

# **KWORCC Select Claims Report**

**Presented April 20, 2023**



## Claim Summary – Settlement Request

Employer:	Cherokee County	Date of Injury:	11/09/2020
Claim No.:	20832669	Job Description:	Fmr. Road and Bridge Foreman
Employee Age:	66	Updated:	4/8/2023
AWW:	670.76	TTD Rate:	447.19
Attorneys:	William Phalen	Employer:	Ron Laskowski
Adjuster:	Amanda Chamberland		

	Medical	Indemnity	Rehabilitation	Legal	Expense	Total
<b>Reserves:</b>	\$101,200.00	\$ 86,626.94	\$ 0.00	\$ 7,050.00	\$ 20,194.37	\$ 215,071.31
<b>Amount Paid:</b>	\$100,174.79	\$ 18,460.00	\$ 0.00	\$ 1,211.25	\$ 19,207.64	\$ 139,053.68
<b>Outstanding:</b>	\$ 1,025.21	\$ 68,166.94	\$ 0.00	\$ 5,838.75	\$ 986.73	\$ 76,017.63

### Accident Description / Nature of Injury:

- This employee stood on the back of a trailer to guide another employee who was parking a track hoe. Once the machine was in place and secure with the boom down, he began to exit the trailer. Meanwhile, the other employee felt it was not straight and without notice began to correct his parking position. This caused the machine to weigh to one side of the trailer and catapulted the claimant in the air. He landed on a gravel road and sustained multiple fractures.

### Investigation / Compensability:

- The claimant. was in the course and scope of his employment, there are no applicable pre-existing defenses, and the event was accepted as compensable.

### Medical Management:

- The claimant’s initial injuries included an open right olecranon fracture, left distal radius fracture, left distal ulna fracture, R lower leg pain, head contusion and rib fractures times three. He has had multiple surgeries to repair the upper extremity fractures. The claimant later alleged bilateral carpal tunnel and ulnar nerve entrapment. All medical providers have concluded that the claimant will likely need future medical care. This care may consist of injections, physical therapy, and possible repeat surgical intervention.

### Periods of Disability:

- The claimant was off work a period of 41.27 weeks totaling \$18,460.00 in TTD payments.

### Permanent Partial Impairment / Permanent Disability:

- The claimant received a rating from Dr. Murati, sought by his counsel, equal to 28% to the body as a whole = \$61,072.50
- Dr. Do provides a rating of 17% to the body as a whole = \$37,079.55
- Both providers indicate the need for some future medical care
- A split of these two ratings equates to a whole-body rating of 22.5 percent or \$49,075.87.

### Subrogation / Other Issues:

- The claimant is an active Medicare beneficiary, and their interests will be considered at time of settlement.
- The employee no longer works for the insured but continues to own and maintain his own pecan farm.

**Plan of Action:**

- Due to the severity of the injuries and the future medical recommended by all providers, we believe there is 100% probability that a judge will leave future medical benefits open. To resolve the case, we will need to either leave the medical care open or provide an additional cash incentive for consideration of closure via Medicare Set Aside. It is difficult to determine the amount of a potential CMS approved Medicare Set Aside, an estimate would be between \$30,000-\$75,000.
- Settlement authority is requested of the board to include two potential settlement options:
  - A) Up to \$65,000 lump sum PPD settlement plus a CMS approved Medicare Set Aside
  - B) Up to \$55,000 to close all issues full and final, except future medical



## Claim Summary – Settlement Request

Employer:	McPherson County	Date of Injury:	10/08/2020
Claim No.:	20829653	Job Description:	Maintenance Worker
Employee Age:	41	Updated:	4/10/2023
AWW:	1,062.10	TTD Rate:	687.00
Attorneys:	Bradley Avery	Employer:	Ron Laskowski
Adjuster:	Amanda Chamberland		

	Medical	Indemnity	Rehabilitation	Legal	Expense	Total
<b>Reserves:</b>	\$ 52,200.00	\$ 41,270.95	\$ 0.00	\$ 12,200.00	\$ 17,690.00	\$ 123,360.95
<b>Amount Paid:</b>	\$ 29,616.75	\$ 1,270.95	\$ 0.00	\$ 618.75	\$ 9,423.87	\$ 40,930.32
<b>Outstanding:</b>	\$ 22,583.25	\$ 40,000.00	\$ 0.00	\$ 11,581.25	\$ 8,266.13	\$ 82,430.63

**Accident Description / Nature of Injury:**

- While driving a broom truck for the employer, the employee was struck from behind by a vehicle traveling at a high rate of speed. He sustained initial injuries to the head, neck, left shoulder, right shin and back.

**Investigation / Compensability:**

- The claimant was in the course and scope of his employment and the mechanism is accepted as compensable.
- The claimant has multiple underlying and pre-existing conditions, which we have attempted to separate from acute injuries throughout the claim.

