



Washington State Department of
Labor & Industries

Structured Settlement Program

2014 Annual Report to the Legislature

January 2015

Document number: LR 14-01

Available online at: Lni.wa.gov/LegReports

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Executive Summary

Introduction

RCW 51.04.069 requires the Department of Labor & Industries (L&I) to provide annual written reports on the implementation and results of the Claim Resolution Structured Settlement Agreement (CRSSA) program starting December 1, 2011 and continuing through December 1, 2014. This report is the last in a series of four, and covers the time period September 30, 2013-August 31, 2014.

Washington's workers' compensation system provides benefits to workers who are injured on the job or who suffer from an occupational disease. It pays for medical treatment and partial wage replacement, and provides disability benefits. CRSSAs were created by the legislature as a potential way of resolving workers' compensation claims for eligible workers age 55 and older who have a claim at least six months old.

L&I launched the CRSSA program in January 2012. Since then, the department has received just over 1,000 applications from workers pursuing a CRSSA. The CRSSA program at L&I involves only State Fund claims, in which the employer pays a premium to L&I to cover their employee for work-related injuries. This is in contrast to self-insured claims, in which employers insure themselves and L&I has regulatory oversight. Through August 2014, the Board of Industrial Insurance Appeals (BIIA) approved a total of 118 State Fund CRSSAs and 28 self-insured CRSSAs. The remaining applications received during this time period were not pursued, mainly because settlement was premature, it could not be shown that settlement was in the best interest of the worker, or State Fund costs would not be reduced. Settlement may be appropriate in some of these cases later in the claim.

Participation remains lower than originally estimated in 2011. In addition, since Washington's program is new and unlike those in other states, it is difficult to accurately predict savings; therefore, L&I has made two reductions in the program's projected savings to the workers' compensation system – one in June 2013 and one in June 2014.

As required by the statute, L&I will contract for an independent study in 2015 to evaluate CRSSAs. Two more independent studies will follow in 2019 and 2023.

2014 Implementation and results

CRSSA data and savings projections

In 2014¹, L&I received 383 applications for CRSSAs and sent 67 to the Board of Industrial Insurance Appeals (BIIA) for approval. The BIIA granted approval for all 67.

¹ This report covers the time period September 30, 2013-August 31, 2014. Since this is L&I's 2014 report, the time period is referred to throughout as 2014.

Projected ultimate savings for claims filed through September 30, 2014 will be about \$70 million; after that, annual savings are estimated at \$10 million.

CRSSA process

L&I's CRSSA process improvements focus on making it easy to do business with L&I. L&I put the CRSSA application online, and also added the financial worksheet to the site so that workers can provide required information quickly and easily. L&I also reduced the time it takes to draft a contract from days to hours by using a standard language template. L&I continues to conduct education and outreach, both externally and internally.

Issues impacting CRSSA implementation

Some CRSSA implementation issues reported in previous years may have contributed to a lower application rate. These include Social Security offset of benefits, BIIA application of best interest standard to represented workers, and workers' concerns about the privacy of the information sent to the BIIA as part of the approval process. These issues have been or are now being addressed.

Conclusion

The CRSSA program is in its third year of implementation. L&I made improvements in 2014 that resolved the implementation issues reported in previous years. In addition, other noted challenges were also largely resolved. These changes include:

- Process improvements have shortened processing time, and education and outreach continues to add value for all parties.
- A court decision that clarified represented workers are not required to pass a best interest test at the BIIA.
- Legislation was passed to protect all workers' private information from public disclosure at the BIIA.
- The Social Security Administration formally recognized the CRSSA law in Washington and is no longer offsetting workers who receive CRSSA payments.

Next steps

As directed in the law, L&I will contract for independent studies of CRSSAs in 2015, 2019, and 2023. These studies will be submitted to the Legislature and will:

- Evaluate the quality and effectiveness of structured settlement agreements of State Fund and self-insured claims.
- Provide information on the impact of these agreements on the State Fund and on self-insured employers.
- Evaluate the outcomes of workers who have resolved their claims through the CRSSA process.

L&I expects to submit the first report of these studies to the legislature by December 1, 2015.

Introduction

Washington's workers' compensation system provides benefits to workers who are injured on the job or who suffer from an occupational disease. It pays for medical treatment and partial wage replacement and provides disability benefits. For eligible workers, training for a new job or occupation (vocational rehabilitation) is also provided.

The legislature created the Claim Resolution Structured Settlement Agreement (CRSSA) program as a potential way of resolving workers' compensation claims for eligible workers. The intent was to maintain a financially sound workers' compensation system for employers and workers by focusing on achieving the best outcomes for injured workers, while controlling costs.

The legislature put two types of protections in place to support workers who want to pursue work or retirement goals independent of the workers' compensation system. These protections:

- Limit access to CRSSAs to only those injured workers who:
 - Are age 55 or older.
 - The 55 or older age limit dropped to 53 or older on January 1, 2015, and to 50 or older on January 1, 2016.
 - Have an allowed claim.
 - Have had a claim in the system for at least six months.
 - Eligible workers are only permitted to settle the non-medical portion of their workers' compensation claim; they would continue to be eligible to receive medical treatment, if appropriate, regardless of whether they entered into a CRSSA.

- Provide for a Board of Industrial Insurance Appeals (BIIA) approval process:
 - The three members of the BIIA must approve all CRSSAs before they can become final.
 - Workers without legal representation must have a conference with an Industrial Appeals Judge before their CRSSA goes to the BIIA members for approval.
 - If the BIIA approves a CRSSA, there is a 30-day "cooling off" period during which any party may revoke consent. Once the agreement becomes final, L&I implements the terms of the agreement by order.

