day of December 2012, I caused a copy of the *Brief of Appellant* to be filed in Division II of the Washington State Court of Appeals.

Signed this 18th day of December, 2012, in Olympia, Washington



BECKY MITCHELL
Legal Assistant

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

1 IN RE: DANIEL B. ZIMMERMAN) DOCKET NO. 12 S0007
2)
3 CLAIM NO. T-353551) DECISION AND ORDER REJECTING CLAIM
4) RESOLUTION STRUCTURED SETTLEMENT
5) AGREEMENT

6 APPEARANCES:

7 Claimant, Daniel B. Zimmerman, by
8 Smell, Snell, Weiss and Comfort, P.S., per
9 David C. Snell

10 Employer, ESD No. 114 Region Workers' Compensation Trust,
11 by Pratt, Day & Stratton PLLC, per
12 Bernadette M. Pratt

13 A Claim Resolution Structured Settlement Agreement (CRSSA) was submitted by claimant's
14 counsel on February 22, 2012, pursuant to RCW 51.04.063. Both parties are represented by
15 counsel. RCW 51.04.063(3) provides that the Board shall approve the agreement unless it finds:

- 16 • The agreement was not entered into knowingly and willingly.
- 17 • The agreement does not meet the requirements of a claim resolution structured
18 settlement agreement.
- 19 • The agreement is the result of a material misrepresentation of law or fact.
- 20 • The agreement is the result of harassment or coercion.
- 21 • The agreement is unreasonable as a matter of law.

22 The agreement is **REJECTED** because we cannot determine whether it meets the
23 requirements of a claim resolution structured settlement agreement as required by
24 RCW 51.04.060(3)(b).

25 **DECISION**

26 RCW 51.04.060 has long mandated that: "No employer or worker shall exempt himself or
27 herself from the burden or waive the benefits of this title by any contract, agreement, rule or
28 regulation, and any such contract, agreement, rule or regulation shall be pro tanto void." However,
29 in 2011, the Legislature passed significant revisions to the Industrial Insurance Act, effective
30 January 1, 2012. "Notwithstanding RCW 51.04.060 or any other provisions of this title," certain
31 workers are now permitted to waive the right to benefits and opt out of further entitlement to
32 monetary compensation under the Act by entering into a CRSSA. RCW 51.04.063. The
33 Legislature required that all agreements be approved by the Board. RCW 51.04.063(2)(a).

1 If the worker is not represented by an attorney, a conference must be held before one of our
2 industrial appeals judges. Under RCW 51.04.063(2)(i)(j) (Emphasis added):

3 (i) Before approving the agreement, the industrial appeals judge shall
4 ensure the worker has an adequate understanding of the agreement and
5 its consequences to the worker.

6 (j) The industrial appeals judge may approve a claim resolution structured
7 settlement agreement only if the judge finds that the agreement is in the
8 **best interest of the worker**. When determining whether the agreement
9 is in the **best interest of the worker**, the industrial appeals judge shall
10 consider the following factors, taken as a whole, with no individual factor
11 being determinative:

- 12 (i) The nature and extent of the injuries and disabilities of the
13 worker;
- 14 (ii) The age and life expectancy of the injured worker;
- 15 (iii) Other benefits the injured worker is receiving or is entitled to
16 receive and the effect a claim resolution structured settlement
17 agreement might have on those benefits; and
- 18 (iv) The marital or domestic partnership status of the injured worker.

19 If the industrial appeals judge approves the CRSSA, the order must be submitted to the
20 Board for further review. RCW 51.04.063(2)(l).

21 Pursuant to RCW 51.04.063(3):

22 Upon receiving the agreement, the board shall approve it within thirty working days
23 of receipt unless it finds that:

- 24 (a) The parties have not entered into the agreement knowingly and willingly;
- 25 (b) The agreement does not meet the requirements of a claim resolution structured
26 settlement agreement;
- 27 (c) The agreement is the result of a material misrepresentation of law or fact;
- 28 (d) The agreement is the result of harassment or coercion; or
- 29 (e) The agreement is unreasonable as a matter of law.

30 If the worker is represented by counsel, the parties bypass the conference before the industrial
31 appeals judge and submit the agreement directly to the Board for approval. RCW 51.04.063(4).

