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FROM THE DESK OF:
Andrew R. Borah, Esquire
Florida Bar Board Certified Workers' Compensation

October 6, 2016

Ms. Cortney Gomer
Employer's Mutual, Inc
700 Central Parkway
Stuart, FL 34994

Re: Claimant: Mary Reidinger
Employer: City of Hollywood
D/A: 8/12/2011
OJCC No.: 13-015818WRH
Our File No.: 0529-0035 ARB
Carrier No.: WC1182011105741

Dear Ms. Gomer:

I have now determined what indemnity benefits are due and owing from the claimant's date of accident up until March 17, 2015, which is the date the claimant reached overall MMI. For the August 12, 2011 to February 15, 2012 time period, you do not owe the claimant any indemnity benefits as the City continued to pay the claimant her normal salary during this time period, which at the time was classified as sick pay or vacation pay, but the employer has since reimbursed the claimant's sick pay and vacation pay. I believe there were a couple weeks before February 15, 2012 when the claimant was entitled to indemnity benefits, but the claimant has conceded that those indemnity benefits have already been paid.

For the February 16, 2012 to November 30, 2012 time period, the claimant did not work and did not receive any continuing salary or indemnity payments. Therefore, for this time period, the claimant received no income besides from long-term disability payments. I have calculated what you owe in back TPD benefits, penalties, and interest as if you were paying such amount on December 21, 2016 as it is likely this amount will not be approved until the commission meeting on December 14, 2016. The total amount of TPD payments with penalties and interest for this time period comes to \$55,931.70. Unfortunately, you do not get any offset for the long-term disability the claimant received for this same time period because the long-term disability carrier is claiming an offset and after you reduce the offset the long-term disability carrier is taking, the claimant's receipt of long-term disability plus the maximum compensation rate the claimant is entitled to, does not exceed the claimant's \$1,700.00 AWW. You could only take an offset on any amount that would exceed the claimant's \$1,700.00 AWW and unfortunately, there is none.

The claimant returned back to work for the employer in a part-time capacity on December 1, 2012. Therefore, I have calculated your TPD exposure for the December 1, 2012 to March 17, 2015 time period by looking at the total income the claimant received for such weekly time periods and came up with \$40,449.95 when you include allocation for penalties and interest. Just like I did for the amount due for the prior time period, I calculated the interest as of December 21, 2016 since such amount will likely not be approved until the December 14, 2016 commission meeting. Again, while the claimant received long-term disability payments during this time period, you would not be entitled to any long-term disability offset, as after the long-term disability carrier takes their offset, the total amount of long-term disability payments when added to the maximum compensation rate does not exceed the claimant's \$1,700.00 AWW.

You will be paying well more than 104 weeks of TPD benefits even though the current statute caps TPD at 104 weeks as the 1st DCA or Florida Supreme Court should be coming out with a decision very soon holding that the 104 week cap on TPD benefits is unconstitutional just like the Florida Supreme Court has already done with TTD benefits in the Westphal case. As such, I do not recommend taking a position that the claimant's entitlement to TPD benefits is capped at 104 weeks. That will just be setting yourself up for an appeal, where you would almost certainly be reversed and be known for making bad law for the employer/carrier like the Westphal case did.

Excluding the aforementioned amounts, you are also responsible for paying the claimant's attorney's fees for obtaining compensability of the claimant's accident as well as the benefits noted above. The claimant's attorney has given a cut-to-the-chase fee demand of \$70,000.00 plus \$4,733.08 in costs. I believe opposing counsel is giving you a very favorable offer to resolve his fees for such amount because if you use the amount of hours your prior defense attorneys incurred in defending the claims the claimant's attorney was successful on, you would be paying over triple the amount of what the claimant's attorney is asking for. As such, I recommend that you obtain \$74,732.08 in authority to get opposing counsel's fees and costs resolved. All together, I am recommending you obtain \$171,113.73 to resolve past indemnity, penalties, interest, and attorney's fees. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,



Andrew R. Borah

ARB/stf

cc: Tanya Bouloy and Kathy Whetstone