SOCIAL SECURITY DISABILITY BENEFITS, VETERANS’ BENEFITS, ERISA, ETC.: HOW OTHER MEDICAL/DISABILITY BENEFITS AFFECT YOUR ABILITY TO SETTLE YOUR WORKERS’ COMPENSATION CLAIM (FROM THE CLAIMANT’S PERSPECTIVE)

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Great news! Your client has agreed to settle his/her workers’ compensation claim due to your outstanding expertise. Bad news? Now you need to figure out how to best protect your client’s financial and medical interests once the settlement has been approved by the State Board of Workers’ Compensation (SBWC). As many attorneys are aware, resolving workers’ compensation claims are only half the battle when it comes to working with your client. You also need to help your client to get all of the benefits they may be entitled to financially (SSDI, SSI, LTD, STD, VA, etc.), and keep receiving health benefits once the settlement is approved (VA, Medicare, Medicaid, health insurance plans, etc.).

There are several different income disability benefits available to claimants, both during and after their injury. Each disability benefit plan depends on several factors, such as whether their Employer provided the benefits, or whether the claimant is eligible for the benefits by either purchasing the policy plans through his/her employer, being a veteran, or by applying on their own for the benefit plan. Each of these income benefit plans are listed below, along with a brief explanation of each.
Social Security Disability Income Benefits (SSDI)

Even if you have only been practicing for a little while, all workers’ compensation attorneys know about SSDI, and the “Hartman language” used for workers’ compensation settlements. But why do we have this reduction? Why, to save our clients income benefits!

Social Security Disability Income Benefits (SSDI) are awarded only to workers who have long-term impairments that preclude any gainful work, regardless of whether the disability arose on or off the job. By law, the benefits are paid only to workers who are unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment that is expected to last at least a year or result in death. The impairment has to be of such severity that the worker is not only unable to do his or her previous work but is also unable to do any other type of substantial gainful work. Social Security disability benefits begin after a 5-month waiting period.

The SSDI payment provided to the claimant depends on how much he/she has paid into the program over the years. If a claimant is still receiving workers’ compensation income benefits at the time of the SSDI award, then it is possible that the SSDI monthly payment will be reduced. 42 U.S.C. §424a, 20 C.F.R. §404.408. Under 42 U.S.C. §424a, a claimant receiving both SSDI and workers’ compensation cannot be paid more than 80% of what his/her average monthly working wages (wages if not disabled). 42 U.S.C. §424a (a) (5). Contrary to popular belief, workers’ compensation benefits do not offset SSDI on a dollar-per-dollar basis. It is instead subtracted from the 80% figure to set the allowance. As such, the higher the pre-injury earnings, the less impact the workers’ compensation benefits will have. Further, this offset only applies to SSDI benefits, not Retirement benefits. 42 U.S.C. §424a (a) (1).
When a workers’ compensation case is settled, Social Security will treat the settlement as if weekly checks are still being sent to the claimant. This means that the claimant will receive the high offset until the settlement amount runs out, and may have quite a few years receiving only a pittance of income.

However, if the settlement agreement states that the lump sum settlement amount is for permanent compensation and is spread out over the claimant’s lifetime, Social Security will use that new, reduced payment for the monthly offset. This is also useful for LTD offsets. This means that instead of having the high offset, the claimant will now have a small fraction as the offset, which will result in much more money for the claimant in the long run. This approach was first approved in Sciarrotta v. Bowen, 837 F. 2d 135 (3rd Cir. 1988). This was when the “Hartman language” first came into play. It is now part of SSA’s policy, POMS DI 52150.060.

This language is also required by the State Board of Workers’ Compensation to be included in all settlements over $5,000.00. The language to be used in any workers’ compensation settlement should include the following:

*Of the $__________ settlement, $__________ shall be paid as attorney’s fees to (insert attorney name), as attorney for the employee/claimant. The $______ to be paid to the employee/claimant shall be calculated without commutation of interest, but shall represent the negotiated compromise agreement that the claimant’s life expectancy is _______ years forward from this date, pursuant to the Annuity Mortality Table for 1949 Ultimate, as established by O.C.G.A. §24-4-45, Appendix, Title 24, and that the settlement herein reached represents the payment of $_____ per week to the claimant over the balance of the _______ week life expectancy of the claimant into the future.*

Do not mention in the stipulation that this is for social security purposes only! This paragraph can also be used for STD/LTD offsets. If you mention this language is for social
security purposes only, and your client has a LTD claim, you have committed a quite serious error.

