



The Brown & Carlson, P.A. Insight

TWO NEW ORDERS FROM OAH REGARDING MULTIPLE PARTY OCCUPATIONAL DISEASE CLAIMS

The Assistant Chief Judge at OAH has issued two new orders involving multiple party occupational disease claims. **Order Staying Proceedings** and **Order Staying Proceedings and Suspending Rules and Time Requirements**. In The Order Staying Proceedings it is ordered that all legal proceedings regarding medical only and/or diagnostic only occupational disease claims are stayed pending dismissal by the parties such as in a Stipulation for Settlement or until the Claim Petition is amended to seek payment of benefits other than medical expenses only.

The Order acknowledges that medical only Claim Petitions are filed to toll the running of the Statute of Limitations. The intent is to minimize unnecessary activity on these types of files until there is a claim for monetary benefits or other benefits other than medical only claims.

The employers and insurers may file formal Answers to the medical only Claim Petitions, or file a letter acknowledging receipt of the Claim Petition. The Order indicates that formal Answers are encouraged, but not **required**. If an Answer is filed, it need only be served on the petitioner's attorney and the Department of Labor & Industry, or if no Answer is filed, a letter acknowledging receipt of the Claim Petition and indicating representation shall be served on the petitioner's attorney and the Department of Labor & Industry.

It is further Ordered that all Motions, except for joinder or dismissal of parties agreed to by petitioner's attorney, shall not be considered until settlement conference or pretrial conference in an action for monetary benefits other than medical only claims. The Special Compensation Fund continues to pay the medical bills on medical only or diagnostic only claims until claims for monetary benefits are presented, at which time the Fund will intervene for reimbursement.

The Order Staying Proceedings and Suspending Rules and Time Requirements suspends the time requirements for scheduling settlement conferences and hearings in multiple party occupational disease cases until an Order of the Court.

The parties are not required to file Pretrial Statements in advance of the settlement conference as in non-occupational disease cases, but they are required in advance of pretrial conferences and hearings.

The time for conducting an independent medical examination or medical records review is extended to 120 days after the date of the Employee's deposition if any, or 120 days after the date of the settlement conference that results in referral of the matter to a hearing, whichever occurs later.

Counsel is to notify the Office of Administrative Hearings when the case is ready to proceed to a settlement conference. The settlement conference will then be scheduled within 120 days or when ordered by a Compensation Judge.

Lastly, all Motions, except for those for joinder of parties or dismissal of insurers for reason of coverage and/or dismissal of the Claim Petition with written consent of the employee/petitioner's attorney, shall not be considered until a settlement or pretrial conference and only on claims for monetary benefits other than medical expenses only.

If you have any questions regarding these orders or on other matters, please contact us.

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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
WORKERS' COMPENSATION SECTION
P.O. BOX 64620
ST. PAUL, MINNESOTA 55164-0620

IN RE: All Medical Bill-Only and/or Diagnosis-Only
Occupational Disease Claims

ORDER STAYING PROCEEDINGS

WHEREAS, the Special Compensation Fund has agreed to pay medical bill expenses in connection with multiple party occupational disease cases which do not involve current claims for monetary benefits subject to reimbursement, as an intervenor, at such time as the employee/petitioner presents claims for monetary benefits in the nature of wage loss, permanent partial disability, dependency and/or death benefits; and

WHEREAS, claim petitions involving medical bill-only and/or diagnosis-only occupational disease cases are filed in order to toll the possible running of the statute of limitations and/or for other legal and/or practical reasons; and

WHEREAS, it is the intent of this plan to minimize unnecessary activity on such files, to reduce costs, and to conserve judicial and administrative resources; and

WHEREAS, the undersigned has consulted with the Department of Labor and Industry, and with petitioner and defense counsel bar members, regarding the fairness and efficacy of staying certain proceedings and actions;

NOW, THEREFORE, IT IS HEREBY ORDERED that all legal proceedings regarding medical bill-only and/or diagnosis-only occupational disease claims, including but not limited to the requirements for filing answers, independent medical examinations and reports, discovery, petitions for joinder, petitions for intervention, and procedural motions are hereby stayed pending dismissal of the action by agreement of the parties or until such time as a pleading or amendment is filed seeking payment of benefits other than medical expenses only; and

IT IS FURTHER ORDERED that formal answers to medical-bill only and/or diagnosis-only occupational disease claim petitions, while encouraged, are not required. If an Answer is filed, the answer need only be served on the attorney for the employee/petitioner and filed with the Department of Labor and Industry. If an Answer is not filed, a letter acknowledging receipt of the Claim Petition and indicating representation, if any, shall be served on the attorney for the employee/petitioner and filed with the Department of Labor and Industry; and

IT IS FURTHER ORDERED that motions, with the exception of those for joinder of parties or dismissal of insurers for reason of coverage, and/or dismissal of the claim petition with written consent of counsel for the employee/petitioner, shall be held in abeyance until the occurrence of a settlement or pretrial conference, which, in turn, shall be scheduled only if

claims for monetary benefits other than medical expenses only are subsequently amended or added into the claim; and

IT IS FURTHER ORDERED that the following documents continue to be in full force and effect and that nothing in this Order Staying Proceedings supersedes the Stipulation to Share Payment of Expenses for Medical-Only Asbestos Cases signed by Brandon Miller, Director of the Special Compensation Fund, on September 26, 1995; the Order on Stipulation and supporting Memorandum of Judge Richard Lund dated January 5, 1996; and the Workers' Compensation Insurers' Task Force Recommendation signed by Gary Bastian, Commissioner of the Department of Labor and Industry, on September 19, 1995.

