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**Gallagher Sharp Shop Talk: Workers' Compensation**

**Question: Is a lump-sum settlement of a workers' compensation claim considered "marital property" subject to division upon a claimant's divorce?**

Most employers appreciate the benefits of lump-sum settlements. The employer enjoys a fixed cost on their claim experience, while the claimant is permitted to secure immediate payment of present and future benefits. However, questions can arise when the claimant is or later becomes divorced: Are the proceeds from a settlement "marital property" which must be addressed during a divorce?

The Fifth District Court of Appeals was recently presented with precisely this scenario in *Mayer v. Mayer*, 2011-Ohio-1884, which concerned a claimant who was injured in 1999. In August 2008, while the claimant was separated but still married, he negotiated a lump-sum settlement of his workers' compensation claim for \$55,000. Rather than deposit the proceeds into an account for future medical expenses (as advised by his attorney) the claimant spent most of the money, including giving \$26,000 to his adult son for legal fees in an unrelated matter. The claimant and his wife eventually filed for divorce, and the proceeds of the settlement were the primary point of contention. The claimant argued that the settlement belonged to him exclusively, and was not a marital asset, while his wife argued that she was entitled to 50% of the settlement because it was disbursed while they were still married. The domestic relations court concluded that, because the settlement was received during the marriage, it was "marital property" and subject to division in the divorce, and the claimant had not produced evidence that the award was his separate property. This decision prompted an appeal by the claimant.

The Fifth District reversed, citing R.C. §3105.171 in concluding that settlements of this type are those for "personal injury" and are presumed not to be marital property. Pursuant to statute, the only portions of a workers' compensation settlement which are "marital property" are those designated for (1) loss of earnings during the marriage; or (2) expenses paid from marital assets. Other amounts, including portions designated to compensate for loss of a body part or loss of the spouse's future earning capacity, are the property of the injured worker. The domestic relations court's finding that the claimant had not produced evidence to support his argument was in error because settlements of "personal injury" claims are presumed by statute to be separate assets, and it was incumbent upon the spouse to produce evidence that some portion of the settlement constituted "marital" property. The court concluded that the entire award should have been treated as the claimant's separate property, and not subject to division.

In soliciting a settlement demand from a claimant, it is prudent for employers to keep in mind the claimant's marital status. Similarly, when drafting settlement documents care should be taken to properly designate settlement amounts, particularly when dealing with claimants who may be involved in divorce proceedings. It is also arguable that the problems in *Mayer* may

have been avoided by simply waiting to settle the claim until after the divorce was final. If you have any specific questions, or would like to discuss this or any other workers' compensation issues, you can contact me or Adam Sadowski from our Toledo office.

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