

BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

JUSTIN RUMBAUGH
Claimant

v.

DIRECTV, INC.
Respondent

AP-00-0494-884
CS-00-0154-263

and

AMERICAN ZURICH INSURANCE CO.
Insurance Carrier

ORDER

Claimant appealed the February 20, 2026, Post-Award Medical Award issued by Administrative Law Judge (ALJ) Bruce E. Moore. This matter was placed on the Board's summary calendar for decision without oral argument.

APPEARANCES

Bruce A. Brumley appeared for Claimant. Andrew T. Jones and Brenden W. Webb appeared for Respondent and Insurance Carrier (Respondent).

RECORD AND STIPULATIONS

The Board adopted the same stipulations and considered the same record as the ALJ, consisting of the record previously itemized by the Board; the Opinion issued by the Court of Appeals on January 17, 2025; the transcript of Proceedings, held August 13, 2025; the transcript of Deposition of Justin Rumbaugh, taken September 25, 2025, with Exhibit 1; and the pleadings and orders contained in the administrative file. The Board also reviewed the parties' briefs.

ISSUE

Is the Post-Award Medical Award's determination all of Claimant's third-party settlement is future medical treatment duplicating the workers compensation award erroneous?

FINDINGS OF FACT

Claimant initially sustained back injuries from an accident arising out of and in the

course of his employment with Respondent on April 30, 2014. Claimant received medical treatment, including back surgery on October 27, 2014. Claimant subsequently presented signs of cauda equina syndrome, necessitating emergency surgery on October 6, 2016. As a result of Claimant's cauda equina syndrome, Claimant sustained permanent urological injuries. In prior workers compensation proceedings, it was determined Claimant's cauda equina syndrome was compensable as a natural and probable consequence of the initial compensable injury. The original workers compensation claim encompassing all of Claimant's compensable injuries settled, with future medical left open. The settlement was approved at a settlement hearing held on April 17, 2018.

During the pendency of the original workers compensation claim, Claimant prosecuted a third-party medial malpractice claim. Claimant alleged the cauda equina syndrome and resulting urological injuries were caused by a failure to timely diagnose or treat. Claimant was represented by separate counsel in the third-party claim. The claim settled at a mediation held after the workers compensation claim settled. Respondent did not appear at the mediation or participate in the litigation of the third-party claim. According to Claimant's third-party counsel, the settlement was a negotiated lump-sum payment of \$800,000.00. No sums were specifically denominated for loss of consortium. Claimant's third-party counsel also testified the settlement did not consider Claimant's possible negligence, or future setoffs or credits. The settlement is confidential. On April 14, 2020, the settlement was approved in Sedgwick County District Court, and a journal entry memorizing the settlement approval is part of the record.

According to the journal entry, the District Court was provided a Confidential Settlement Agreement and Release (Settlement Agreement), as well as a Settlement Sheet, which contained the full terms of the third-party settlement. The Settlement Agreement and Settlement Sheet were reviewed by the District Court Judge *in camera*. The journal entry states the settlement was a full, final, complete and confidential settlement of all issues and claims without an admission of liability. The journal entry also states none of the sums include exemplary or punitive damages, or pre- or post-judgment interest. The journal entry states Claimant is eligible for Medicare, and because future medical was left open in the workers compensation settlement, which would include medical treatment for the urological injuries which are the subject of the third-party claim, a Medicare set-aside agreement was not necessary to protect Medicare's interests. The settlement also provided Claimant was responsible for satisfying Respondent's subrogation interests. Finally, the journal entry stated the Settlement Agreement and Settlement Sheet could be withdrawn and retained by Claimant's third-party counsel.

The Settlement Agreement and Settlement Sheet were not part of the journal entry. Crucially, the Settlement Agreement and Settlement Sheet are not part of the record in these proceedings.

Following approval of the third-party settlement, Claimant's third-party counsel sent Respondent's counsel a check in the amount of \$37,129.23, made payable to Insurance Carrier. According to Claimant's third-party counsel's cover letter, the check was tendered in satisfaction of Respondent's subrogation interest for past benefits incurred. The check was subsequently negotiated by Insurance Carrier. This payment is the subject of an accord and satisfaction argument subsequently advanced by Claimant. The accord and satisfaction argument was reserved by Claimant, and is not a subject in these proceedings.