The life expectancy language must be in the settlement documents in order to be recognized by the SSA. SSR 97-3. However, the Social Security Administration (SSA) will allow you to deduct certain “excludable expenses” to arrive at the lump sum amount which will be amortized and used as an offset. POMS §DI 52120.030 defines “excludable expenses” and permits the reduction of the following expenses from the gross amount of the settlement:

1. Approved legal fees.
2. Allocated medical expenses identified in the settlement.
3. Permanent Partial Disability Advances previously paid to the claimant. However, penalties paid in the settlement are excludable.
4. Monies allocated for a Medicare Set Aside Trust.
5. Amounts allocated to purchase annuities or structured settlements. (Note that any future annuity payment will be used to calculate the offset when received)
6. Liens for legal or medical expenses paid from the lump sum and deducted from the claimant’s share.
7. Lump sum catch up payments for unpaid temporary disability benefits when included in the gross award.
8. Supplemental Job Displacement Benefits are excludable as the payment is issued directly to the educational re-training or skill enhancement school. However, if all or part of the SJDB benefit is paid directly to the claimant, the amount received by the claimant is not excludable.

After reducing the settlement amount by the excludable expenses, the net amount to the claimant will then be amortized by a weekly rate. The SSA will first look to the settlement agreement for guidance on the amortization of the lump sum. SSA is in effect inviting the claimant’s attorney to create a more favorable offset provision for the claimant. The failure to do so will simply result in the SSA using the weekly TTD rate in effect for the claimant’s date of injury, which can result in a much higher offset to the claimant for a long period of time, resulting in the loss of a significant amount of income to the claimant.
SSA will not allow a subsequent stipulation or award which attempts to later reduce the offset. Social Security Ruling 87-21c; POMS §DI52150.065e. There is no “do-over” which is why it is so important to correctly address the offset issue in the original settlement agreement. Allocating the lump sum over the life expectancy will greatly reduce any social security offset and in most circumstances will eliminate the potential offset completely.

**Medicare**

Medicare is an entitlement program that allows Social Security beneficiaries to have medical insurance. Medicare insured individuals suffering injuries can use his/her Medicare coverage for the injury. This paper is not meant to address all issues regarding Medicare, Medicare Set Aside Trusts (MSA) or all of the nuances with the Centers for Medicare (CMS).

Many times a claimant will have Medicare at the time he/she settles his/her workers’ compensation claim. As such, any settlement of his/her workers’ compensation claim should not affect his/her ability to keep Medicare. It will, however, limit the medical care related to the workers’ compensation injury paid by Medicare.

Under the Medicare Act, Medicare considers itself to be a secondary payer; i.e., the primary payer is the tort-feasor and/or the tort-feasor’s insurance carrier, medical payment insurance, workers’ compensation insurance, etc. This program is known as the Medicare Secondary Payer (MSP) Program. The injured party is accountable to repay Medicare upon recovery from workers’ compensation insurance carrier. Medicare has an automatic statutory right of recovery or lien on the third party recovery that is superior to any other lien claim. Think of a “Super Lien.” Medicare liens must be paid first, no matter what.
Medicare expects reimbursement, and provisions allow for double recovery directly against the workers’ compensation’s insurance carrier, if the injured Medicare recipient fails to honor the Medicare lien claim. Both the injured Medicare beneficiary and his/her attorney are subject to double recovery payable to Medicare, if they fail to notify and honor the Medicare claim. See 42 CFR § 411.23 (g). However, attorney fees and costs can be deducted from the Medicare reimbursement amount. 42 C.F.R. § 411.37.

