

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



Issue Date: 09 March 2012

CASE NO.: **2011-LHC-00787**

OWCP NO.: **06-2073035**

In the Matter of:

RAMON SERRANO,
Claimant,

v.

ISLAND STEVEDORING, LLC,
Employer,

and

ZURICH AMERICAN INSURANCE COMPANY,
Carrier.

DECISION AND ORDER APPROVING SETTLEMENT APPLICATION

By letter dated February 14, 2012, counsel for the employer/carrier, Robert L. Bamdas, submitted an application for approval of agreed settlement in the above-captioned matter pursuant to Section 8(i) of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901, *et seq.*, (the Act). The application is signed by the claimant's counsel, David Pacheco, the claimant and Mr. Bamdas.

Having considered the pertinent information contained in the settlement application with respect to the claimant's age and work history, the vocational evidence, claimant's medical history, the need for further medical treatment, and all other relevant factors as set forth in the application and attachments thereto, in accordance with 20 C.F.R. §§ 702.242(a), 702.242(b)(1), and 702.243(f), I find the amount of the settlement set forth in the application is adequate and was not procured under duress.

The parties have considered the provisions of the Medicare Secondary Payer Act found at 42 U.S.C. § 1395y(b)(2) and its implementing regulations at 42 C.F.R. § 411. They agree that because the claimant is not within thirty months of Medicare eligibility and the settlement is less than \$250,000, approval of the settlement is not required by the Center for Medicare Services

(CMS). Notwithstanding, the parties have allocated \$30,000.00 towards future Medicare covered medical expenses and these funds will be paid directly to the claimant, but are intended to be used for medical purposes related to this claim. Claimant agrees to waive any future actions against the employer/carrier, including but not limited to any private cause of action for damages pursuant to 42 U.S.C. § 1395y(b)(3)(A) *et.seq.* Included with the application is a Medicare affidavit executed by the claimant. In approving this settlement, the undersigned is in no way determining Medicare's interests, if any, in this matter or whether Medicare's interests have been adequately protected under the provisions of the Medicare Secondary Payer Act.

An application for attorney's fees, together with an affidavit in support of the fees, were filed with the settlement application by claimant's counsel, Clifford R. Mermell, in which he itemizes the hours of services that he and Mr. Pacheco devoted to this case. Based on this itemization and the hourly rates customarily charged by the respective members of his firm, Mr. Mermell calculates that they normally would be entitled to total fees of \$32,865.00 for this claim. Notwithstanding, claimant's counsel and the employer/carrier have agreed in the settlement application to fees totaling only \$27,500.00 for claimant's counsel in this matter.

The attorney's fees that the employer/carrier has agreed to pay claimant's counsel to settle this case appears significant. However, the claimant is receiving a lump sum of \$57,500.00 in compensation and \$35,000.00 for past, present and future medical expenses. Thus, I find Mr. Mermell and Mr. Pacheco have negotiated a successful result for their client through this settlement, which I find is the most important factor to consider in determining the reasonableness of counsel's fees.

After carefully considering the attorney fee issue, I find that the agreed upon attorney's fee is reasonably commensurate with the necessary work performed in this matter, taking into consideration the quality of the representation, the complexity of the legal issues involved, and the amount of the benefits awarded. *See* 20 C.F.R. § 702.132(a) & (c). I therefore approve the amount of fees that the employer/carrier has agreed to pay claimant's counsel to settle this matter.

ORDER

In accordance with the terms of the settlement agreement, **IT IS HEREBY ORDERED** that:

1. Island Stevedoring, LLC and/or Zurich American Insurance Company shall pay to the claimant the sum of Fifty Seven Thousand Five Hundred Dollars (\$57,500.00) in past, present and future compensation benefits;
2. employer/carrier shall pay to the claimant Five Thousand Dollars (\$5,000.00) for past, present and future medical benefits;
3. Island Stevedoring, LLC and/or Zurich American Insurance Company shall pay the claimant Thirty Thousand Dollars (\$30,000.00) for future Medicare covered medical benefits; and,

4. employer/carrier shall also pay to Clifford R. Mermell, Esquire, and David Pacheco, Esquire, an additional sum of Twenty Seven Thousand Five Hundred Dollars (\$27,500.00) as attorney's fees, incident to counsel's representation of claimant in this proceeding.
5. Upon payment of the aforesaid amounts, any and all claims, including compensation benefits, medical benefits, attorney's fees, penalties, interest, and all other costs of any kind arising out of or related to the claimant's injury of September 6, 2009 made the basis of this claim under the Longshore and Harbor Workers' Compensation Act shall be discharged.

A

DONALD W. MOSSER
Administrative Law Judge