



State: Calif.

Worker Recovers \$10 Million Settlement for Brain Injury From Car Accident: Top [2017-03-23]

An administrative law judge on Monday signed off on \$10 million settlement for a worker's comp claim in what may be a record recovery for the state.

Los Angeles attorney Chris Asvar of Asvar Law on Tuesday said the settlement he attained for Boram Teresa Choi certainly beats his personal best, which was an \$8.9 million payment from the State Compensation Insurance Fund.

Asvar said he believes that 2012 deal had been the largest settlement ever paid out on a comp case in California, and that it had never been topped until now.

While there is no official ranking of comp settlements within the state, several California attorneys said they wouldn't be shocked if the \$10 million settlement is indeed the largest ever obtained.

Defense practitioner Jake Jacobsmeyer of Shaw, Jacobsmeyer, Crain & Claffey on Wednesday said he's never seen a settlement get anywhere near the \$10 million mark.

While the largest settlement he's ever seen was around \$2.5 million, Jacobsmeyer said he could see how \$10 million could be "a feasible amount" in a case involving a young worker who had been a high wage-earner and is now in need of extensive medical care. All of those factors "drive up the cost" of a claim, Jacobsmeyer said.

Given the cost of treatment for seriously injured workers, he said, settlements "in the seven figures are not routine, but they're not uncommon any longer."

None of the 24 defense attorneys with Lenahan, Lee, Slater & Pearse had ever heard of a \$10 million settlement before, either, firm partner Gerald Lenahan said Wednesday. He said that sum was "by far" the largest he had ever seen paid out on a comp claim in almost 36 years of practice.

However, Lenahan cautioned, insurance carriers "don't give that kind of money away."

If a carrier were willing to pay out \$10 million on a claim, Lenahan said the carrier "must have been facing potential future exposure of one and a half to two times that amount."

Lenahan opined that most attorneys have seen multi-million dollar settlements, especially on claims by young workers with catastrophic injuries, because the costs of the workers' claims are driven up by the projected cost of lifetime medical treatment. That can include round-the-clock attendant care, home modifications, vehicle modifications or purchases, and expensive medications.

Applicants' attorney Julius Young of Boxer & Gerson said he was unaware of any settlements above \$10 million, and for "such a huge amount to be paid, there must have been very, very extensive past and future medical expenses involved" in the claim.



Asvar said his client was "an exceptional young woman" who suffered severe injuries in a car accident on the Interstate 10 freeway.

Choi had worked as an assessor for Ernst & Young before her car veered down a steep embankment and crashed into a tree on June 5, 2013.

After her accident, Choi hired Asvar and his firm to pursue a claim for workers' compensation benefits. She also hired Jin Lew of the Homampour Law Firm to pursue a tort claim against the California Department of Transportation, asserting a dangerous condition in the roadway had caused the accident.

Ernst & Young's comp carrier — the Insurance Co. of the State of Pennsylvania, an American International Group subsidiary — acknowledged that Choi was permanently and totally disabled from her injuries. The carrier commenced the payment of benefits and intervened in Choi's tort action, asserting its right to subrogation.

Lew eventually negotiated a tentative settlement of the tort action for \$8 million. Under the terms of the settlement, AIG would recover \$1.5 million on its subrogation lien, and Choi would receive approximately \$3.2 million.

Asvar said Choi almost rejected the settlement because AIG wanted to use the \$3.2 million recovery to offset its liability for Choi's future medical expenses.

He took the position that the \$3.2 million would represent damages for Choi's pain and suffering, and that AIG was responsible for all of Choi's medical costs.

After AIG agreed to leave the \$3.2 million civil recovery for Choi and pay her an additional \$10 million for her future medical care, Choi accepted the Caltrans settlement offer.

Asvar said the settlement was finalized last week and that Administrative Law Judge Roger Tolman approved the agreement late Monday.

Looking back, Asvar noted that, usually, in high-value comp cases, "there is nothing left but scorched earth" when the case comes to a close. While Choi's case "was hard-fought," he said there was "a great deal of respect and decency shown by each of the parties."

Asvar also said he appreciated AIG's "willingness to understand and recognize the nature and extent of the injuries involved in this claim, and approve a settlement that allows the injured individual sufficient means for ongoing medical care and a dignified future."

Asvar said he hoped Choi's case will serve as "a reminder" to his fellow applicants' attorneys that "results like this are possible," notwithstanding "how tough, and as rigged as the system has become." He suggested that applicants' attorneys "be prepared to reject the first offer, no matter how high, if the math doesn't add up."

In Choi's case, her employer and the comp carrier were represented by Joe Kieffer of Kegel Tobin & Truce, and Mark Susson of Smith & Susson. Kieffer said Wednesday that Choi's case "was tragic" and "not the kind of case you aggressively litigate" as a defense attorney.

He said he understood Choi's life had been "immeasurably altered" by the accident, and the "driver of the dollar value" was Choi's need for care.

While "there was some disagreement about the exact value (of Choi's claim)," Kieffer said there was no dispute Choi needed 24-hour assistance. "It was just about finding the right number," he said, and it was "really a team effort to find a figure that adequately addressed (Choi's) needs," and was "fair and equitable" for the employer and carrier.

Alan Gurvey, an applicants' attorney with Rowen, Gurvey and Win, said he thinks everyone involved in the comp system "recognizes the seriousness of brain injuries, spinal cord injuries and severe strokes." Over the course of the past 10 years, he said, settlements have been rising for serious injury claims because of the ever-increasing costs of medical and home care.

Steven Chapman, managing partner of the California office of National Settlement Consultants, said Wednesday that he believed the \$10 million settlement in Choi's case was a record for the state.

He assisted with the structuring of that settlement, as well as Asvar's prior \$8.9 million SCIF settlement, and he said he thought the \$8.9 million settlement had been the prior record high.

The most recent data available for claims involving workers who were permanently and totally disabled in motor vehicle accidents is from 2011. That year, the CFO reports, there were 20 cases settled for a total of \$10,290,739. The average settlement value of a claim was \$514,536.