Medicare’s MSP rights are enforced through the Centers for Medicare and Medicaid Services (CMS), which is an operating division of the Department of Health and Human Services. CMS issues regulations for the recovery of Medicare benefits including the enforcement of Medicare Act rights. The act allows enforcement in federal court for double damages. See 42 U.S.C. § 1395y (b). There are four (4) main Medicare portions: Medicare Parts A, B, C and D. Original Medicare consists of Parts A-hospitalization and B-medical doctors and services. CMS handles reimbursement/subrogation for Medicare Parts A and B. This is the portion that is the “Super Lien.’

Medicare takes the position of a secondary payer in cases where there is another culpable party, such as an employer and its workers’ compensation insurance carrier or a liability insurer as set forth in the Medicare Secondary Payer Act 42 U.S.C. §1395y and 42 C.F.R §411:20, et al. The purpose of the Medicare Set-Aside arrangement (MSA) is to provide funds to the injured party to pay for future medical expenses that would otherwise be covered by Medicare, known as “qualified medical expenses”. If the injured party incurs qualified medical expenses that exhaust the anticipated set-aside sum, Medicare will pay for allowable expenses in excess of the properly exhausted MSA funds. By establishing a Medicare Set-Aside Account,
parties to a workers’ compensation settlement are protecting Medicare’s interest and complying with the Medicare Secondary Payer Act.

A MSA is required when either: 1) The claimant is a Medicare beneficiary and the total settlement amount is greater than $25,000.00; or 2) The claimant has a reasonable expectation of Medicare enrollment within 30 months of the settlement date and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is expected to be greater than $250,000.00. However, there are also many twists and turns concerning whether a MSA is necessary, and whether it must be submitted to CMS for approval. Overall, many claimant attorneys would rather request a MSA in cases where future medical treatment is still needed. At any rate, Medicare’s interests must be adequately considered, and that consideration must be added into the claimant’s settlement stipulation.

Once the MSA is obtained there are numerous issues that may arise. How will the MSA be funded: lump sum or annuity? Will the MSA be self or professionally administered? Will the settlement be submitted to the State Board of Workers’ Compensation before or after CMS approval of the MSA allocation? Will the settlement be held and therefore either party can “back out” of the settlement? How will the insurance company deal with an increase requested by CMS? What if CMS determines the MSA is too high; then how will the insurance company collect the overpayment? When is the seed money to be paid and how does the insurance company collect an overpayment, if any? With all of these possible issues, just make sure that however the MSA is handled, it will be in the settlement paperwork submitted to the SBWC.
**Social Security Income Disability (SSI)**

SSI falls under Title 16 of the Social Security Act. SSI is available to disabled individuals who have either never worked or who have not worked enough work quarters to qualify for Social Security disability insurance. However, eligibility is subject to income and asset limits. SSI is also available to individuals who once worked and were eligible to receive Social Security disability but are now no longer eligible because they have not worked in a long time (and, thus, their coverage has lapsed) and to children who are disabled, whose families have low income and low or no assets.

SSI can be reduced by a claimant’s workers’ compensation benefits. As such, any workers’ compensation settlement should have the “Hartman language” in the stipulation. The lowering of the claimant’s weekly checks per the stipulation will allow the claimant to receive a higher SSI amount.

However, the claimant may need a Special Needs Trust to place his/her settlement proceeds. This is so that the claimant will not lose his/her SSI benefits, food stamps, living, or Medicaid benefits. Unless you are knowledgeable about these procedures, it would be best for you to seek guidance from another attorney that specializes in SSI/Special Needs Trust, trust law, etc.

**Medicaid**

Medicaid is the health insurance used by the SSI claimant. Medicaid has a dual right to reimbursement under both state and federal law. 42 U.S.C. §1396a (a) (25). If Medicaid has
paid for medical expense that it believes should have been paid by the workers’ compensation insurance carrier, Medicaid will place a lien on the settlement, which must be paid.

