Origins And Evolution Of Connecticut Workers' Compensation Stipulations

CQ spoke with Attorneys Doug Drayton and Jim Pomeranz about the history of Connecticut workers' compensation stipulations.

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CQ: Good afternoon Attorney Drayton and Attorney Pomeranz. Thank you for agreeing to meet with me today.

DD: Good afternoon.

JP: Good afternoon.

CQ: We thought we would take this opportunity to sit down and ask you some questions about the origins and the evolution of the workers' compensation stipulations. What is the first or earliest reference that we can find to a workers' compensation stipulation?

DD: Probably the first reference was back in 1916. It was a dismissed case and after the case was dismissed the parties wanted to settle the case and so they elected what they call a settlement out of court and the reference was that this case was being settled – but the term stipulation really came into vogue probably in the 1920s.

JP: There are records of cases in the 1920s that all refer to the actual word stipulation for settlement. Actually, the first one was in 1917 – there was a proposed settlement by stipulation where a lump sum was to be paid by the City of New Britain to a widow in a disputed compensation case. And the questions raised were whether or not it was reasonable and whether it was necessary for the Commissioner to approve it. So, the history goes back to the early part of the Act for settlements and the use of the term stipulation.

CQ: So even as early as the 1920s the parties still had to appear in front of a Commissioner for approval as opposed to the way settlements have been in other venues with a general release between the parties?

DD: Correct. In fact, in 1922 the Court pointed out that actually it was a Commissioner's decision. They pointed out that a hearing on a lump sum settlement was discussed and the Commissioner deemed it fair and reasonable. So, the Commissioner was the person who approved the settlement.

CQ: Is there any indication early on as to where the authority came from for the parties to enter into settlement – because as we know the statute is silent as to stipulations?

DD: Not really, but the Commission kind of wandered around it and basically said that there would have to be a way to end litigation and the way to end litigation is to settle. And so they kind of accepted the process – but you are correct – there is no specific provision that I am aware of in our statutes that says that the parties could settle cases by stipulation.

JP: In the Welch *case they dealt with opening a stipulation and so it certainly was very obviously implied by the Court that settlements were acceptable – they would not have been talking about opening a settlement and whether it was legitimate or not legitimate and the circumstances under which it could be opened, if they did not recognize the idea that a settlement was a valid way to end the case.* Welch v. Arthur A. Fogarty, Inc., *157 Conn. 538 (1969).*

CQ: What does CORAM mean? It seems to appear on all stipulations.

DD: I suspected that you might ask that. Its meaning in Latin is – before – so it is in the presence of – so it references when you put CORAM First District – before the First District – it does not mean anything and there is no great significance to it except that is a throwback from the Latin terms that were used in the law. I just remember Jim's dad saying it was a meaningless term, but it kept showing up and I had forgotten why – but that was it – just means that the parties are before the First District.

CQ: Now I know that I have read in case law that sometimes stipulations are referred to as a voluntary agreement. Of course, today we think of a voluntary agreement as a form. Are Stipulations also voluntary agreements?

JP: Well, some parties even today do not label their stipulations as a settlement but as an Award by Stipulation, so they consider it an award and it has been treated by the Courts as having the force and effect of an award for purposes of any attempt to re-open them only for fraud or mutual mistake.

DD: It is interesting that you mention that because there were different schools of thought and there were primarily 5 major defense firms or people who did defense work, back in the 1950s and 1960s, and they tended to split on authority and now you are seeing some companies still go by this Award by Stipulation and Agreement and others just stick to the stipulation and settlement of the claim. I honestly do not remember the philosophy, but there was a split amongst the firms that did the defense work and again there were only 5 or 6 – you leave Doug Johnson by himself, George Downing by himself – but there were very few firms right through the 1950s and 1960s.

JP: Frank Moran was another and my inference is that with the Welch *case discussing that a stipulation can only be opened on the same basis as an award can be opened, that people then were equating stipulations to a Finding and Award by a Commissioner.*

CQ: I noticed that there are, I'll call it titles on Stipulations, one is a "Stipulation and Award by Agreement," another is "Stipulation and Settlement." I also noticed that some stipulations recite jurisdictional facts – some citing more than others – does this come from the same schools of thought, was there a split?

