

BEFORE THE IOWA WORKERS' COMPENSATION COMMISSIONER

DIANE ROMERO,

Claimant,

vs.

NATIONAL EXPRESS, LLC.,

Employer,

and

OLD REPUBLIC INSURANCE CO.,

Insurance Carrier,
Defendants.

File No. 20700750.01

ARBITRATION DECISION

Head note no: 3400

STATEMENT OF THE CASE

Claimant, Diane Romero, filed a petition seeking approval of a third-party settlement agreement under Iowa Code section 85.22(3) and costs.

On February 12, 2021, claimant filed an entry of default against defendants for failure to timely answer the petition. On February 17, 2021, entry of default was entered against the defendants and hearing was scheduled for April 6, 2021, by telephone. The hearing took place as scheduled. The proceedings were recorded digitally and constitute the official record of the proceedings.

The record in this case consists of claimant's exhibits 1-3 and the testimony of John Stoltze and Tiffany Kragne.

ISSUES

1. Should the settlement agreement between claimant and the third party tort fees be approved?
2. Costs.

FINDINGS OF FACT

Claimant was working for National Express ("National") on February 27, 2015. On that date, claimant was riding a bus when a car pulled in front of the bus. An accident with the car and bus caused injuries to claimant.

Claimant received medical treatment for her injuries. This treatment was paid for by Old Republic Insurance Company ("Old Republic"), defendant insurer. (Ex. 2)

John Stoltze testified he is an attorney for claimant. Mr. Stoltze testified that based on the injuries claimant sustained, claimant brought a third-party action in Story County District Court. Mr. Stoltze testified that by the time the case came to him, the statute of limitations had run on claimant's workers' compensation claim, and claimant was not able to file a workers' compensation petition against defendants' employer and insurer.

Mr. Stoltze said that in the process of investigation and preparing claimant's case in district court, it was determined that claimant was cognitively impaired. Mr. Stoltze said an expert opinion obtained by claimant determined that the impairment was not due to the workers' compensation injury.

Mr. Stoltze said that claimant developed dementia. As a result of the dementia, Tiffany Kragnes was appointed guardian ad litem for the purposes of the third-party litigation.

Mr. Stoltze testified that because claimant's medical bills were paid by the workers' compensation insurer, Old Republic had a lien against any third-party litigation.

Mr. Stoltze said that because claimant's expert opined that claimant's cognitive issues were not caused by the 2015 accident, claimant had problems in the third-party suit concerning causation and damages. He said that after extensive negotiation, the defendants and the third-party action offered to pay \$8500.00 to settle the case. Mr. Stoltze testified he believed the settlement is reasonable and fair given the facts of the third-party action.

Tiffany Kragnes testified that she is an attorney who practices in Iowa. She testified she was appointed guardian ad litem for purposes of third-party litigation. She testified that given the problems with damages and causation, she believed that the third-party settlement for \$8500.00 was reasonable and fair given the facts of the third-party litigation.

Mr. Stoltze testified that the workers' compensation insurer will not approve the settlement of the third-party action. He said that he has contacted the workers' compensation insurer numerous times between 2019 and 2020 but has not received any response from the insurer.

Mr. Stoltze testified that exhibit 2 is the list of medical expenses paid by the workers' compensation insurer. He said that exhibit 3 is a list of out-of-pocket expenses incurred by his law firm in preparation of litigation in the third-party claim.

CONCLUSIONS OF LAW

The first issue to be determined is whether the settlement agreement between claimant and the third-party tort fees should be approved.

Iowa Code section 85.22(3)(2011), provides:

Before a settlement shall become effective between an employee or an employer and such third party who is liable for the injury, it must be with the written consent of the employee, in case the settlement is between the employer or insurer and such third person; and the consent of the employer or insurer, in case the settlement is between the employee and such third party; or on refusal of consent, in either case, then upon the written approval of the industrial commissioner.

The power to approve settlements in this case is exclusively with the industrial commissioner, and not with the court. Shirley v. Pothast, 508 N.W.2d 712 (Iowa 1993). The workers' compensation commissioner has authority to grant written approval of a settlement between an employee and a potential third-party tortfeasor in situations such as this, i.e., where the employer/workers' compensation insurer refuses to give its consent to a settlement reached between the employee and the third-party tortfeasor. Iowa Code section 85.22(3)(2011); Shirley v. Pothast, 508 N.W.2d 712, 717 (Iowa 1993).

A purpose of section 85.22 is to encourage employers and their insurers to pay workers' compensation benefits with the expectation that they will be reimbursed in the event of any recovery by the employee from a third party. Sladek v. K-Mart Corp., 493 N.W.2d 838, 840 (Iowa 1992). The section is also designed to prevent "double recovery" by the employee, who would otherwise be compensated by both the tortfeasor and the workers' compensation insurer for the same injuries. Liberty Mut. Ins. Co. v. Winter, 385 N.W.2d 529, 531 (Iowa 1986).

Settlements which avoid prolonged, extensive and uncertain litigation are encouraged by the law. White v. Flood, 138 N.W.2d 863, 867 (Iowa 1965); Moore v. Bailey, 163 N.W.2d 435 (Iowa 1968). In this context, the Iowa Supreme Court has said that the workers' compensation commissioner's responsibility is to protect the rights of both employers/insurers and employees from unfair and inadequate settlements of claims. Shirley v. Pothast, 508 N.W.2d 712, 717 (Iowa 1993).

Claimant's guardian ad litem and claimant's counsel in the third-party action both testified that settlement for the third-party action is fair and reasonable. This is because there are problems with damages and causation in the third-party action. There is no evidence or testimony the third-party settlement is not fair and reasonable. Based on this record, it is found that the settlement of \$8500.00 to resolve claimant's third-party tort action is fair and reasonable and should be granted.

The next issue to be determined is costs. Claimant's attorney's costs are found in exhibit 3. Costs are assessed at the discretion of the agency. Because claimant prevailed on the issue of approval of the settlement agreement, costs are awarded to claimant.

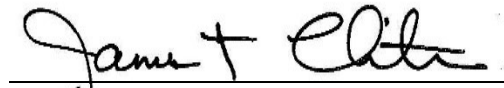
ORDER

Therefore, it is ordered:

That the settlement between claimant and the third-party tort fees for eight thousand five hundred and 00/100 dollars (\$8500.00) is approved.

That claimant's counsel shall be reimbursed costs as detailed in exhibit 3.

Signed and filed this 7th day of June, 2021.



JAMES F. CHRISTENSON
DEPUTY WORKERS'
COMPENSATION COMMISSIONER

The parties have been served, as follows:

Bruce Stoltze (via WCES)

National Express, LLC (via regular and certified mail)
2601 Navistar Dr
Lisle, IL 60532

Old Republic Insurance Company (via regular and certified mail)
631 Excel Dr, Ste 200
Mt. Pleasant, PA 15666

Right to Appeal: This decision shall become final unless you or another interested party appeals within 20 days from the date above, pursuant to rule 876-4.27 (17A, 86) of the Iowa Administrative Code. The notice of appeal must be filed via Workers' Compensation Electronic System (WCES) unless the filing party has been granted permission by the Division of Workers' Compensation to file documents in paper form. If such permission has been granted, the notice of appeal must be filed at the following address: Workers' Compensation Commissioner, Iowa Division of Workers' Compensation, 150 Des Moines Street, Des Moines, Iowa 50309-1836. The notice of appeal must be received by the Division of Workers' Compensation within 20 days from the date of the decision. The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or legal holiday.