Dated at St. Paul, Minnesota
this _____ day of January, 2012.
TJO/kp

TIMOTHY J. O'MALLEY
Assistant Chief Administrative Law Judge
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STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
WORKERS' COMPENSATION SECTION
P.O. BOX 64620
ST. PAUL, MINNESOTA 55164-0620

IN RE: Multiple Party Occupational Disease Cases
Involving Claims for Monetary Benefits

**ORDER STAYING PROCEEDINGS
AND SUSPENDING RULES AND TIME
REQUIREMENTS**

WHEREAS, the 2011 Minnesota Legislature adopted amendments to Minn. Stat. § 176.305 pertaining to time limitations for conducting settlement conferences and hearings in workers' compensation cases and requiring the filing of pretrial statements in advance of settlement conferences; and

WHEREAS, an assessment of the legislative history suggests that the focus of the Legislature in amending Minn. Stat. § 176.305 may have been on non-occupational disease cases; and

WHEREAS, there have been many multiple party occupational disease cases filed which involve claims for monetary benefits such as wage loss, permanent partial disability, dependency, funeral and/or death benefits and it is anticipated that many such cases will continue to be filed; and

WHEREAS, many such multiple party occupational disease cases allege progressive and/or terminal medical conditions which may make the time limitations in Minn. Stat. § 176.305 impractical and counterproductive to judicial and administrative economy; and

WHEREAS, from the perspective of the employee/petitioner in such cases there are also concurrent third party claims in most, if not all, of such cases often involving depositions, medical examinations and other proceedings and that such matters are often utilized in the workers' compensation case as well; and

WHEREAS, historically there have been multiple requests and motions that have been filed by counsel for the employee/petitioner as well as counsel for the employers/insurers and representatives of the Special Compensation Fund, establishing good cause and requesting extensions of time in which to, among other matters, find and confirm insurance coverage, schedule and complete independent medical examinations, file answers, extend discovery, schedule depositions, identify and join additional parties; and

WHEREAS, the undersigned has concluded after consultation with the Department of Labor and Industry, and petitioner and defense counsel bar members involved in handling multiple party occupational disease cases, that in view of the complicated nature of these cases, the large number of parties involved, the progressive and/or terminal nature of the medical conditions typically involved, the limited number of physicians involved in such cases from both a petitioner and defense perspective, and the impracticality of having to petition for exemption from timeline requirements in each case, that, in the interest of fairness and efficacy, the rules and time requirements should be suspended for this class of cases;

NOW, THEREFORE, IT IS HEREBY ORDERED that the rules and time requirements for scheduling settlement conferences and hearings in multiple party occupational disease cases involving claims for monetary benefits are hereby suspended until further Order of the Court without prejudice as to any rights, privileges, claims or defenses of any party or potential party and without the necessity of any party to request or file a motion for relief granted under this blanket Order; and

IT IS FURTHER ORDERED that pretrial statements shall not be required in advance of settlement conferences but shall be required in advance of pretrial conferences and hearings; and

IT IS FURTHER ORDERED that the time limitation for conducting an independent medical examination shall be extended to 120 days after the date of the employee's deposition, if any, or 120 days after the date of a settlement conference that results in referral of the matter to a hearing, whichever occurs later. This provision shall not be construed as preventing the parties from conducting an independent medical examination at an earlier date; and

IT IS FURTHER ORDERED that counsel shall notify the Office of Administrative Hearings when, in the judgment of counsel, the case is ready to proceed to a settlement conference. Settlement conferences shall be scheduled 1) within 120 days of OAH's receipt of notice from counsel or 2) when ordered by a workers' compensation judge.

IT IS FURTHER ORDERED that motions, with the exception of those for joinder of parties or dismissal of insurers for reason of coverage, and/or dismissal of the Claim Petition with written consent of counsel for the employee/petitioner, shall be held in abeyance until the occurrence of a settlement or pretrial conference, which, in turn, shall be scheduled only if claims for monetary benefits other than medical expenses only are subsequently amended or added into the claim.

Dated at St. Paul, Minnesota
this _____ day of January, 2012.
TJO/kp

TIMOTHY J. O'MALLEY
Assistant Chief Administrative Law Judge
(651) 361-7900
TDD: (651) 361-7878