

## **Colorado Division of Workers' Compensation FAQs re: Uniform Settlement Agreements (“USAs”)**

### Question #1:

*Am I permitted to modify the USA to include additional employment-related matters that my client wants resolved at the time a worker's claim for compensation is settled? My client doesn't want to be involved in employment discrimination litigation, bad faith claims, etc. and wants these issues settled at the time the WC claim is settled.*

### **Answer #1:**

**No. With the exception of Paragraph 2 and 9A and B of the USAs, “the parties shall not alter the prescribed form”. This provision of Rule 7-2(A) means that documents containing alterations to the underlying form USA will not be approved. Parties should note that the USA forms contain “blanks” or “fields” in Paragraphs 1 and 5 that DO require completion. Paragraph 1 requires a date or dates of injury as well as the insertion of the body part or parts that is/are the subject of the claim and Paragraph 5 requires the marking of the appropriate choice regarding subrogation. If parties wish to resolve other, non-workers' compensation matters, they should do so separately and not as part of the USA.**

### Question #2:

*What may I include in Paragraph 9B of the USA?*

### **Answer #2:**

**Paragraph 9B is reserved for “listing” documents that are permitted to be attached to a USA. By Rule, the documents that are permitted to be attached to the USA are not reviewed for approval by the Division of Workers' Compensation (“DOWC”) nor is DOWC's approval of the USA an approval of documents attached to it. Also, under Rule 7-2(A)(2), where the settlement involves a Pro Se claimant and is to include a Workers' Compensation Medicare Set-Aside Arrangement (“WCMSA”), that WCMSA should be listed in Paragraph 9B and attached to the USA. Nothing other than a WCMSA may be attached to a USA involving an unrepresented (“Pro Se”) claimant.**

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### Question #3:

*May I include language in Paragraph 9A (or elsewhere in the USA) that provides that settlement of the WC claim is contingent upon the claimant's execution of a bad faith waiver, voluntary resignation, discrimination claim against the employer and/or other employment related right or benefit?*

### **Answer #3:**

**No. The WC Settlement cannot be made contingent on other agreements although other agreements can be made contingent on approval of the WC Settlement.**

### Question #4:

*May I include in Paragraph 9A (or elsewhere in the USA) language that provides that attachments to the USA or other agreements among the parties are “incorporated in” or “incorporated by reference into” the WC settlement (the USA)?*

### **Answer #4:**

**No. The WC agreement (the USA) cannot contain language stating that other agreements or attachments are “incorporated” or “incorporated by reference” (or similar language) into the WC agreement.**

### Question #5:

*In Paragraph 2 of the USA there is a blank space preceded by a “dollar” sign (\$). I presume that is where the money that's being paid to settle the WC claim is inserted. However, I'm settling a claim by paying some money in a lump sum and other money in a series of payments spread out over time. May I set out the lump sum amount and the series of individual payments in Paragraph 2?*

### **Answer #5:**

**Yes. The money that is to be paid in settlement including, when applicable, recitation of annuity or installment payments to be made to the claimant as consideration, should be placed in Paragraph 2 of the USAs.**

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### Question #6:

*What if I want to make it clear for tax purposes that this money that is being paid in settlement is intended by the parties as “damages” for personal injuries?*

### **Answer #6:**

**The DOWC will permit the parties to include the following sentence in Paragraph 2 if they so desire:**

*“All payments provided herein constitute damages on account of personal injuries and/or physical sickness within the meaning of Section 104(a)(1) of the Internal Revenue Code of 1986, as amended.”*

### Question #7:

*My client intends to settle a WC claim by paying a lump sum as well as purchasing an annuity that will make periodic payments but the annuity company requires that certain details pertaining to the annuity purchase and its administration be contained within the WC settlement. How can I do this if I'm not allowed to alter the USA?*

