

Does the Language in a C&R Agreement Really Matter?

In short – absolutely. Oftentimes, many defense attorneys who prepare Compromise and Release Agreements do not put much thought into the language contained therein. Oftentimes, it is concise and rather meaningless phrases that are usually boilerplate.

However, this should not be the case. The times of these “standard” C&Rs have changed. The language included in the Agreement is very important.

On Friday, October 10, 2008, the Commonwealth Court issued an Opinion regarding the effect of a claimant’s death on C&R Agreements. See Crawford v. WCAB(Centerville Clinics, Inc.) No. 2331 C.D. 2007.

The issue before the Court was whether claimant’s death rendered the C&R null and void where the requirements of Section 449 of the Act were satisfied prior to claimant’s death but where the WCJ did not issue a Decision approving the C&R until after claimant’s death.

By way of brief background, the claimant sustained a low back injury in August, 2001. A C&R hearing was held on August 24, 2005. The testimony at the hearing revealed that the claimant had a full knowledge and understanding of all provisions of the C&R and had fully reviewed same with her attorney who satisfactorily answered all questions. On August 28, 2005, the claimant died of cervical cancer. The very next day, on August 29, 2005, the WCJ issued a Decision and Order approving the C&R Agreement.

Employer filed an appeal, which was subsequently remanded to the WCJ to consider the evidence of claimant’s death and its implications on the C&R.

On remand, Employer argued that the C&R was null and void pursuant to paragraph 18(f) in the C&R Agreement which stated that the claimant certifies that she is suffering from no known life-threatening or terminal illness(es) unrelated to her work injury and agrees that this C&R is null and void upon her death if not approved by a WCJ.

The WCJ found that the C&R was null and void because the C&R was not officially approved until the WCJ issued the Decision and Order, after the claimant’s death. The WCJ pointed out that, if the C&R had not contained such specific language concerning the effect of claimant’s death, then he may not have reached the same conclusion.

The claimant appealed and the Board affirmed. The Commonwealth Court also affirmed the WCJ’s Decision. The Court noted that the C&R specifically contained an addendum stating that the claimant agreed that the C&R would be null and void upon her death if not approved by a WCJ.

Based on the Crawford case, it is imperative that C&R Agreements are drafted thoughtfully and creatively. Therefore, I would urge all employers and carriers to request that specific language be included in their C&R Agreements.