32 In the current case, according to the CRSSA submitted by the parties, Daniel B. Zimmerman
was born on July 31, 1956, is single with one dependent, and has a life expectancy of 24.01 years.
He filed Claim No. T-353551 on May 6, 1991, for an April 30, 1991 industrial injury in which he

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1 twisted his low back. The claim was allowed solely for a low back condition. Any cognitive or
2 mental health conditions are segregated from this claim.

3 The claim was previously closed on February 2, 1995, with an award for permanent partial
4 disability equal to Category 2 of WAC 296-20-280. Thereafter, the claim was reopened and
5 Mr. Zimmerman underwent a left L5-S1 partial laminectomy and foraminotomy on September 13,
6 1995. He has also undergone multiple forms of conservative treatment. According to the parties,
7 Mr. Zimmerman has received time-loss compensation benefits for almost 19 years, through
8 April 2011. Mr. Zimmerman's doctors who conducted a September 3, 2009 independent medical
9 examination concluded that his condition was best described by Category 3 of WAC 296-20-280.

10 Under the agreement between Mr. Zimmerman and ESD No. 114 Region Workers'
11 Compensation Trust, Mr. Zimmerman would forfeit his rights to receive further permanent partial
12 disability beyond that previously paid pursuant to the February 2, 1995 Department order; forfeit his
13 rights to receive further time-loss compensation beyond that paid prior to the April 26, 2011
14 Department order; and forfeit his rights to receive further vocational benefits beyond those already
15 received. In return, Mr. Zimmerman will be paid a total of \$60,000, over a six-month period. The
16 claim will be closed and, if he applies to reopen the claim, he can reopen only for medical and must
17 demonstrate aggravation of the conditions accepted under this claim.

18 In determining whether to approve the parties' agreement, RCW 51.04.063(3) directs us to
19 consider the five factors listed above. We are particularly concerned with the second criteria, the
20 question of whether the agreement meets the requirements of a claim resolution structured
21 settlement agreement. RCW 51.04.063(3)(b). As part of that determination, we believe we must
22 evaluate whether the agreement is in the best interest of the worker. We are unable to make that
23 determination based on the information that has been provided to us.

24 According to the business member in his dissent, representation by counsel obviates the
25 need for the Board to independently determine that the agreement is in the worker's best interest,
26 because that task falls to his attorney. There is no question that a worker's attorney has an ethical
27 obligation to determine if a CRSSA is in the client's best interest. The attorney should also be
28 concerned with whether the client has entered into the agreement knowingly and willingly; whether
29 the agreement is the result of material misrepresentation of law or fact; whether it is the result of
30 harassment or coercion; and whether it is unreasonable as a matter of law. RCW 51.04.063(3).

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1 However, the attorney's ethical obligations do not relieve the Board of the duty to make its own
2 independent determination regarding all of those criteria, as directed by the Legislature. Likewise,
3 attorney involvement does not relieve the Board of its obligation to determine if the agreement
4 meets the requirements of a claim resolution structured settlement agreement. The Legislature
5 gave oversight to the Board, not the parties' attorneys, requiring that all claim resolution structured
6 settlement agreements must be approved by us, regardless of whether the worker is represented.
7 RCW 51.04.063(2)(a).

8 The business member also argues that, as a matter of statutory construction, the Board
9 should not concern itself with whether an agreement is in the worker's best interest. Again, we
10 disagree. In enacting RCW 51.04.063, the Legislature has permitted workers to waive benefits
11 under the Act for the first time in the 100-year history of workers' compensation in this state. In
12 making that sweeping change in the system, the Legislature found that:

13 Washington state's workers' compensation system should be designed to **focus on**
14 **achieving the best outcomes for injured workers.** Further, the legislature
15 recognizes that controlling pension costs is key to a financially sound workers'
16 compensation system for employers and workers. To these ends, the legislature
17 recognizes that certain workers would benefit from an option that allows them to
18 initiate claim resolution structured settlements in order to pursue work or retirement
19 goals independent of the system, provided that **sufficient protections for injured**
20 **workers are included.**

21 RCW 51.04.062 (Emphasis added).

22 Thus, in permitting CRSSAs, the Legislature stressed that the system should be designed to
23 focus on achieving the best outcomes for injured workers and that such agreements should only be
24 permitted if sufficient protections for injured workers are included. When a worker is not
25 represented by counsel, one of our industrial appeals judges must hold a conference and evaluate
26 whether the agreement is in the worker's best interest. RCW 51.04.063(2)(j). If a worker is
27 represented by counsel, no conference is required, but we are still required to determine if the
28 agreement meets the requirements of a claim resolution structured settlement agreement.
29 RCW 51.04.063(3)(b).