### **Answer #7:**

**In Pro Se Settlements, where specific details regarding structured payments are desired, those details, e.g., the payee's right to payment, non-assignment, discharge of payment obligation, qualified assignment, etc., may be placed in Paragraph 9A or, where all parties are represented, the parties may elect to place those details in Paragraph 9A or in attachments to the WC settlement and then list those attachments in paragraph 9B.**

### Question #8:

*To settle this particular pro se WC claim, my client wants to establish a Medical Trust or a Medical Custodial Account to allocate and protect money exclusively to be used by the injured worker for future medical care but the injured worker is not Medicare-eligible and will never become eligible. Can the parties include this type of set-aside in the USA?*

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**Answer #8:**

**Yes. In Pro Se Settlements, language regarding Medical Custodial Accounts or Medical Trusts that are part of the WC settlement, including the annuity funding of such accounts, should be placed in Paragraph 9A.**

*Question #9:*

*There are times when parties want to settle all issues in a WC claim except for medical benefits. In other words, the parties desire to keep the medical benefits “open” but “fully and finally” close all other benefits. However, Paragraph 3(h) of the USA indicates that future medical benefits are closed upon approval of the USA and parties are not permitted to alter the USA except as expressly indicated in Rule 7-2 and this is not one of the exceptions. Can the parties fully and finally settle all benefits except future medical benefits using a USA and if so, how can this be done? Should Paragraph 3(h) be deleted when medical benefits are being left open?*

**Answer #9:**

**Parties seeking a final settlement of all issues except medical benefits, i.e., “meds left open”, should use the appropriate USA and include a provision keeping future medical benefits “open” in paragraph 9A. Paragraph 3(h) should NOT be deleted because (a) except as noted, the parties are not to alter the form and (b) the language of Paragraph 3 provides that all workers’ compensation benefits that are listed in Paragraphs 3(a) through (h) are being waived “...unless specifically provided otherwise in Paragraph 9A...”**

*Question #10:*

*In a settlement I’m working on, the parties have agreed that a specific unpaid bill will be paid by the respondent and many times there are particular WC details that have been the subject of prior discussions between the parties that either or both parties want to have memorialized in the settlement agreement as evidence of their respective understandings about these matters. Can this be done using the form USA?*

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### **Answer #10:**

**Yes. Paragraph 9A is where such similar matters that are specific to this particular settlement (and covered by the WC Act) may be addressed. These will usually be matters relating to the benefits listed in Paragraph 3(a) through (h), e.g., “Parties agree that TTD will end on May 3, 2009” or “Claimant reached MMI on April 3, 2009 and has a 14% whole person rating.” or “Parties agree that the St. John’s Hospital bill in the amount of \$1,200 for services on May 2, 2008 is the responsibility of the respondent” or “Parties agree that claimant has been previously paid for disfigurement” or other similar ‘particularized circumstance’.**

### ***Question #11:***

*My client wants to be sure that all the WC claims incurred by an injured worker while the worker was employed by my client will be included in the settlement that I’m working on. Must I include all the WC numbers in the caption of the USA in order to settle all of them or can I put one WC number in the caption of the USA and just list the injury dates and body parts for all of them in Paragraph 1?*

### **Answer #11:**

**Where DOWC records show that a claimant has had other injuries to which a WC number has been assigned, if those numbers do not appear in the caption of the USA, the DOWC will take the position that those other claims are not being settled regardless of language in the document that purports to settle “any and all” claims and regardless of whether all injury dates and body parts are listed in Paragraph 1. If the parties are aware of injuries that have not resulted in claims filed with the Division (i.e., no division-assigned WC number), but wish to include those injuries in the settlement, then list the dates of injury in the USA. Similarly, any clause that attempts to release liability for “unknown” injuries while employed is not permitted. Language that releases the unanticipated consequences of a known injury or disease is already included in Paragraph 6 of the USA. It is also permissible to include a provision in Paragraph 9A that provides that claimant acknowledges disclosure to respondents of “any and all known job related accidents, injuries or occupational diseases...”.**

