Board should not consider the "best interest" of represented workers when evaluating structured settlements

By Christy Doornink and Shauna G. Fruin • July 1, 2014

Claim resolution structured settlement agreements (CRSSA) were adopted by the Washington legislature in 2011 and launched in 2012. CRSSA proponents anticipated the program would create a significant savings for the Department of Labor and Industries. However, the Department's *2013 Report to the Legislature* admitted the CRSSA program's projected two-year savings ($405 million) was overestimated by 75 percent. The Department stated one reason for the program's underperformance was the Board's consideration of the best interest of represented workers – a factor not explicitly directed by statute and seemingly redundant to the role of the workers' attorneys.

On May 20, 2014, the Washington Court of Appeals came down with its long-awaited decision in *Board of Industrial Insurance Appeals v. South Kitsap School District, Zimmerman, & Department of Labor and Industries*, holding that the Board had no authority to consider a represented worker's best interest when reviewing a CRSSA for approval. The Court's analysis was simple, explaining that the Board could not consider a represented worker's best interest because the CRSSA statute is "wholly void of any requirement that workers with legal counsel convince the state that a structured settlement is in their best interests."

Although *Kitsap* does make it more feasible to attain a CRSSA, it is too early to tell if this decision will make a noticeable difference with the approved CRSSA rate or associated Department savings. Even before we knew how the Board would evaluate represented worker CRSSAs, not many were rejected under the "best interest" standard (16 by mid-2013, per the Department's *2013 Report to the Legislature*). Regardless of the "best interest" consideration, CRSSA still require a laborious amount of information, extended government review, and limited benefit applicability. Unless CRSSAs are reformed to a simpler process on a more even negotiation table, circumstances where they will be appealing to a self-insured employer will remain few and far between. ■

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