




**City of Venice**  
*Administrative Services Department*

**Interoffice Memorandum**

**DATE:** April 11, 2017

**FROM:** Alan Bullock, Director of Administrative Services 

**THROUGH:** Ed Lavallee, City Manager

**TO:** City Council

**SUBJECT:** Robert Bosnyak - Proposed Workers' Compensation Claims Settlement

Robert Bosnyak has been employed by the City of Venice since January 2, 2004 and is currently a Utility Mechanic. He has a history of several work-related injuries sustained since 2005, including two rather significant Workers' Compensation claims resulting from work-related injuries on September 24, 2014 and August 15, 2015, respectively. The injuries have resulted in ongoing medical treatment, sporadic attendance at work and inconsistent ability to perform the essential functions of his position.

Mr. Bosnyak and the city are represented by legal counsel in this matter. Following successful completion of negotiations, we are requesting Council approval of a settlement (Council approval is necessary since the city is self-insured for Workers' Compensation). It is our assessment that it is more cost-effective for the city to settle the claim now rather than keep them open ad infinitum.

The proposed settlement amount is as follows:

\*\$ 30,000 to the claimant in exchange for a release of WC claims, resignation from city  
\*\$ 5,000 to the claimant's attorney for fees & costs  
\$ 100 to the claimant in exchange for a general release of all claims  
\$ 35,100 total

\*estimated - \$35,000 total is known; split between claimant and attorney is not known

The City Attorney's standard request in proposed settlements of this nature is for a written evaluation and recommendation from both the assigned defense counsel and the assigned adjuster. Both are attached for your review. We hereby request City Council approval. More information is available upon request.

**Legal Review**

Completed April 6, 2017

**Risk Management Review**

Completed April 11, 2017

**Funds Availability**

Account number 502-0421-595.23-03 – Workers' Compensation Claims

TO: Mr. Alan Bullock – City Director of Administrative Services

FROM: Mark E. Hungate, Esq., Workers' Compensation Defense Counsel

DATE: April 6, 2017

RE: Robert Bosnyak Workers' Compensation Claim Settlement Recommendation  
Date of Accidents: 9/24/14, 8/16/15 and any and all dates of accident

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Alan: Please consider this as the City's workers' compensation defense counsel's recommendation of the parties' 4/3/2017 proposed settlement of any/all work-related claims for \$35,000.00 inclusive of fees/costs and any child support arrearages (there are none). In addition, the City will pay \$100.00 for a Separation Agreement/General Release which releases any causes of action other than workers' compensation. Settlement is contingent upon City Council approval.

At present, the treating doctors have placed Mr. Bosnyak (hereafter referred to as "Claimant") at overall maximum medical improvement with a small permanent impairment, however, the authorized orthopedic gave Claimant conflicting light duty work restrictions. He first gave LD lifting limitations for one accident then 'no repetitive motion' for both accidents 'until seen by pain management.' The pain management doctor released Claimant to full duty for both accident as of 3/20/17. He also left the space to assess a permanent impairment for the one accident blank. These are ambiguities that can create WC litigation and difficulties returning Claimant to work when his personal medical leave expires.

Claimant has hired a workers' compensation attorney for his work-related dates of accident of 9/24/14 and 8/16/15. She has threatened to file Petitions (work comp claims) alleging entitlement to an alternative pain management doctor and that one or the combination of both accidents exacerbated/aggravated a pre-existing personal condition that has caused disability, his current absence from work since 3/28/17 and requires treatment. Alternatively, opposing counsel could pay for an independent medical exam that could give an opinion Claimant is not at overall maximum medical improvement, needs more surgery or pain management treatment. If any doctor gives opinions different from the authorized doctors, the City would be required to pay for a tie-breaking 'expert medical advisor' (EMA) which is binding on the Judge of Compensation Claims absent unusual circumstances. The parties have no input on the EMA appointed by JCC Beck meaning that with an EMA, we lose a control over the case outcome. An EMA can cost up to \$2,400.00 plus litigation costs/expenses.

Regarding future medical treatment at present, the case has exposure to periodic orthopedic and pain management treatment, including costly medications, some of which may have an adverse impact on his work capabilities, unless Claimant allows 1 year to pass without treatment triggering the statute of limitations which is unlikely in view of his representation by counsel. The 3 prescriptions currently prescribed cost an estimated \$300/month - \$3,600/year. Claimant is only 35 years old and has an approximate 45-year normal life expectancy, thus  $\$3,600.00/\text{year} \times 45 \text{ years} = \$162,000.00$ . Of course, no one takes the same meds over an entire lifetime so estimating this is an inexact science.