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### Question #12:

*If parties want to enter into a “global settlement”, i.e., resolve non-workers’ compensation matters e.g., bad faith, voluntary resignation, waiver of other employment rights and/or benefits and a WC claim or claims, what procedure should be followed with respect to presenting a WC settlement agreement to the DOWC for approval?*

### **Answer #12:**

**Parties to a pro se settlement wishing to ‘globally’ settle a WC claim as well as non-WC matters (resignation, employment waivers, bad faith waiver, confidentiality agreement, etc.) will need to use a vehicle other than just the USA to achieve that goal e.g., separately by agreement(s) that are not referenced in, attached to or submitted to the DOWC with the USA since, by Rule, no document(s) other than a WCMSA may be attached to a Pro Se USA and because non-WC matters cannot be included in Paragraph 9A. However, the parties may condition their acceptance of those separate agreements involving non-WC matters upon the Division’s approval of the USA.**

**Parties to Represented USAs have the option to either handle non-WC issues by attachments to a USA (and then list the attachments in 9B) or by separate agreement(s) that are not referenced in, attached to or submitted to the DOWC with the USA. Remember that DOWC does not review documents that are permitted to be attached to the USA for approval nor is DOWC’s approval of the USA an approval of the documents attached to it.**

### Question #13:

*I represent the sole and wholly dependent spouse of a worker killed in an on-the-job accident and am helping her settle her claim for death benefits. Must the parties use a USA to settle this claim?*

### **Answer #13:**

**No. The USA is not meant to be used for claims for death benefits.**

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### Question #14:

*Must I use a USA when “settling” disputed issues?*

### **Answer #14:**

**No.** When only discreet issues in a case are being resolved (e.g., average weekly wage, temporary disability periods, acceptance of a physical impairment rating by the parties, etc.) the USA form **should not** be used. However, final settlements that masquerade as “stipulations” so that unacceptable provisions can be included in them will not be approved and will likely be considered a violation of rule 7-2.

### Question #15:

*May I include a provision in the USA that provides that if the claimant’s future medical expenses related to injuries referred to in the claim exceed the amount of the settlement, that fact will not constitute fraud or a mutual mistake of a material fact that would allow the claimant to reopen the settlement?*

### **Answer #15:**

**No.** As a matter of policy, any clause that attempts to define what will or will not be considered fraud or a mutual mistake of material fact will not be permitted.

### Question #16:

*In the USA that the insurance carrier wants my client to sign there is a clause that provides that if a healthcare provider or CMS seeks to obtain payments from the carrier after the settlement, my client has to indemnify the carrier for any payments it’s obligated to make. Is this provision acceptable in a USA?*

### **Answer #16:**

**No.** Clauses that provide that the claimant must repay settlement proceeds if the claim is reopened or that provide for a credit against money ordered to be paid upon a reopening of a settlement are acceptable but language that requires the claimant to indemnify a carrier when reimbursement from the carrier is sought by another entity are not acceptable.

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### Question #17:

*Rule 7-2(C) says that when parties are requesting approval of a stipulation resolving one or more issues in dispute, a motion for approval of a joint stipulation should be used and not the Division's prescribed form settlement agreement. My client agreed to settle all issues in a claim but also agreed to leave medical benefits “open”. I prepared a Stipulation for Partial Settlement relying on Rule 7-2(C) but the DOWC would not approve our “Stipulation”. Why not?*

### **Answer #17:**

**Parties seeking a final settlement of all issues except medical benefits, i.e., “meds left open”, should use the appropriate USA and include a provision keeping future medical benefits “open” in paragraph 9A.” Though it is true that not all issues are being settled because medical benefits remain available, because all other issues are being closed i.e., “settled”, including, most-significantly, the “right-to-reopen”, the Division requires that the parties use the form settlement agreement.**