

Can an Employer Use a Compromise and Release Agreement to Avoid Medical Payments?

Not if there is already an existing medical payment obligation was the answer of the Commonwealth Court in *Armour Pharmacy v. WCAB* (National Fire Insurance Company of Hartford), No. 1613 C.D. 2017; Filed: August 7, 2018. The employer challenged expensive topical compounded creams by Utilization Review (UR) Request. However, the UR Determination found the medications reasonable and necessary and there was no appeal of that Determination. The provider pharmacy filled more of these prescriptions during the following year. There was no further UR Request filed. When the employer refused to pay for the medications, the provider filed a Fee Review and the Administrative Determination required the employer to pay for the medications. The employer essentially appealed that Determination by requesting a Fee Review hearing.

While that proceeding was pending the employer and the injured worker entered into a C&R Agreement, which provided that the employer would have no liability for the payment of past, present and future compounded prescription creams. The C&R agreement was approved by a Workers' Compensation Judge (WCJ). The provider Pharmacy was not a party to the C&R Agreement and did not participate in the settlement approval proceeding.

The Fee Review Hearing Officer considered the C&R Agreement and found that it extinguished the employer's liability, so the employer did not have to pay for the medications. The provider Pharmacy appealed to the Commonwealth Court and argued that the C&R proceeding could not be used to extinguish its right to be paid without notice, and an opportunity to appear and contest the issue as that would constitute an unconstitutional due process violation of its property rights.

The Commonwealth Court agreed. It reasoned that the C&R Agreement, to which the provider was not a party could not be used to deprive the provider of its rights under the medical review procedures. The Court also found that the injured worker had no authority to "release" the employer from its liability to the Pharmacy because the injured worker was not "the person with the claim." Likewise, the employer could not release itself from its liability to the Pharmacy established by the Medical Fee Review section. The Court remanded for further proceedings.

Interestingly, the *Armour* decision does not make any mention of a relevant prior Commonwealth Court decision which came to a completely different conclusion, albeit with somewhat different facts. In *Schatzberg v. WCAB* (Bemis Co.), 136 A.3d 1081 (Pa. Cmwlth. Ct. 2016) the Court agreed that a C&R settlement of a claim petition without an admission of liability for a claimed work related injury denied a provider of any recourse for payment of medical treatments for the claimed injury from the employer. The Court noted that there was no affirmative statement that employer would pay for prior medical treatments, and further that paragraph 5 of the C&R Agreement stated that "no medical bills were paid pursuant to employee's alleged work-related injuries and settlement". The Court explained further that employer denied that the employee suffered a work injury and never admitted liability. Since the claim petition was never decided, medical payment obligations were never established and no provider right to payment existed.

Comment: If an obligation to pay medical expenses has already been established, then the *Armour* decision would prevent a C&R Agreement from extinguishing the provider's right to payment. However, if a work injury has not been established, a C&R Agreement may be used to extinguish the potential obligation to pay medical expenses. However, this must be done carefully with a clear statement that the settlement is

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without an admission of liability and the employer is not paying for any alleged work related medical treatments.