JP: I honestly do not know. I know I am old, but I am not that old.

DD: But there was a difference of opinion concerning how they should be drafted and there was an old Commissioner, Gregory Lynch, who liked verbose documents. In other words, put everything in there and then there were some who would prefer something more succinct like Leo J. Noonan. You could put in a sentence for what we now have as a paragraph. But the cautious lawyers I think, thought they ought to expand the language to make sure that they have dotted their I's and crossed their T's. There were some pretty simple ones in the old days. Very simple one-page stipulations, settlement of the case. Just like a General Release, of course, now you see General Releases in the courts that are 5 or 6 pages long now too.

CQ: One phrase that I seem to see in stipulations frequently, after a recitation of the parties is set forth, "all parties were subject to the Workers' Compensation Act." Was this something that has significance or is it just sort of background information?

DD: I think it is historical – because what happened is – the Act in the beginning, and it changed as it was amended, did not cover everybody. In other words, if you had fewer than 5 employees you did not have to have workers' compensation insurance and so eventually it became one employee – but I think that the original phraseology was to show that the parties were subject to the provisions of the statute and again the independent contractor and all the arguments that somebody is not an employee would govern – so they made sure there was language that this was subject to the jurisdiction of the commissioner.

CQ: So, in essence, is it the parties agreeing to the jurisdiction of the Workers' Compensation Commission so that it does not have to be proven?

JP: I think so.

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CQ: Do you have any thoughts on the minimum facts to which the parties must agree for a valid Stipulation?

JP: I think the basic facts are that there is jurisdiction, although jurisdiction can be argued as a part of whatever the event is, that an employee/employer relationship existed, that there was or was not an insurance policy in effect, that an injury occurred, and maybe some other things.

CQ: Is it necessary to have a dispute to settle a workers' compensation case?

DD: A good question.

JP: I do not think it is necessary. I think that the idea of settling workers' compensation cases is now so well accepted that even if the parties agreed that the case was compensable – all benefits due were paid – that the parties would be able to close out the case for a fair consideration as to the value of future benefits. Of course, parties might differ, and not necessarily have a dispute, but have a different opinion as to what the fair value of future benefits is, because that is something that cannot be determined with any degree of certainty.

CQ: Earlier you mentioned that the stipulations are similar to voluntary agreements and Awards and that there are only a couple of reasons that they could be re-opened; fraud, accident, a mutual mistake of fact or duress. Have you come across any of these situations that were legitimate?

DD: You know, we sometimes get a disgruntled claimant who settles his or her case and is disgruntled with the figure and what his or her lawyer did. I have had quite a few of those. But the one case that comes to mind was a mutual mistake of facts that stands out. Many years ago, probably in the 1970s, there was a case in which the Commissioner in the Second District had approved the settlement – another lawyer represented the respondents and the claimant was represented by a very competent counsel – I was asked if I would review the file and look at the Motion to Re-Open and Set Aside, which had been filed based on a claim of mutual mistake of facts.

I went to a meeting with the commissioner and the other lawyer and what happened was that the doctor who had given the final report on the claimant, upon which the settlement was based, discovered that he had made a mistake and this is months, even a year after the settlement was entered into, he wrote a letter to the claimant expressing his concern that he had made a mistake in his diagnosis and analysis, etc. The commissioner looked at me and said that it is the only time that he has ever seen what he considered to be true mutual mistake of facts.

All of the parties relied on the doctor's diagnosis, his future predictions as to what would take place and that was used for the settlement – it turned out he was horribly wrong and that the settlement was unfair. So, the commissioner told me that he was going to be inclined to re-open and set aside the stipulation.

I might add in most cases when we get these Motions to Re-Open and Set Aside, I make a Motion for Deposit of the funds with someone to show that they are going to pay back the money that they have gotten in the settlement if they are going to re-open and set aside. Ironically, I have a case in New Britain where the claimant actually put the money up, $40,000.00, because he was dissatisfied, and the Commissioner ruled that he was/she was not going to re-open and set aside the Stipulation.

CQ: In other words, a pre-requisite to re-open in this Stipulation is the return of the consideration?

DD: Correct.

CQ: Gentlemen, thank you for your time.

DD: You're welcome.

JP: You're welcome.