A worst case scenario involves Claimant's attorney successfully linking litigating Claimant's pre-existing personal condition to his work-related accidents which would exponentially increase future medical and compensation benefits. Recent case law increased liability for temporary indemnity benefits (hereafter "lost wages") from 104 weeks to 520 weeks, although mental lost wages are limited to 26 weeks after physical maximum medical improvement. At Claimant's lost wages rate of \$533.31/week for the 2015 date of accident, 26 weeks = \$13,866.06. Claimant's attitude, attendance and work capabilities have progressively deteriorated since his 2012 work accident as have the difficulties/annoyances

confronted by Human Resources and his department to properly staff the work load. Absent settlement, these issues can only be expected to worsen as Claimant ages. We can reasonably expect more work-related accidents/injuries. If the 'worst case scenario' comes to pass, it is not unreasonable to anticipate Claimant could eventually present a claim asserting his cumulative WC injuries have caused him to be permanently and totally disabled from gainful work. If he's successful, the City would be exposed to payment of his lost wages rate, \$533.31/week, until age 75 plus a supplemental cost of living adjustment until age 62. Claimant may not be eligible for Social Security Disability benefits because he's worked at the City since 2004 if no contributions have been made into Social Security over 5 of the last 10 years because the City has its own retirement plan. If he applies for a disability pension, the City has that additional exposure. Legal defense of permanent total disability claims typically costs \$15 - \$20,000.00 litigation costs and defense expense plus surveillance and other vendor expense. Under the worst case scenario, total potential future exposure over Claimant's normal life expectancy is in excess of \$1M.

Please also keep in mind the effect of the Castellanos case which returned hourly attorney's fees to WC cases for the workers' attorneys. In the event Claimant's attorney files a Petition (a work comp claim) and prevails yet only recovers a minor dollar benefit, she could easily incur 50 hours in doing so and get awarded a fee of at least \$250/hour = \$12,500.00 plus taxable costs.

An additional practical/legal factor is that Claimant's current City pay rate is approximately \$41,600.00/year plus benefits. An additional benefit of settlement is that Claimant is separating from his employment, thus eliminating repetitive staffing and Human Resources issues.

In conclusion, this settlement is a '3 for 1 deal' in that it resolves workers' compensation, Equal Employment Opportunity Council/employment law causes of action personnel/Human Resources issues. Settlement at this time for this amount is essentially a cost effective risk management tool being utilized to eliminate multiple potential exposures. I would be happy to provide any additional information or comments that Council requires. I look forward to hearing the results of City Council action at its 4/25/17 meeting. Thanks.

Mark E. Hungate, Esq.  
Board Certified Workers' Compensation Attorney  
Banker Lopez Gassler P.A.

cc: Ms. J Colon, CRM – via e-mail  
Ms. D Harrington, CRM – via e-mail



# Commercial Risk Management, Inc.

Solving Your Workers' Compensation Puzzle

To: Alan Bullock

Date: 4/11/17

Re: Robert Bosnyak 9/24/14 and 8/16/15

Alan: Please consider this settlement recommendation and request for authority of \$35,000.00 plus \$100.00 for the General Release to conclude all dates of accidents.

Mr. Bosnyak has had several work injuries during his employment. The injuries of 9/24/14 and 8/16/15 have been complicated claims due to different specialties on each claim. The greatest concern is the conflicting work restrictions and what appears to be lack of interest by Mr. Bosnyak to return to work in a full duty capacity. He is post surgeries and it would not be difficult for Opposing Council to litigate for permanent restrictions. Also, as the employee ages there is always exposure for PTD benefits.

Mr. Bosnyak is 35 years of age with exposure for 45 additional years of treatment and possible addition surgery. The medical costs for conservative treatment at 45 years are approximately \$160,000.00. The recent case law change makes the employee eligible for the remaining 520 weeks of Indemnity benefits or \$263,455.00.

Litigation exposure includes IME physicians, Expert Medical Advisor appointed by the Judge of Compensation Claims and of course the exposure for attorney's fee and costs.

We are requesting \$35,100.00 for settlement of all claims. This is a very reasonable settlement given the above exposure and the propensity for new work related injuries.

Thanks,  
Jennifer Colon, Adjuster

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