Claimant subsequently incurred additional medical expenses. Claimant sought payment of those expenses by Respondent under the future medical provision of the workers compensation settlement. Respondent argued a credit under K.S.A. 44-504 for the value of the third-party settlement should be applied against the post-award medical expenses sought by Claimant. As a result, Respondent argued it was not responsible for paying post-award medical expenses in workers compensation until the third-party settlement was exhausted.

Two post-award hearings before the ALJ were held on this issue. The ALJ determined Respondent had a credit under K.S.A. 44-504 for the full extent of Claimant's \$800,000.00 third-party settlement, which should be applied before Respondent was responsible for paying post-award medical treatment. The Board affirmed the ALJ. Claimant sought review by the Court of Appeals.

The Court of Appeals reversed the Board and remanded this matter for further proceedings.¹ Relying on *Wishon v. Cossman*,² and *Henson v. Davis*,³ the Court stated K.S.A. 44-504 grants liens only to the extent a worker's third-party recovery duplicates compensation and medical expenses paid by the employer.⁴ An employer's obligation cannot be reduced by sums the worker received for other unrelated injuries or conditions.⁵ The Court ruled the Board did not consider whether Claimant's third-party settlement included sums duplicating the future medical awarded in the workers compensation claim. The Board's order was vacated, and this matter was remanded for additional proceedings. The Board was instructed, in light of *Wishon* and *Henson*, to determine whether Claimant's third-party settlement included damages for treatment of an injury or condition for which

¹ See *Rumbaugh v. DirectTV*, 65 Kan. App. 2d 266, 280, 564 P.3d 17 (2025).

² 268 Kan. 99, 991 P.2d 415 (1999).

³ 54 Kan. App. 2d 668, 402 P.3d 1161 (2015).

⁴ See 65 Kan. App. 2d at 278.

⁵ See *id.* at 279.

he received a workers compensation award.⁶ If so, the Board was instructed to determine whether, and to what extent, the third-party settlement included damages for future medical treatment.⁷

Following the Court of Appeals's remand, the Board remanded this matter to the ALJ for further proceedings. The Board instructed the ALJ to conduct additional proceedings, receive additional evidence, and determine the extent Claimant's third-party settlement duplicated the compensation awarded in the workers compensation claim, including the value of any duplication of future medical treatment for Claimant's urological problems and Respondent's subrogation interest.

The ALJ conducted the remand proceedings, which consisted solely of Claimant testifying in a deposition. Claimant testified he could not recall many details of the third-party settlement. Claimant confirmed the third-party settlement entailed damages for the residual urological problems he experienced because his cauda equina syndrome was not timely diagnosed. Claimant could not recall if the third-party settlement included sums for loss of consortium. Claimant understood all of the third-party settlement funds were damages for pain and suffering, and none of the settlement was intended to cover future medical treatment. Claimant did not think the terms of the third-party settlement were confidential. Claimant was not provided a copy of the Settlement Sheet, and did not have a copy of the Settlement Agreement. Another copy of the journal entry was admitted into evidence. Claimant's counsel indicated he intended to obtain a copy of the Settlement Agreement and Settlement Sheet from Claimant's third-party counsel, but those items were not offered into evidence.

On February 20, 2026, ALJ Moore issued the Post-Award Medical Award. The ALJ noted Claimant was privy to the terms of the confidential third-party settlement, while Respondent and the ALJ were not. The ALJ noted he did not have an opportunity to inspect the Settlement Agreement or Settlement Sheet *in camera*, and the specific terms of the settlement were not disclosed. The ALJ determined the third-party settlement included damages for the urological injuries which were duplicated in the workers compensation award.

The ALJ then endeavored to determine whether the sums of the third-party settlement included sums denominated as future medical, and the value of those sums. The ALJ interpreted Claimant's failure or refusal to fully disclose the terms of the third-party settlement as evidence future medical expenses were contemplated in the third-party settlement. The ALJ surmised the third-party settlement included sums for future medical

⁶ See *id.* at 280.