30 That comprehensive requirement means we must be assured that the worker is at least
31 55 years old per RCW 51.04.063(1); that more than 180 days have passed since the claim was
32 received by the Department or the self-insured employer per RCW 51.04.063(2)(a); that the claim
has been allowed by a final and binding order per RCW 51.04.063(2)(a); that the agreement does
not set aside or reverse the allowance order per RCW 51.04.063(2)(c)(iii); that the worker retains
the right to medical benefits per RCW 51.04.063(2)(c)(i); that the agreement provides a schedule of

1 periodic payments within certain parameters per RCW 51.04.063(2)(c)(ii); that the agreement does
2 not subject any employer who is not a signatory to any responsibility or burden under the claim per
3 RCW 51.04.063(2)(c)(iv); and that the agreement does not subject any funds covered under this
4 title to any responsibility or burden without prior approval from the director or designee per RCW
5 51.04.063(2)(c)(v).

6 However, our obligation is not limited to those types of matters, all of which could be gleaned
7 by anyone reviewing the paperwork, and none of which would require the Board's particular
8 expertise. Rather, we are asked to exercise our judgment and determine if the agreement is in the
9 worker's best interests; the question that is at the core of the approval process. In making that
10 determination, we consider the same factors our industrial appeals judges consider.

11 **What further information is required:** This Board has carefully considered what type of
12 information that would assist us in a best interest analysis in Mr. Zimmerman's case. According to
13 the agreement, the self-insured employer paid Mr. Zimmerman almost 19 years of time-loss
14 compensation benefits through April 2011. The parties have provided no explanation for why those
15 benefits were terminated at that point. From the information provided, we cannot ascertain whether
16 there is a genuine dispute, based on specific opposing medical or vocational opinions, regarding
17 Mr. Zimmerman's entitlement to continuing total disability benefits. If there is such a dispute, that
18 might explain why he is willing to relinquish a claim for such benefits in exchange for \$60,000. We
19 should be provided the estimate of the value of the claim or the pension reserve. Mr. Zimmerman
20 must be aware of the potential benefits he forfeits by entering into this agreement. Alternatively, if
21 he now has some other source of income to support him or anticipates a reduction in his
22 compensation rate as a result of receiving other benefits, perhaps that would explain why this
23 settlement is in his best interest. But without further information, we cannot say it would be in his
24 best interest to forego total disability benefits in light of his life expectancy, particularly with such a
25 rapid pay out and no explanation of how Mr. Zimmerman will support himself thereafter.

26 The parties are free to re-file the CRSSA with the necessary information. We recognize that
27 the necessary information may differ in each case. Regardless of the documentation needed, we
28 emphasize that the worker's best interests are a consideration regardless of representation.
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1 Without sufficient information regarding Mr. Zimmerman's best interests, particularly his financial
2 status, we do not approve the CRSSA in this case. The agreement is rejected

3 Dated: April 3, 2012.

4 BOARD OF INDUSTRIAL INSURANCE APPEALS

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6 
7 DAVID E. THREEDY Chairperson

8
9 
10 FRANK E. FENNERTY, JR. Member

11
12 DISSENT

13
14 I must respectfully dissent from the majority's decision to reject the Claims Resolution
15 Structured Settlement Agreement (CRSSA). The majority ignores the basic rule of statutory
16 construction that requires us to derive meaning of an unambiguous statute from the statute's plain
17 language. When the words in a statute are clear, we must apply the statute exactly as written.
18 *Xenith Services v. Department of Labor & Indus.*, Wn.App. Division 1; Docket No. 66013-6
19 (February 13, 2012). When a worker is represented, RCW 51.04.063(3) unequivocally states that
20 the Board "shall approve" a CRSSA unless one or more of the five specifically stated factors are
21 present. The majority's conclusion that RCW 51.04.063(2)(j) refers to the Board in addition to the
22 industrial appeals judge conducting the conference amounts to statutory advocacy. The
23 Legislature's use of the term "industrial appeals judge" in reference to subsection (2)(j) plainly refers
24 to the judge conducting the CRSSA conference with a worker that is not represented by an
25 attorney, rather than agreements submitted to the Board by workers represented by an attorney as
26 referenced in subsection (3) and (4).