O.C.G.A. § 34-9-206 provides that a workers' compensation carrier may be held liable for medical expenses incurred by an employee and paid by a group insurance company or other health care provider, where an employee subsequently files a workers' compensation claim and is found to be entitled to workers' compensation benefits. However, a Medicaid recipient, by virtue of receiving Medicaid benefits, has to repay those benefits if a recovery is made as a result of the liability of a third party. O.C.G.A. § 9-2-21(c) provides that prior to initiating a recovery action (i.e., filing a workers' compensation claim), the claimant's attorney, who has actual knowledge of an employee's receipt of benefits, must notify the Department of Community Health of the claim. Assuming medical assistance has been paid on behalf of the injured employee for whom the workers' compensation carrier is legally liable, the Department of Community of Health may then seek reimbursement from the insurance carrier by the filing of a lien. The Department of Community Health can recover the reasonable value of the medical assistance paid and attributable to the employment-related injury from the Claimant's recovery from the workers' compensation carrier.

Do not assume that having a claimant’s settlement as a No-Liability settlement will protect you from a Medicaid lien. It will not protect you. Medicaid does not differentiate between a Liability and No-Liability settlement. Any funds you recover can be liened.

The U.S. Supreme Court decision of Arkansas Department of Health and Human Services v. Ahlborn, 547 U.S. 268 (2006), is usually held to explain how a Medicaid lien is to apply to personal injury cases. Ahlborn did not, however, resolve the question of how to determine
what portion of a settlement represents payment for medical care. *Ahlborn* held that a state seeking reimbursement of Medicaid benefits by a lien on a third-party action cannot “lay claim to more than the portion of the plaintiff’s settlement that represents medical expenses.” *Id.* at 280. Therefore, the Court held that reimbursement for medical assistance applies only to the liability of third-parties “to pay for care and services available under the plan. *Id.* It does not allow an assignment of right to payment for anything other than medical expenses—not lost wages, not pain and suffering, not an inheritance. *Id.* at 281.

The main problem with this case is that it did not state the extent of a third party’s legal liability. Most settlements do not separately state an amount for past medical care, future care, lost wages, future lost wages, loss of earning capacity, general damages, etc.

The most recent case concerning Medicaid is *Wos v E.M.A. ex rel. Johnsons*, 133 S. Ct. 1391 (2013). This case came out of North Carolina, which required a Plaintiff-Medicaid beneficiary to pay up to 1/3 of her tort recovery to the state as reimbursement of its lien. However, this 1/3 apportionment was without regard to the Plaintiff’s tort damages and without regard as to whether she recovered in settlement all or just a small amount of her total damages. The Supreme Court struck down this requirement, finding it violated 42 U.S. 1396p (a) (1), the Anti-Lien Provision of Medicaid. The blue line rule that Medicaid was entitled to reimbursement from 1/3 of the total proceeds did not reconcile with the *Ahlborn* case, which stated that a lien could only be held on the portion of the settlement that could be allocated to past medical expenses paid by Medicaid.
It is best to contact Medicaid to reduce this lien, which can be deducted from the claimant’s settlement amount for the “Hartman language.” This will also allow you to further reduce down your client’s offset amount for the income benefits.

**Short Term Disability and Long Term Disability Plans**

Many employers offer Short-Term Disability (STD) and Long-Term Disability (LTD) plans for employees who are hurt or sick and must stop working. These are income benefit plans. In addition, anyone can purchase their own disability plan outside of their employment. STD benefits usually only offer benefits for a few months after their initial injury. Some STD policies will exclude benefits for work-related injuries. Also, some STD policies will have an offset for any workers’ compensation benefits or SSDI benefits. The only way to know for sure if the STD policy will be in affect with your claim is to read the policy. If the STD amount is quite high, the claimant will still be able to receive funds, even with the offset.

LTD plans last longer than STD plans, and have a longer waiting or elimination period before they will begin to pay the claimant. However, these plans may pay out until the age of 65. LTD benefits are also reduced by workers’ compensation benefits, social security benefits, and veteran’s disability benefits. Holbrooks v. Sun Life Assurance Company of Canada, 2014 U.S.App.LEXIS 12741 (10th Cir. July 7, 2014). To determine exactly what benefits will reduce your LTD or STD benefits, you must read the insurance disability policy.

