

ADMINISTRATIVE BULLETIN 105

To: All Interested Persons
From: Omar Hernández, Senior Judge
Re: Lump Sum Agreements
Date: January 3, 2019

There has been concern raised about lump sum settlement papers that purport to close out any and all dates of injury with a specific employer, as well as one set of papers that purports to close out other specific board numbers. The Department finds that the language "any and all dates of employment" next to the date of injury is contrary to [M.G.L. c. 152, Section 48 \(3\)](#) in that "no lump sum agreement shall contain as part of a settlement a general or specific release..."

The parties need to draft separate lump sum settlement documents for each board number they seek to close out. This is required so that the amount of the lump sum settlement, fees and expenses for each board number may be entered accurately in our department's case management system, the lump sum papers themselves may be entered into the appropriate board file and so that the judge may fulfill his or her statutory duty to determine whether the agreement is in the employee's best interest. A lump sum document that simply states "any and all dates of employment" fails to provide a judge with sufficient information to make that assessment and runs the risk that board numbers are added without the insurer on the risk being represented. An attorney for one insurance company lacks authority to settle a case for another company that he/she does not represent and risks a Board of Bar Overseers violation. This is equally a risk for employee's counsel where a different attorney of record appeared on behalf of the employee in a prior case and the employee's current counsel has not filed an appearance in that matter prior to presenting the lump sum settlement.

Further, if the parties decide to settle all old claims for a dollar each, the insurance company is required to pay the actual dollar to the employee. This will become a problem if the attorney does not represent the insurance company for the claim the parties are "settling" and the actual dollar is not paid. For example, if the attorney for Insurer "A" signs all of the documents, pays the money in one check and Insurer "B" never pays the employee the one dollar, Insurer "B" is technically in violation of [Section 8\(1\)](#) for failure to pay the employee and may be subject to a \$10,000.00 penalty.

The DIA will approve lump sum language that states "any and all claims arising out of said date of injury". However, any lump sum agreement that reflects general or specific release language will not be approved.