27 Because the Legislature did not identify best interest as a factor for consideration by the
28 Board when a worker is represented by an attorney, the Board is precluded from applying it to
29 Mr. Zimmerman's CRSSA. The language of the statute should not be broadened to reach a
30 strained result. Although the majority relies on liberal construction, this standard cannot be reached
31 in the absence of ambiguity. Plain meaning is the threshold. While statutory interpretation should
32 enforce the intent of the Legislature, the plain meaning of the statute is the expression of legislative
intent. *City of Spokane v. Spokane County*, 158 Wn.2d 661, 673 (2006). RCW 51.04.063(2)(j)

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1 expressly indicates that "best interest" should be considered by the judge, who conducts a CRSSA
2 conference when the worker is not represented by an attorney. Broadening the statutory language
3 is violative of these well-established principles of statutory construction.

4 Structured settlement agreements are governed by common law contract principles.
5 Consideration of additional evidence, including financial evidence, is arguably in violation of the
6 parole evidence rule. In other words, the four corners of the contract should govern the terms
7 between represented parties. Extrinsic or parole evidence is generally not admissible for verifying
8 the terms of the contract. See, *In re Lynott v. National Union Fire Ins. Co.*, 123 Wn.2d 678 (1994).

9 Even though I see no harm in considering additional information when the parties agree to its
10 submission, workers who retain legal representation should have a modicum of control regarding
11 the documentation submitted to this Board. A benefit to being represented by an attorney is that
12 the worker can choose to whom he wants to reveal his personal and financial information rather
13 than to total strangers. What this Board may consider relevant, the worker may consider a violation
14 of his or her privacy. This could have a chilling effect on the resolution of claims with a CRSSA,
15 which would undermine the Legislature's intent pursuant to RCW 51.04.062. The cumbersome
16 process instituted by the majority, even for workers with attorneys, would thwart the legislature's
17 intention that certain workers would benefit from an option that allows them to initiate claim
18 resolution structured settlements in order to pursue work or retirement goals.

19 Retention of an attorney obviates the need for excessive disclosure of personal and financial
20 information. As officers of the Court, attorneys are ethically bound to zealously represent the best
21 interest of the worker. The Washington Supreme Court recently reiterated the role of an attorney.
22 "A lawyer must advise his client, advocate for his client's interest, and provide representation
23 consistent with his client's needs. *In the matter of the Disciplinary Proceeding Against Van Camp*,
24 171 Wn.2d 781, 810 (2011). An attorney representing any party in a claim resolution structured
25 settlement agreement has these obligations. Rules of Professional Conduct addressing the scope
26 of representation (Rule 1.2), diligence (Rule 1.3), communication (Rule 1.4) and an attorney's role
27 as advisor (Rule 2.1) provide consistent safeguards of an injured worker's interest in the negotiation
28 of a structured settlement. The ethical obligation of an attorney provides the worker with an
29 elevated status not enjoyed by workers not represented by an attorney. There is no reason,
30 procedural or substantive, for the Board to also seek to separately determine whether the CRSSA
31 is in the best interest of a worker represented by an attorney.

32

1 The majority asserts that it has the authority to consider "best interest" as a factor regardless
2 of whether the worker is represented by an attorney and regardless of an industrial appeals judge
3 approving the CRSSA as in the best interest of an unrepresented worker. It apparently justifies this
4 assertion in part due to the "Board's particular expertise" to determine the worker's best interest.
5 Although the Board has special expertise in the area of worker's compensation, it does not have
6 any special expertise in other disciplines such as financial planning, counseling or life planning.

7 The CRSSA in this case is reasonable, free from coercion or harassment, and was entered
8 into knowingly and willingly. Because it meets the statutory requirements of RCW 51.04.063(3), I
9 believe we are obligated to approve the CRSSA in this case.

10 Dated: April 3, 2012.

11
12 BOARD OF INDUSTRIAL INSURANCE APPEALS

13
14
15
16 JACK S. ENG

Member

CERTIFICATE OF SERVICE BY MAIL

I certify that on this day I served the attached Order to the parties of this proceeding and their attorneys or authorized representatives, as listed below. A true copy thereof was delivered to Consolidated Mail Services for placement in the United States Postal Service, postage prepaid.