STD and LTD claims are governed under ERISA §502(a) (1) (B) of ERISA, or 29 USC 1132(a) (1) (B). However, if the claimant purchased his/her policy directly from an insurance company, or if the claimant’s employer was a church or government entity, then any claims under the policy are governed by state law. Although based in part on trust law, in part on
contract law, and in part on disability insurance law, ERISA long term disability litigation is like no other area of the law. As a creation of a federal statute and federal common law, for the most part, ERISA has evolved from a law enacted to protecting employees to a law that insulates long term disability insurance plans. As speaking and writing about ERISA can take a full daylong seminar, this paper is not meant to explain every nuance regarding ERISA.

What does the claimant’s attorney need to know about offsets? Under a typical ERISA governed long term disability plan workers’ compensation benefits are usually treated as “offsets” or “other income” and used as a means to reduce benefit payments otherwise payable under the insurance policy or plan. The claimant’s attorney must review the specific policy language in the disability insurance plan or policy and devise a permissible method for assuring that the client’s interests are appropriately protected. It is essential to review the actual policy language in the insurance policy or the plan. Reliance on the Summary Plan Description (“SPD”) or Certificate Booklet is ill advised. The Plan documents tend to exclusively govern although inconsistencies with the SPD sometimes (depends on the Circuit) will ultimately control.

If the LTD/STD plan is not under ERISA, then you must review the policy language and determine whether the offset is valid, and what types of benefits it will allow as offsets. Veterans Benefits (VA) have only recently been established as benefits to be offset, and many plans still do not mention VA benefits as an offset.

In regards to the settlement language used for workers’ compensation claims, using the “Hartman language” as required by the SBWC helps your client regarding his/her settlement. Most plans will use this language for the offset, and if the language is ambiguous, courts will
defer to the interpretation of the insurance company under the arbitrary and capricious standard of review. *Nesom v. Brown and Root, U.S.A., Inc.*, 987 F.2d. 1188 (5th Cir. 1993). As such, it is very important to review the plan documents to determine their policy on offsets. Further, even if some plans do not even mention a lifetime offset, go ahead and put in lifetime proration language in the workers’ compensation settlement (Hartman language).

In addition, do not allow your client to sign a Resignation or Release until you determine whether this will stop his/her LTD/STD benefits. Sometimes continuation of LTD depends on still being considered an Employee. By allowing a Resignation or Release in this situation could be opening yourself to a possible malpractice claim.

**Veteran’s Disability Benefits**

Veteran's disability (VA) is a tax free monetary benefit paid to Veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military service. Compensation may also be paid for post-service disabilities that are considered related or secondary to disabilities occurring in service and for disabilities presumed to be related to circumstances of military service, even though they may arise after service. Generally, the degrees of disability specified are also designed to compensate for considerable loss of working time from exacerbations or illnesses. All Veterans are allowed to receive free or reduced cost medical treatment from any VA affiliated medical provider. Settlement of the workers’ compensation claim will not prevent a veteran from receiving any medical benefits.

If the claimant is receiving, or begins to receive VA benefits prior to settlement of his/her workers’ compensation claim, the settlement of the workers’ compensation claim will most likely not affect his/her VA benefits amount. The settlement of the workers’
compensation claim will not be used as an offset LTD benefits may be reduced by VA benefits on certain LTD plans.

However, things are a little tricky regarding SSDI/SSI. If you are receiving VA benefits, you can receive Social Security disability benefits at the same time. Social Security not only allows you to receive VA and Social Security disability benefits at the same time, they do not reduce the amount of your monthly Social Security disability benefit amount because of your VA benefits.

This means you are able to receive the full amount of your Social Security disability benefits and your full VA benefit amount simultaneously if your VA benefits are service connected. However, it does not mean entitlement to Social Security disability will not affect the amount of a VA pension in all cases. If you receive a non-service connected pension, it is likely that your Social Security disability benefits may cause an offset of your VA benefits depending upon the amount of your Social Security disability. And if your SSDI benefits are offset by a workers’ compensation settlement, then the lower amount of SSDI helps to keep more of your VA benefits.