⁷ See *id.*

because Medicare's interests were considered when the third-party settlement was approved. The ALJ also surmised the third-party settlement included sums for future medical because Insurance Carrier was paid for past medical expenses, which would not have occurred if the third-party settlement only compensated Claimant for pain and suffering. The ALJ found the entire amount of the third-party settlement, less the money previously paid to Insurance Carrier, duplicated the future medical awarded in the workers compensation award. The ALJ concluded Respondent was not responsible for paying future medical in association with the residual urological problems until the remaining credit was exhausted. Respondent, however, did not have a credit against future medical treatment unrelated to Claimant's urological problems. These proceedings follow.

PRINCIPLES OF LAW AND ANALYSIS

Claimant argues the Post-Award Medical Award is erroneous because the record does not support finding all of the third-party settlement was denominated as future medical. According to Claimant, he does not have access to the terms of the third-party settlement, and it is not his burden of proving an itemization of damages in the third-party settlement. Claimant also argues the District Court's consideration of Medicare's interests does not support finding the entire third-party settlement was denominated as future medical. Respondent argues the Post-Award Medical Award was decided correctly and should be affirmed.

When an injury for which compensation is payable under the Workers Compensation Act was caused under circumstances creating a legal liability against some person other than the employer, the injured worker shall have the right to take compensation under workers compensation and pursue a remedy by proper action in a court of competent jurisdiction against such other person.⁸ In the event of recovery from such other person, the employer shall be subrogated to the extent of the compensation and medical aid provided by the employer to the date of such recovery, and shall have a lien against the entire amount of such recovery.⁹ Whenever any judgment, settlement or recovery is recovered prior to the completion of compensation or medical aid payments, the amount of such judgment, settlement or recovery in excess of the amount of compensation and medical aid paid to the date of recovery shall be credited against future payments of compensation and medical aid.¹⁰

The employer's subrogation interest, however, only exists to the extent a third-party

⁸ See K.S.A. 44-504(a).

⁹ See K.S.A. 44-504(b).

¹⁰ See *id.*

recovery duplicates compensation and medical expenses payable in workers compensation.¹¹ If an employer is concerned about a third-party settlement being crafted to avoid the employer's subrogation lien, the employer has the right to intervene in the third-party action.¹² For an employer to have a credit under K.S.A. 44-504(b) applied to future medical treatment, sums in the third-party recovery must be denominated and paid as future medical.¹³

The Board first considers whether the ALJ erred in determining the third-party settlement included damages for injuries also covered in the workers compensation award. The journal entry is silent on the specific terms of the settlement. It is uncontested, however, the third-party settlement was premised on recovery for permanent urological injuries Claimant sustained because his cauda equina syndrome was not timely diagnosed or treated. Claimant confirmed this in his most recent deposition. The medical evidence in the record confirms Claimant's permanent urological injuries were the natural and probable consequence of the original compensable back injury. The Board agrees with the ALJ, and finds Claimant's third-party settlement includes damages for injuries also compensated in the workers compensation settlement.

The more difficult issue, however, is whether the third-party settlement specifically includes sums denominated as future medical treatment, which would duplicate the future medical provision of the workers compensation award. If the third-party settlement includes sums devoted to future medical treatment of Claimant's urological injuries, those sums would duplicate the future medical awarded in the workers compensation award and Respondent would have a credit under K.S.A. 44-504(b). On the other hand, if the third-party settlement does not include sums for future medical, Respondent would not have a credit under K.S.A. 44-504(b) because there is no duplication of compensation.

The current record does not contain evidence of the precise terms of the third-party settlement. Claimant does not recall the terms of the settlement. Claimant's understanding the settlement was not confidential is contradicted by the journal entry. According to Claimant's third-party counsel and the journal entry, the basis of the third-party settlement is contained in the Settlement Agreement and Settlement Sheet. Neither the Settlement Agreement, nor the Settlement Sheet, are in evidence, although it appears Claimant's third-party counsel, and possibly the Sedgwick County District Court, have copies of those documents.

¹¹ See *Wishon v. Cossman*, 268 Kan. 99, 105-06, 991 P.2d 415 (1999).

¹² See *id.* at 105.

¹³ See *Henson v. Davis*, 54 Kan. App. 2d 668, 676, 402 P.3d 1161 (2015).

Like the ALJ, the Board believes the settlement documents would be the best evidence of the scope of the third-party settlement. Administrative law judges generally have the same power to compel the production of books, accounts, papers, documents and records to the same extent as is conferred on the district courts, and may conduct an investigation, inquiry or hearing on all matters pending before them.¹⁴ Administrative law judges have the authority to conduct *in camera* inspections of documents to the same extent as district court judges.