DANIEL B ZIMMERMAN
13567 OLYMPIC DR SE
OLALLA WA 98359-9415

CL1

DAVID C SNELL, ATTY
SMALL SNELL WEISS & COMFORT PS
PO BOX 11303
TACOMA WA 98411-0303

CA1

ESD #114 WORKERS COMP TRUST
2530 W 19TH ST
PORT ANGELES WA 98363-1358

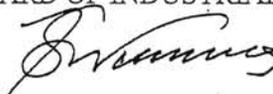
EM1

BERNADETTE M PRATT, ATTY
PRATT DAY & STRATTON PLLC
2102 N PEARL ST #204
TACOMA WA 98406-2550

EA1

Dated at Olympia, Washington 4/3/2012
BOARD OF INDUSTRIAL INSURANCE APPEALS

By:


J. SCOTT TIMMONS
Executive Secretary

In re: DANIEL B ZIMMERMAN
Docket No. 12 S0007

9 (55)

RECEIVED

FEB 22 2012

SMALL SNELL
WEISE & COMFORT

CLAIM RESOLUTION STRUCTURED SETTLEMENT AGREEMENT

Daniel B. Zimmerman (Zimmerman) and ESD No. 114 Workers' Compensation Trust (ESD No. 114) ("the parties"), in order to resolve BIA Docket No. 11 14875, arising out of Claim No. T353551, agree as follows:

- 1) The parties to this agreement are:

Daniel B. Zimmerman	ESD No. 114 Region Workers'
13567 Olympic Drive Southeast	Compensation Trust
Olalla, WA 98359	2530 West 19th Street
	Port Angeles, WA 98363

- 2) Daniel B. Zimmerman, born July 31, 1956, is single with one dependent, and has a life expectancy of 24.01 years as of the date of this agreement.
- 3) Claim No. T353551 was received by the Department on May 6, 1991, allowed by Department order dated June 17, 1991, with such order becoming final on August 17, 1991. This agreement does not set aside or reverse an allowance order.
- 4) Claim No. T353551 arose out of an April 30, 1991 incident in which Zimmerman twisted his lower back. This claim was allowed solely for a low back condition. Any cognitive disorder or mental health conditions are segregated from this claim. This agreement will close this claim.
- 5) Zimmerman received time loss compensation benefits under this claim from May 1991 through March 1994, August 1995 through February 2005, and October 2005 through April 2011. On September 13, 1995, Zimmerman underwent left L5-S1 partial laminectomy and foraminotomy. In addition to his surgery, Zimmerman has undergone multiple forms of conservative treatment for his low back condition. This claim was previously closed, on February 2, 1995, with an award of Category 2 permanent dorso-lumbar and/or lumbosacral impairments. In a September 3, 2009 Independent Medical Evaluation, the examiners indicated that Zimmerman's condition would have best been described by Category 3 of dorso-lumbar and/or lumbosacral impairments. Zimmerman has received vocational retraining benefits. By entering into this settlement agreement, Zimmerman forfeits his rights to the receipt of further permanent partial disability benefits beyond those previously paid pursuant to the February 2, 1995 Department order; time loss benefits beyond those paid prior to the April 26, 2011 Department order; and, vocational training benefits beyond those already received. This agreement shall bind the parties to all aspects of the claim with the exception of medical benefits. In the event Zimmerman applies to reopen this claim, pursuant to RCW 51.32.160, he will be required to demonstrate aggravation of the conditions accepted under this claim.
- 6) Zimmerman understands and agrees that he has the right to continue to receive all the benefits to which he has the right; participate in vocational retraining if eligible; or, resolve his claim with a structured settlement.

