

# How to Get Compromise Agreements Approved

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# Generally

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- Do not attempt to compromise a claim if there is no dispute. For PPD full and final agreements, it is our policy to require a dispute of at least 100 weeks of disability.
- If medical causation is in dispute, provide the medical report that serves as the basis for the dispute.
- If the dispute is factual in nature, provide the details of the dispute in the compromise agreement. When an ALJ has to reach out to inquire, it delays the Order.
- A single valid dispute should be limited to that dispute.
- Do not attempt to compromise conceded traumatic injuries.
- If you compromise a claim, pay it.
- If you are required to have a restricted account, provide the financial institution's information with the compromise. When an ALJ has to reach out to inquire, it delays the Order.
- Don't ignore third-party liens—tell us how they are going to be resolved in the compromise agreement or the cover letter.

# Generally

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- Be sure to identify the correct employer and insurer, and, for barred claims, WISBF.
- Make sure a compromise that is described or identified as a full and final compromise actually is a full and final compromise. Check for internal consistency.
- The compromise should account for liens for child support and/or Medicaid. Be sure to identify the lien holder and the amount of the lien protected in the compromise. *See: Wis. Stat. § 102.27(2).*
- For limited compromises, be specific as to which claims are closed and which claims are being left open.
- Do not attempt to include other types of injuries in the compromise or make the compromise overly broad.

# Generally – Claims That Almost Always Get Approved

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- Hearing loss. However, again, please specify what the dispute is in the compromise agreement. Additionally, audiograms alone are not sufficient to prove medical causation.
- Hernias.
- Heart attacks.
- Strokes.
- Non-traumatic mental stress.
- LOEC claims with at least 10%.
- Old injuries with no recent treatment.

# Generally – Claims That Get Scrutinized More Closely

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- Head injuries.
- Silicosis, aseptic necrosis, or asbestosis occupational disease claims.
- Certain eye injuries.
- When causation is not a valid issue.

# Medicare Set-Aside Accounts (MSAs)

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- The Division tries to ensure that full and final compromise agreements that close out future medical expenses address Medicare's interests. A MSA approved by CMS may be required under the below guidelines:
  - The applicant is presently receiving Medicare benefits and the total amount of the settlement is greater than \$25,000.00; or
  - The applicant has a reasonable expectation of enrolling in Medicare within 30 months of the date of the settlement and the anticipated settlement amount for future medical expenses and indemnity over the life or duration of the settlement agreement is expected to be greater than \$250,000.00.
- If a full and final compromise closes out future medical expenses and the above thresholds are met, the agreement should discuss how the parties considered Medicare's interests. If there is no such language, the division will inquire about: (1) Whether the applicant has incurred any medical expenses under Medicare or Medicaid; and (2) Whether the applicant is currently receiving Social Security benefits or if they have any intent to apply for the same.

# Accrued vs. Non-Accrued Benefits; Advancements

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- One effect of a compromise may be to replace income lost due to an injury, a purpose that is not always best served by a lump sum payment. Thus, the amount of unaccrued compensation that may be advanced on a compromise is limited by Wis. Admin. Code §§ DWD 80.03, 80.39, and Wis. Stat. § 102.32(6m).
- When the amount to be paid to an applicant immediately under a compromise is determined, it is usually based on the accrued benefits plus an automatic \$10,000.00 advance. Read literally, § DWD 80.03(1)(d) means that there can be no additional advance until a restricted account is set up. Then any advance must be considered under the factors listed in DWD 80.39, and such advances are limited to three in a year.
- One possible technique might be to request an advance beyond the \$10,000.00 allowed at the time of compromise by § DWD 80.03 under the factors listed in § DWD 80.39, but then treat the advance as the first of the three-per-year advances allowed under Wis. Stat. § 102.32(6m).

# Medical Expenses and Attorney Fees

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- “Attorney fees are not normally allowed on medical expenses, even if not insured by other sources, when attorney fees can be assessed against disability compensation paid in addition to medical expenses.” *Doreen A. Doro v. RES MFG Co.*, WC Claim No. 1999-036498 (LIRC November 11, 2010).
- Usually, 20 percent is awarded on the compromised amount ***after*** the deduction of any medical expenses paid under the compromise. One possibility is to have the expenses identified in a WKC-3 paid to the applicant’s attorney's trust account. The attorney can then negotiate with the providers and non-industrial insurers to accept a lesser amount than identified in the WKC-3, and then take a fee on the difference.



# Suggested Language from ALJ Shore

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The respondent shall further pay \$\_\_\_\_\_ for outstanding treatment expenses. Such monies shall be deposited into the \_\_\_\_\_ Law Firm Trust Account. Such amount, or any portion as may be required, shall be utilized solely and exclusively to satisfy the treatment expense debts and liens delineated on the WKC-3 [Treatment Expense Summary] filed with the Division under Attorney \_\_\_\_\_ cover letter of \_\_\_\_\_ 20 \_\_\_\_ Reiterated herein, those debts /liens are as follows:

- [List unpaid bills and liens]

As the amounts required to satisfy those liens may be subject to negotiated reductions, any monies remaining following satisfaction of the liens will be disbursed to applicant subject to a 20 percent fee payable to Attorney \_\_\_\_\_. Counsel is accorded 60 days to finalize the negotiated settlement amounts, and all payments in satisfaction of the liens shall be disbursed within one week thereof, i.e., within 67 days from the date of this order. Counsel shall provide a final accounting / reconciliation of the total amount paid/dispursed under the provisions of this paragraph; such accounting shall be forwarded to the Division no later than one week after the final payment has been disbursed. Release and payment of fees realized as a result of the above shall be approved upon receipt of the final accounting / reconciliation. Note: the file shall be set for follow-up review to ensure the Division's timely receipt thereof.

# Hearing Loss Compromises

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- Compromises for occupational deafness should include an amount for future medical expenses (again a fee is not paid on this amount), as the worker is virtually certain to require replacement hearing aids at some point.

- Somethings to keep in mind is that LIRC has held that if a:

“compromise agreement specifically provide[s] that the employer will reimburse the applicant for the cost of hearing aids that are medically indicated . . . [but] does not express any time limit for the employer’s provision of this hearing aid expense . . . The employer is required to reimburse the applicant for all hearing aid expenses reasonably required as a result of his [or her] occupational hearing loss injury, throughout the applicant’s lifetime.”

*Day v. Newpage Wisconsin Systems, Inc. and WISBF, WC Claim No. 2002-021031 (LIRC May 26, 2017).*

# Attorney Costs

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- Unlike medical expenses, an attorney's "protected costs" are deducted from the applicant's award *after* the fee is determined. These are generally the expenses of obtaining medical records or an expert report. The division does not protect costs for postage, private mediation, photocopies, telephone, abstract medical reports prepared by a third-party, and travel expenses, though these may be recouped pursuant to the specific terms of counsel's fee/retainer agreement with the applicant.

# Sending Compromises

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- Please email compromises directly to the OWCH Director or the ALJ assigned to hear the case. Additionally, please mail physical copies of the signed compromise agreement to:

Office of Worker's Compensation Hearings  
4822 Madison Yards Way, Fifth Floor  
Madison, WI 53705-9100

# DHA-OWCH Directory

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## DHA-Office of Workers Compensation Hearings Directory

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# DHA-OWCH Directory

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\*\* Indicates also available for Mediations

# DHA-OWCH Directory

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# DHA-OWCH Directory

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# HA 4 CLE

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Please join OWCH on Friday, October 22, 2021, for a one-hour virtual CLE regarding Wis. Admin. Code HA 4.