The ALJ did not have the opportunity to conduct the *in camera* inspection the District Judge in the third-party action enjoyed. Rather, the ALJ attempted to comply with the Board's remand order with the record presented by the parties. The ALJ was required to engage in speculation to determine whether the third-party settlement included sums for future medical duplicating the workers compensation award. Unfortunately, the conclusion is based on speculation, rather than the evidence in the record, and must be vacated. The Board is similarly constrained from determining whether the third-party settlement includes sums for future medical, which prevents it from complying with the remand instructions from the Court of Appeals.

The Board possesses the authority to remand a matter to the ALJ for further proceedings.¹⁵ Unfortunately, the Board must remand this matter to the ALJ, again, for additional proceedings because the current record is deficient to comply with the remand instructions issued by the Court of Appeals. Like the ALJ, the Board declines the invitation to adjudicate which party has the burden of proving the terms of the third-party settlement, which was raised for the first time in these remand proceedings. Both parties have an interest in this issue. On one hand, Respondent should be tasked with establishing it has a credit under K.S.A. 44-504(b). On the other hand, Claimant has the burden of proving all of the elements of entitlement to compensation,¹⁶ including future medical treatment. Claimant is also more likely to successfully procure copies of the settlement documents from his attorney, or from the Sedgwick County District Court, than Respondent.

Accordingly, this matter is remanded to the ALJ for further proceedings:

1. Claimant shall obtain from his third-party counsel copies of the Settlement Agreement and Settlement Sheet. To preserve confidentiality, these documents may be provided to Claimant under seal, with an affidavit executed by Claimant's third-party counsel attesting the documents are true

¹⁴ See K.S.A. 44-551(l)(1).

¹⁵ See K.S.A. 44-551(l)(1).

¹⁶ See K.S.A. 44-501b(c).

and correct copies of the Settlement Agreement and Settlement Sheet submitted to the Sedgwick County District Court.

2. If Claimant's third-party counsel requires an order to release this information under seal, counsel shall jointly prepare an order for production, which shall be submitted to the ALJ for approval. In the alternative, the parties shall jointly obtain a subpoena from the Director seeking a sealed copy of the Settlement Agreement and Settlement Sheet, with an affidavit executed by Claimant's third-party counsel attesting the documents are true and correct copies of the Settlement Agreement and Settlement Sheet submitted to the Sedgwick County District Court. Claimant's counsel shall forward either the subpoena or order for production to Claimant's third-party counsel.
3. Consistent with the terms of the third-party settlement, the parties and their counsel are prohibited from divulging the terms of the third-party settlement. Counsel for the parties shall ensure a sealed copy of the Settlement Agreement and Settlement Sheet are forwarded to the ALJ. The parties shall transmit those documents to the ALJ either by stipulation to their admissibly, or as exhibits in a deposition taken to establish foundation for the admission of those documents.
4. The ALJ shall conduct a hearing, either in person or remotely, confirming receipt and admission of the copies of the Settlement Agreement and Settlement Sheet under seal. After the hearing is concluded, the record shall be closed and this matter deemed submitted to the ALJ for decision.
5. The ALJ shall conduct an *in camera* inspection of the copies of the Settlement Agreement and Settlement Sheet. Without divulging the terms of the confidential settlement, the ALJ shall issue a decision with its finding of whether the settlement includes sums denominated as future medical treatment. If the settlement includes sums denominated as future medical treatment, the ALJ shall make a finding of the value of those sums and the value of Respondent's corresponding credit under K.S.A. 44-504(b).
6. The ALJ shall retain the copies of the Settlement Agreement and Settlement Sheet under seal, and shall provide them to the Board if needed in future proceedings.

AWARD

WHEREFORE, it is the finding, decision and order of the Board the Post-Award

Medical Award issued by ALJ Bruce E. Moore, dated February 20, 2026, is vacated and this matter is remanded for further proceedings consistent with the above instructions.

IT IS SO ORDERED.

Dated this _____ day of May, 2026.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: (Via OSCAR)

Bruce A. Brumley
Andrew T. Jones and Brenden W. Webb
Hon. Bruce E. Moore