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Hollifield v. Braun

Argonaut Insurance Company

Facsimile

Argonaut Insurance Company
250 Middlefield Road
Menlo Park, CA 94025
650.326.0800
Home Office Executive Fax: 650.858.6680

DATE: April 14, 2000Number of pages following: 3TO: Richard SaxLOCATION: Carlsbad, CAFAX NO: (760) 931-9800FROM: Michael Nolan
HOME OFFICE EXECUTIVE

MESSAGE:

See attached

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APR-19-2000 15:10

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J. MICHAEL NOLAN
Senior Vice President,
General Counsel & Secretary

Argonaut Insurance Company

April 19, 2000

Richard Lee Sax, Esq.
2192 Palomar Airport Road
Carlsbad, CA 92008

Via Facsimile

Re: Hollifield Litigation

Dear Mr. Sax:

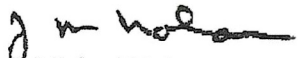
Pursuant to our prior communications, I write to enclose a memorandum describing Argonaut Insurance Company's understanding of the status of the Rick Hollifield workers' compensation claim No. 62X103499. Dianna Cumpian, a Principal Account Specialist, in the Claims Department of our Brea office wrote this memorandum since she is the claims adjuster who handled the WC case. You are welcome to contact Mr. Hollifield's WC attorney, Dean Goetz, for his view of the current status of the case. If fact, I encourage you to contact Mr. Goetz since we do not represent Mr. Hollifield.

I also write to request that you voluntarily dismiss your recent Complaint against Argonaut Insurance Company and our insured, Kvass Construction Company. As we discussed, Mr. Hollifield's WC claim is still open at the WC Appeals Board. There is no compromise and release for this claim. However, there is an approved credit petition for \$128,910. We strongly believe that claims for additional WC benefits, if any, for this open matter should be handled through the WC process and not through civil litigation. If necessary, we are prepared to file a Demurrer to the Complaint. The Demurrer, in part, would be based on the exclusive remedy of the WC laws.

Please review this material and call me on this matter. Since I will be out of town all next week, please call Robert Kanonick (773) 380-2340 in our Chicago Office in my absence. He will be the attorney overseeing our interests in this case in the event it is not dismissed. Also, please extend the time for our filing of a response to the Complaint so that both parties may explore the possible dismissal. I will let you and Bob work out the details of that extension of time to answer.

Thank you for your consideration of this matter.

Very truly yours,


J. Michael Nolan
General Counsel



Argonaut Insurance Company

SOUTHERN CALIFORNIA DIVISION

April 18, 2000

To : Michael Nolan, SVP, General Counsel

From : Dianna Cumpian, Principal Account Specialist, Brea Office

RE : Claim No. : 62X103499
 Employee : Rick Hollifield
 Employer : Kvas Construction/MWWD
 Injury Date : 08/28/1996

Claim History

This claim involves a 31-year-old laborer who fell 12 feet from a ladder while working. The claimant sustained severe fractures to his left wrist. The claimant is left hand dominant. He also sustained a hairline fracture to his left 5th rib that did not require medical treatment. The claimant has retained an attorney who claimed injury to the left upper extremity and the left 8th rib. He also alleged a back injury and a left lower extremity injury. We denied liability for the back and left lower extremity as we have no medical evidence of injury to the back and left leg. Throughout the entire period of medical treatment (over 2 years), the claimant did not make any complaints of back or left leg pain to his treating doctor per the medical reporting. The claimant has filed a 3rd party liability case against Olsen Steel, the other contractor on the jobsite at the time of the injury. Since this is an OCIP, Argonaut Insurance Company was also the liability carrier for this project.

Temporary Disability

The claimant received temporary total disability payments from 08/29/96 to 10/02/98 at \$490 per week for a total of \$53,550.00.

Medical Treatment

At the initial time of his injury the claimant underwent emergency left wrist surgery with Dr. Kupfer. The claimant was referred to Dr. Richard Braun, a well known hand surgeon, as his primary treating doctor. Due to the serious nature of this injury, I assigned a nurse case manager, Doris Harrah with Corvel, to monitor the medical treatment on this claim. While under the care of Dr. Braun, the claimant underwent 8 additional surgeries to his left wrist. Doris Harrah advised me that Dr. Braun was attempting to save as much motion in the wrist as possible versus a total fusion wherein the claimant would lose all mobility in the wrist joint. The doctor verbally stated to the nurse case manager, Doris Harrah, that the claimant was permanent & stationary as of 10/02/98 and that he would issue a report accordingly. Therefore, temporary total disability benefits were discontinued at that time. The doctor's office did not issue this report. The claimant then returned to Dr. Braun on 12/09/98 complaining of pain in his left wrist. He was diagnosed with a broken bone plate in the distal forearm area that



Argonaut Insurance Company

SOUTHERN CALIFORNIA DIVISION

needed surgical repair. Since the claimant settled his third party claim and a check was issued on 11/04/98 resolving the third party case, I advised the doctor's office that we were seeking a credit in the workers' compensation case and that the claimant was responsible for payment per Labor Code 3861. Per the claimant's recent lawsuit, the lawsuit states that he did undergo left wrist fusion by different doctor in 3/99.

Permanent Disability

I advanced a total of \$3000 in permanent disability advances. The estimated amount of permanent disability would be \$16,277.50 that equals 25% in permanent partial disability. We received a credit in the amount of \$128,910.35. This exceeds permanent disability.

Vocational Rehabilitation

Once again, there is a credit of \$128,910.35 that would exceed the \$16,000 limit allowed for vocational rehabilitation.

Litigation

The claimant retained an attorney, Dean Goetz, Esq., shortly after the injury date. With the agreement of the applicant's attorney, we had planned to resolve this case via 3rd party Compromise & Release with no further monies being paid on the workers' compensation case as he received a \$200,000 settlement in his 3rd party case. Since the treating doctor did not issue a permanent & stationary report, the workers' compensation judge would not approve the 3rd party Compromise & Release. Therefore, we received a petition for credit in the amount of \$128,910.35 approved by Judge Dienerle at the San Diego Workers' Compensation Appeals Board dated 01/28/99. If the applicant's attorney did not agree with the Petition for Credit, he had the right to appeal. Attorney Goetz did not file an appeal. The statute of limitations is 5 years from the date of injury to continue litigation at the Workers' Compensation Appeals Board. Although our file has been administratively closed, the file is still open at the Workers' Compensation Appeals Board as, technically, the case has not been resolved.

Plan of Action

We received a Petition for Credit in the amount of \$128,910.35. The Workers' Compensation defendants would owe no further monies on this workers' compensation case until the claimant provides receipts that he was spent this amount for his workers' compensation injury per Labor Code Section 3861. Neither the claimant nor his attorney have communicated with us since the approval of the Petition for Credit.