If you receive VA or Veterans benefits, you may not be able to receive SSI benefits at the same time. SSI disability is a need-based program that considers income and resources as a basis of entitlement. Social Security considers VA benefits in the same way they consider other types of income, so if your VA benefits are higher than the income amount allowed, it is likely you will be denied SSI benefits. If your VA benefit amount is under the SSI income limit, you may be entitled to receive SSI disability benefits simultaneously with your VA benefits.
If you receive a non-service connected pension your VA benefits will definitely be offset by the amount of SSI benefits you receive from social Security. If you receive service connected compensation and SSI benefits, it is likely that your VA benefits may be offset. It depends upon your percentage rating by the Department of Veterans’ Affairs.

However, settlement of the claimant’s workers’ compensation claim could reduce the claimant’s ability to receive other VA benefits, such as aid and attendance (pension), extended care services, etc. It is necessary that if you have a claimant receiving VA benefits that you discuss with the claimant how his settlement can affect his ability to receive some services. If you are not knowledgeable about VA benefits, please receive advice from a VA attorney, or have your client contact a certified elder law attorney knowledgeable about these services.

However, if the VA provided medical benefits to a claimant that was due to a workers’ compensation claim, they may ask for reimbursement, or have a lien, on the workers’ compensation case for the full amount of the medical treatment. This will be discussed briefly later in this paper.

**ERISA and Other Health Care Benefits**

Sometimes the claimant will still be using his health care insurance during his/her workers’ compensation claim. There are different types of health insurance, either through the claimant’s employer or by other means.

**EMPLOYEE RETIREMENT SECURITY ACT (ERISA)**

ERISA is a type of private medical insurance or STD/LTD plan which is funded or maintained by an employer and/or employer organization. An employer can self-fund medical care or disability benefits for its employees, and when the plan’s coverage pays for an
employee’s care, caused by a third party tort-feasor, the plan’s fiduciary can seek recovery under ERISA § 502 (a)(3); 29 U.S.C. 1132 (a). 29 U.S.C. § 1001, et seq. However, ERISA does not apply to a church, government or farm plan or to self-pay insurance plans.

How does an attorney know if he/she has an ERISA plan? First, obtain a copy of the contract (Summary Plan Description and the actual Plan Documents) and read it carefully. The contract language should inform you as to the type of plan, what settlement funds it is able to obtain seek reimbursement from (liability, UM, etc.), what funds it can offset, whether the plan identifies a specific source for recovery, and whether the plan language waives the make whole or common fund doctrines. Cigna Corp. v. Amara, 131 S. Ct. 1866 (2011) held that the disclosures in the Summary Plan Descriptions could not be enforced as terms of the original plan. As such, you will need to receive both documents and review them carefully.

The ERISA plan can either subrogate the claim with a direct action against the tort-feasor or make a demand for reimbursement from the employee’s settlement/verdict, including funds from a workers’ compensation settlement. A No-Liability Stipulation and Agreement will not protect a Claimant or his /her attorney from a direct action for a failure to address an ERISA plan. It is very important to receive and review the contract language as soon as possible in order to determine if the ERISA plan requires reimbursement. Some cases have required that the employee pay the entire amount of the ERISA lien, even if the recovery did not provide enough to repay the entire lien. Wal-Mart Stores, Inc. v. Shank, 500 F. 3d 834, (8th Circuit 2007).

ERISA health liens are tricky. I am not going to go into every detail or defense concerning an ERISA lien. However, if an ERISA health lien is valid, you have to pay! And if you
don’t, scary things can happen to you and your client. First thing, Request the Summary Plan Description ( SPD) and the actual Plan documents early on. Second, determine the type of plan, and whether 1) the Plan language identifies a specific source for recovery and the particular share of the fund, and 2) whether the Plan language waives the made whole or common fund doctrines.

The plan language you are looking for will probably be found under the heading "Subrogation" or sometimes something like "If a third-party is liable for the injury" or "Right of Recoupment" or "Other Insurance" or "Coordination of Benefits" or "Reimbursement." And sometimes they have a section called "Third Party" and the subrogation clause follows it. Of course to save yourself the time, you can always ask the subrogation adjuster/person to point out where the section can be found in the policy. (They are always quite helpful to point out that they should get paid.) Sometimes there is a waiver regarding workers’ compensation claims.

