

INTERESTING HODGE PODGE
The Iowa Association of Workers' Compensation
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I. New Developments in Second Injury Fund Settlements

A. The Argument

1. Iowa Code section 85.35 – “[A]n approved compromise settlement shall constitute a final bar to any further rights arising under chapter 10A, subchapter III, this chapter, and chapters 85A, 85B, 86, and 87 regarding the subject matter of the compromise”
2. White v. Northwestern Bell Tel. Co., 514 N.W.2d 70 (Iowa 1994)
 - a. The parties entered into a compromise settlement whereby White was entitled to “future medical care . . . of the same kind and to the same degree as would be required of the employer under the Iowa Workers’ Compensation Act . . . had claimant’s injuries been held by the industrial commissioner to have been compensable.”
 - b. White brought an action before the Commissioner when a medical dispute inevitably arose. The Commissioner concluded that it lacked jurisdiction to resolve the dispute due to Iowa Code section 85.35. White then brought an action in district court alleging breach of contract, bad faith, etc. The district court overruled Northwestern Bell’s motion to dismiss for lack of jurisdiction, finding that White’s rights arose solely out of the contract and not the workers’ compensation act.
 - c. The Supreme Court concluded that the language of Iowa Code section 85.35 “evinces a legislative intent to terminate the jurisdiction of the industrial commissioner upon settlement approval” and that “[a]ny claims arising out of a settlement . . . are therefore properly brought in an original action before the district court.”
 - d. The Supreme Court also rejected Northwestern Bell’s contention that the settlement language carved out future medical rights as a matter remaining under the Commissioner’s jurisdiction. White, 514 N.W.2d at

75 (“[n]othing in the agreement could revive that jurisdiction once terminated.”).

3. White’s Progeny
 - a. Bankers Std. Ins. Co. v. Stanley, 661 N.W.2d 178 (Iowa 2003) – The Supreme Court held that an approved compromise settlement barred the employer from seeking indemnification from the proceeds of the claimant’s third-party settlement under section 85.22
 - b. United Fire & Cas. Co. v. St. Paul Fire & Marine Ins. Co., 677 N.W.2d 755 (Iowa 2004) – The Supreme Court held that an approved compromise settlement barred the employer from seeking indemnification from another employer that may have been responsible for the condition under section 85.21, despite the employer’s attempt to carve this right out of the compromise settlement.
- B. Tweeten v. Tweeten Farms, File No. 20700058.01 (App. 5/20/22)
 1. The Commissioner ultimately did not reach the merits of the argument, as he found that the defendants waived the argument by failing to raise it prior to hearing.
 2. A key premise underlying the Commissioner’s conclusion was that the issue presented related to jurisdiction of the case (which is waivable), rather than subject matter jurisdiction (which is not). “Subject matter jurisdiction is ‘the authority of a court to hear and determine cases of the general class to which the proceedings in question belong, not merely the particular case then occupying the court’s attention.’” Ney v. Ney, 891 N.W.2d 446, 453 (Iowa 2017) (quoting Schaefer v. Putnam, 841 N.W.2d 68, 80 (Iowa 2013).
- C. Milbrandt v. R.R. Donnelly, File No. 20009756.01 (App. 2/17/23) – The Commissioner reaches the merits of the dispute.
 1. The deputy found that the claim against the employer was barred by a separate compromise settlement the claimant entered into with the Second Injury Fund. The Commissioner reversed, concluding that the Fund settlement was not a bar to Milbrandt’s claim against her employer. Milbrandt v. R.R. Donnelly, File No. 20009756.01 (Arb. 8/29/22).
 2. White, Stanley, and United Fire were all decided under a prior version of Iowa Code section 85.35.
 - a. In 2005, the Legislature amended that section as follows in response to the Supreme Court’s decision in United Fire:

Approval of a settlement by the workers' compensation commissioner ~~is shall be~~ binding on the parties . . . an approved compromise settlement shall constitute a final bar to any further rights arising under this chapter and chapters 85A, 85B, 86, and 87 regarding the subject matter of the compromise . . .

(additions underlined, deletions struck through).

- b. "A claim brought by a claimant against the Fund is distinct from a claim brought by a claimant against an employer and an insurance carrier . . . To hold otherwise would render the language of the amendment to the statute restricting the bar to matters 'regarding the subject matter of the compromise' superfluous and is contrary to the intent of the legislature."
 - c. The Commissioner also concluded that the issue presented related to jurisdiction of the case and not subject matter jurisdiction.
3. The Commissioner also overruled a previous decision to the contrary, Ahn v. Key City Transp., Inc., File No. 5042640 (App. 10/8/15), as that decision failed to address the 2005 amendments to Iowa Code section 85.35.

D. Future Developments

1. Tweeten has been retained by the Supreme Court and Milbrandt is pending judicial review.
2. Full commutations with the Fund do not create the same issues, as the release arising out of a full commutation does not rely on the language in Iowa Code section 85.35.

II. Anderson & Carmer: The New "All Other" Cases

- A. Anderson v. Bridgestone Americas, Inc., File No. 5067475 (App. 1/25/22) – The Commissioner found that distinct injuries to a shoulder and the same arm sustained in the same injury are compensable under subsection (2)(v).
- B. Carmer v. Nordstrom, Inc., File No. 1656062.01 (App. 12/29/21) – The Commissioner found that injuries to both shoulders sustained in the same injury are compensable under subsection (2)(v) because this combination of injuries is not otherwise addressed by section 85.34.

C. What is "hereinabove described"?

1. Iowa Code section 85.34(2)(v) – Applies to "all cases of permanent disability other than those hereinabove described or referred to in paragraphs 'a' through 'u' hereof". (emphasis added).

2. The primary issue presented in both cases is therefore which injuries are covered by subparagraphs (a) – (u) of section 85.34(2), as those that are not described are “all other” cases.
3. Section 85.34(2) must be read as a whole and, in that context, the statute clearly distinguishes between singular injuries and multiple injuries.
 - a. Subparagraph (2)(t)
 - “The loss of both arms, or both hands, or both feet, or both legs, or both eyes, or any two thereof, causing by a single accident, shall equal five hundred weeks and shall be compensated as such; however, if said employee is permanently and totally disabled the employee may be entitled to [permanent and total disability].”
 - There would be no reason for this subparagraph to exist if references to “a” or “an” injury in section 85.34(2) covered multiple injuries.
 - b. Section 85.34(2) contains other sections that distinguish between singular and multiple injuries:
 - Compare subparagraph (2)(q) (“[f]or the loss of an eye, weekly compensation during one hundred forty weeks” to subparagraph (2)(r) (“[f]or the loss of an eye, the other eye having been lost prior to the injury, weekly compensation during two hundred weeks.”).
 - Subparagraph (2)(s) assigns a greater number of weeks of compensation for “the loss of hearing in both ears” than it does for the loss of hearing in only one ear.
 - c. The foregoing (as well as the Second Injury Fund Act) evidence the Legislature’s belief that injuries to multiple scheduled members are more disabling than singular injuries.
4. The Agency has a long history of compensating injuries to three scheduled members under subparagraph (2)(v) under the same logic as the above. Sparks v. P&J Equip. Corp., File No. 5058524 (App. 5/18/20); Martinez v. Pavlich, File No. 5063900 (App. 7/30/20); Bruce v. Hydecker Wheatlake Co., File No. 5036473 (Arb. 1/10/13); Wallingford v. Atlantic Carriers, File No. 5008405 (Arb. 7/23/04); Schlottman v. Sharp Bros. Contracting Co., File No. 477094 (Rev. 1/4/80).