**Medical Management:**

- The employee treated with Dr. Estivo in Wichita as the authorized treating provider. After a period of light duty and physical therapy, the employee continued to complain of neurological symptomology. He was ultimately found to have a small brain bleed. Neurological care was received by Dr. Sand. The claimant began experiencing symptoms that were unknown in etiology and Dr. Sand referred the employee to a psychologist to rule out a possible pre-existing anxiety condition. The claimant did see Dr. Kerzner who found that the claimant was experiencing startle reflex and anxiety, although she opined it was a result of his open disability claim with the U.S. Military and merely aggravated by our work injury. Based on this information an IME was performed by Dr. Pat Do who found the claimant at MMI and in need of no future medical recommendations specific to the worker's compensation claim. The claimant accepted a settlement offer; however, he changed his mind during the settlement hearing and retained counsel. Claimant's counsel directed the claimant to Dr. Murati, who found the claimant in need of treatment for multiple additional body parts and conditions.

**Periods of Disability:**

- The claimant missed less than two weeks of work post injury. He continues to work with our insured.

**Permanent Partial Impairment / Permanent Disability:**

- The employee received an impairment rating from Dr. Do in the amount of 7% to the BAW= \$19,957.35
- Dr. Murati rated the claimant at 38% to the BAW = \$108,339.90.
- A split of the impairments would be 22.5 %, with a value of \$64,148.62.

**Subrogation / Other Issues:**

- Subrogation is applicable in this case. The third-party suit has settled for \$50,000. Counsel has asserted our lien. Subrogation recovery is subject to a 45% contingency fee, which puts maximum subro. recovery at \$27,000. Taking into consideration loss of consortium, loss of services and litigation expense in District Court, counsel projects a best case subro. recovery of 16,666.00. This represents one third of the third-party settlement.

**Plan of Action:**

- The claimant is scheduled for a court appointed IME with Dr. Lowry Jones and it is believed that he will provide a rating perhaps even lower than the split of the ratings between Dr. Do and Dr. Murati. However, he may recommend some additional future medical care, which is a risk. We do believe that the ALJ would provide future medical care at minimum for post-concussion syndrome due to his prior brain bleed. Although we have a significant pre-existing medical defense, the claimant's prior medical records are held by the military which are customarily difficult to obtain.
- Counsel believes that the ultimate settlement value of the case is \$50,000, which includes an estimated discounted PPD split at 15% plus future medical and review and modification. He provides two options to achieve settlement for the board to consider:
  - A) The preferred option is a global full and final settlement of the work comp case and subrogation claim based upon a lump sum payment of \$33,344 with a waiver of the subrogation lien. This option gives KWORCC a \$16,666 subrogation credit against the settlement value of the work comp case. (\$50,000 minus \$16,666 equals \$33,344)
  - B) Full and final settlement of the claim in the amount of \$50,000 with continued pursuit of lien recovery.



## Claim Summary – Reserve Advisory

Employer:	Rush County	Date of Injury:	03/20/2023
Claim No.:	231084450	Job Description:	Equipment Operator
Employee Age:	56	Updated:	4/8/2023
AWW:	607.48	TTD Rate:	405.00
Attorneys:	N/A	Employer:	N/A

Adjuster: Amanda Chamberland

	Medical	Indemnity	Rehabilitation	Legal	Expense	Total
<b>Reserves:</b>	\$ 46,500.00	\$ 25,000.00	\$ 0.00	\$ 600.00	\$ 10,000.00	\$ 82,100.00
<b>Amount Paid:</b>	\$ 0.00	\$ 405.00	\$ 0.00	\$ 0.00	\$ 0.00	\$ 405.00
<b>Outstanding:</b>	\$ 46,500.00	\$ 24,595.00	\$ 0.00	\$ 600.00	\$ 10,000.00	\$ 81,695.00

**Accident Description / Nature of Injury:**

- While replacing and airing up a tire, the locking ring was not placed resulting in the separation of the steel from the tire. The employee was struck by the steel portion and suffered a resultant humeral shaft fracture to the right side.

**Investigation / Compensability:**

- The claimant was in the course and scope of his employment and the event is accepted as compensable.

**Medical Management:**

- The employee treated locally, where a splint was placed, and he was told to recheck in ten days. Intervention was made, and a referral generated to Advanced Orthopedics in Wichita for a trauma fracture consultation. Dr. Corrigan found the claimant’s fracture to be markedly unstable and recommended swift surgical intervention. This was authorized resulting in fixation of the bone with 9 screws and 2 plates.

**Periods of Disability:**

- The employee is expected to be off work until his recheck in April, at which time he will likely return to work in a light duty position.

**Permanent Partial Impairment / Permanent Disability:**

- The employee is expected to receive an impairment of 12-15%, plus require additional funds to resolve future medical needs, the file is reserved for the same.

**Subrogation / Other Issues:**

- N/A

**Plan of Action:**

- I will work with the employee and employer to accommodate restrictions as they are reduced.
- I will review medical notes and physical therapy plans to ensure the claimant is progressing as expected.
- Reserves will be reviewed and altered after initial surgical costs are received.
- Once the claimant is at MMI, we will attempt to settle the file full and final or limit medical to specific medical procedures, such as hardware removal.