CLAIM RESOLUTION STRUCTURED
SETTLEMENT AGREEMENT

Page 1 of 3

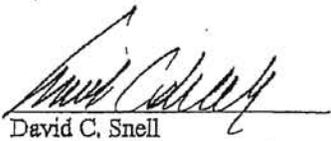
- 7) Under this agreement, BSD No. 114 Region Workers' Compensation Trust will pay Zimmerman a total of sixty-thousand dollars. The first payment will be in the amount of twenty-four thousand dollars (\$24,000), with the remaining thirty-six thousand dollars (\$36,000) to be paid in equal monthly installments of six-thousand dollars (\$6,000) each. This payment schedule is equal to at least twenty-five percent but not more than one hundred fifty percent of the average monthly wage in the state pursuant to RCW 51.08.018, except for the initial payment which may be up to six times the average monthly wage in the state pursuant to RCW 51.08.018.
- 8) The parties are seeking approval of this agreement by the Board of Industrial Insurance Appeals (Board). ESD No. 114 Region Workers' Compensation Trust is responsible for applying for approval with the Board.
- 9) No employer, who is not a signatory as evidenced below, is subject to any responsibility or burden under any claim as a result of this Agreement. No Department funds, covered under the Industrial Insurance Act, are subject to any responsibility or burden by this Agreement without prior approval from the director or his/her designee.
- 10) The parties enter into this Agreement, reached during a half-day mediation conference at the Board of Industrial Insurance Appeals with Judge Fred Feller acting as mediator, knowingly and willingly, without coercion or harassment. The parties have represented the facts and the law to each other to the best of their knowledge and believe that this Agreement is reasonable under the circumstances. The parties have been represented by counsel throughout the negotiation process leading to this Agreement.
- 11) The parties know that they may revoke consent to this Agreement by providing written notice to the other party and the Board within thirty days after such agreement is approved by the Board.
- 12) There are no restrictions on the assignment of rights and benefits under this claim resolution structured settlement agreement.
- 13) The signatures below evidence that both parties to this agreement have signed such agreement and that the parties understand and agree to the terms of this agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date and year as indicated below:

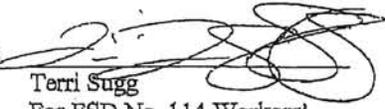
Dated this 20 day of February, 2012 
 Daniel B. Zimmerman

Dated this _____ day of _____, 2012 _____

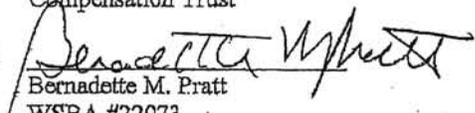
Dated this 22nd day of February, 2012


David C. Snell
WSBA #20173
Attorney for Daniel B. Zimmerman

Dated this 13 day of February, 2012


Terri Sugg
For ESD No. 114 Workers'
Compensation Trust

Dated this 23rd day of February, 2012


Bernadette M. Pratt
WSBA #22073
Attorney for ESD No. 114 Workers'
Compensation Trust

BEFORE THE BOARD OF INDUSTRIAL INSURANCE APPEALS
STATE OF WASHINGTON

2430 Chandler Court SW, P O Box 42401
Olympia, Washington 98504-2401 • www.biaa.wa.gov
(360) 753-6824

In re: DANIEL ZIMMERMAN

Docket No. 12 S0007

Claim No. T-353551

**NOTICE OF RECEIPT OF STRUCTURED
SETTLEMENT AGREEMENT**

On February 23, 2012, a structured settlement agreement was filed in this industrial insurance claim with the Board of Industrial Insurance Appeals.

The Board will issue an order approving or rejecting the agreement within 30 working days.

Information about this structured settlement agreement may be subject to public disclosure. For additional public disclosure information, contact: Public Records Office, Board of Industrial Insurance Appeals, PO Box 42401, Olympia, WA 98504-2401 or call (360)753-9646.

Dated: February 24, 2012.

BOARD OF INDUSTRIAL INSURANCE APPEALS



J. SCOTT TIMMONS
Executive Secretary

c: DEPARTMENT OF LABOR AND INDUSTRIES

CERTIFICATE OF SERVICE BY MAIL

I certify that on this day I served the foregoing Notice to the parties of this proceeding and their attorneys or authorized representatives, as listed below. A true copy thereof was delivered to Consolidated Mail Services for placement in the United States Postal Service, postage prepaid.

DANIEL B ZIMMERMAN
13567 OLYMPIC DR SE
OLALLA WA 98359-9415

CL1

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DAVID C SNELL, ATTY
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PORT ANGELES WA 98363-1358

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BERNADETTE M PRATT, ATTY
PRATT DAY & STRATTON PLLC
2102 N PEARL ST #204
TACOMA WA 98406-2550

Dated at Olympia, Washington 2/24/2012
BOARD OF INDUSTRIAL INSURANCE APPEALS

By:



J. SCOTT TIMMONS
Executive Secretary

60