Once you have determined that you have an ERISA plan, you need to absolutely know whether the plan contracted around (waived, negated, etc.) the “made-whole” and “common fund” doctrines. If they did, then it may be more difficult to get the claim resolved.

As long as the claimant did not use the ERISA insurance for treatment related to his workers’ compensation injury, then he/she will not have a possible lien upon settlement of the workers’ compensation claim. However, if the claimant was receiving his/her health insurance from the Employer, the claimant will lose his/her insurance upon signing a Release and Resignation. Unless your client is agreeable to this, you cannot allow your client to sign a Resignation and Release if he/she is receiving health insurance through his/her employer. Once
the claimant agrees to have his health plan terminated, he/she may be eligible for other health plans.

**Non-ERISA Health Care Plans**

If your client has health insurance, and the insurance plan does not fall under ERISA, (not a self-funded plan, policy covers a self-employed person, church or government plan, etc.), then any subrogation is governed by state law. These are not as common as ERISA plans.

The contract language will determine whether the health plan has a right to reimbursement. The contract will also state what settlement funds the plan can go after. Sometimes, these plans will not provide a right to settlement funds from workers’ compensation claim. However, unless the language is valid under O.C.G.A. § 33-24-56.1, you will not have to reimburse these plans.

**Conclusion**

As you can see, settlement of a claimant’s workers’ compensation claim is more than just having the paperwork signed and submitted to the SBWC. To adequately protect the claimant after his/her settlement, one must consider how the settlement language will affect the claimant’s future disability benefits and health coverage. While most claimant attorneys have a good understanding of how SSDI and Medicare work regarding workers’ compensation claims, few understand the relationship between STD/LTD, VA, SSI, Medicaid, ERISA, liens, etc.

Every firm has their own checklist and intake sheet. Just make sure to tailor it to address potential liens and to initiate action if needed. Use a client intake sheet to ask whether the client has health insurance, Medicare, Medicaid, STD, LTD, VA benefits, etc. Ask your client to provide you with a copy of his/her benefits book from his/her employer. This helps to provide
an initial idea of whom and what you are dealing with concerning any potential offsets and liens. You will also want to determine the following information:

- How old is your client? Is he/she already over 65, or below the age of 18?
- Who does your client work for? Self-employed? Government worker?
- Will your client become permanently disabled?

In addition, review the medical records thoroughly if initially provided by your client. Otherwise, keep reviewing the medical records/bills for any potential lienholders. Request that your clients keep you in the loop on any STD/LTD policies or any action or documents that he/she receives from his/her employer.

Continue to contact your client regarding any change in his/her lifestyle. Ask your client if his/her health insurance has changed. Determine whether your client or the health insurance provider (spouse, parent) has changed jobs or insurance plans. Ask your client if he/she has filed for Social Security Disability due to his/her injuries. Determine whether your client has become eligible for a Medicaid program or Medicare or other programs as a result of his/her injuries. These changes in life events will need to be dealt with as soon as possible.

The main focus that claimant attorneys need to realize is that by settling a claimant’s workers’ compensation claim, the claimant may lose potential indemnity benefits if one does not place the “Hartman language” into the stipulation. This language not only protects from offsets to SSDI, but also for STD/LTD, SSI, etc.

In addition, it is important to realize that once a claim settles, the claimant may or may not have insurance, or have the money to pay for insurance. It is important to try to find all avenues of health benefits for your client after he/she settles his/her workers’ compensation case.
Claimant’s should not sign a Release and Resignation if there are any possibilities that he/she needs to stay employed for health or indemnity benefits through other insurance plans, such as ERISA, LTD, STD, etc. By agreeing to resign, you can lose your health insurance, disability insurance, etc. Unless the claimant fully understands these options, one cannot be too careful.

Remember, a happy client is one that not only believes that you helped them settle his/her workers’ compensation claim, but also one that believes you had their best interests at hand.