This report will discuss the CRSSA process, CRSSA data and savings projections, and issues impacting CRSSA implementation.

2014 Implementation and Results

This section describes the process involved for settling a workers' compensation claim using a Claim Resolution Structured Settlement Agreement (CRSSA); provides information about results, including the number of claims settled and the savings projections; and discusses issues that have impacted CRSSA implementation. During 2014, L&I improved the application process, reduced contract drafting time, and reduced errors, which has contributed to improved customer service.

CRSSA PROCESS

The CRSSA program at L&I involves only State Fund claims. A State Fund claim is one in which the employer pays a premium to L&I to cover their employee for work-related injuries. This is in contrast to self-insured claims, in which employers insure themselves and L&I has regulatory oversight. Self-insured employers receive, negotiate and draft all CRSSAs involving their employees. L&I is not involved except to issue an order making the CRSSA effective and to keep a record of the contract in the worker's claim file.

As the administrator of the State Fund, L&I receives CRSSA applications from employers, injured workers or their representatives; negotiates the terms of a settlement; and drafts all CRSSA contracts entered into by State Fund workers.

CRSSA applications

L&I developed an online application to make it easier for injured workers and employers to submit a CRSSA application. The online application includes three criteria required by law, to ensure that applicants meet the statutory requirements. These requirements are:

- The worker is age 55 or older at the time of the CRSSA application.
- At least six months have passed since L&I received the claim.
- The claim has a final allowance decision.

L&I makes sure applicants meet the statutory requirements before they can apply online. Injured workers can now also find an income and expense worksheet online. L&I uses this worksheet with unrepresented workers to evaluate whether a CRSSA is in a worker's best interest. L&I reduced the time it takes to process a CRSSA by putting the worksheet online.

CRSSA negotiation

When negotiating a CRSSA, L&I always considers both the need for a positive outcome for the worker, and the need to reduce costs to the fund (and, as a result, to employers). L&I considers the entire claim file and any information the worker supplies to supplement the application, including:

- The medical status of the worker and whether further treatment is indicated.
- The worker's financial circumstances separate from workers' compensation benefits.
- Whether the worker can return to employment.
- Whether the worker is interested in retraining.

Unrepresented workers are encouraged to get the advice of legal counsel **before** entering into a CRSSA. If the negotiation involves an unrepresented worker, L&I offers to meet in person with the worker. The department often receives favorable feedback from workers who have had meetings with program specialists to discuss settlement terms.

CRSSA contract drafting

L&I has reduced the time it takes to draft a contract from days to just under two hours on average, and has almost eliminated errors.

Previously, drafting a CRSSA contract was a complex, time-consuming task that could take days to complete depending on the complexity of the CRSSA. L&I's experience in administering the program has given the department a better understanding of the variations in contracts and how to address them. By fine-tuning and standardizing contract clause language, the department developed a template that can be easily adapted to changing information. This has reduced both the contract drafting time and the number of errors in contracts.

CRSSA approval process

Once the parties to a CRSSA have agreed to the terms and signed the contract, L&I submits it to the BIIA for approval. CRSSAs for workers represented by an attorney go directly to the BIIA. CRSSAs for unrepresented workers are reviewed by an Industrial Appeals Judge who conducts an in-person conference with the worker. The purpose of the conference is to determine whether the worker has an adequate understanding of the agreement and any consequences it may have, and whether the agreement is in the worker's best interest. An Assistant Attorney General who has already discussed the contract with the worker is also present at this conference, but is not acting as the worker's legal representative.

The judge questions the worker on a number of issues including, but not limited to:

- The worker's marital or domestic partnership status.
- Other benefits the worker may be receiving or be entitled to receive and the effect a CRSSA might have on those benefits.
- The age and life expectancy of the worker.
- The nature and extent of the worker's injuries or disabilities.

If the judge is not satisfied that the worker understands the terms or concludes that the CRSSA is not in the worker's best interest, the CRSSA will be denied. If the judge is satisfied that the worker understands the terms and that it is in the worker's best interest, the CRSSA moves on to the full BIIA for approval.

Within 30 working days of receiving a CRSSA, the BIIA members will determine whether the agreement:

- Was entered into knowingly and willingly.
- Meets the requirements of the law.
- Is the result of a material misrepresentation of law or fact.
- Is the result of harassment or coercion.

- Is unreasonable as a matter of law.

Once approved by the BIIA, any party can revoke consent to the CRSSA within 30 days. Once BIIA approval is final, no party may appeal that decision.

Workers continue to receive benefits to which they may be entitled from the beginning of the CRSSA process until the CRSSA is final. Once the CRSSA is final, L&I will implement the terms of the agreement by issuing an order and starting the agreed-upon payments.

CRSSA education and outreach

The CRSSA program specialists continue to conduct education and outreach with many different groups, both inside and outside the agency. This benefits both the groups to whom presentations are made and the CRSSA staff. In every meeting, learning is a shared experience where all parties discover new ideas and insights.

L&I has a CRSSA website (<http://lni.wa.gov/main/settlement/>) providing information specifically tailored to injured workers and employers. The site allows injured workers or employers to submit their CRSSA application electronically. L&I recently added an income and expense worksheet to the site, which allows workers to quickly submit financial information to the program along with the CRSSA application.

As of October 2014, about 7,500 workers have open claims eligible for CRSSAs. L&I periodically sends eligible workers a notice informing them of the CRSSA law and inviting them to contact the department for more information.

CRSSA DATA AND SAVINGS PROJECTIONS

CRSSA applications and approvals

Since the CRSSA program began in January 2012, L&I has received just over 1,000 applications and has submitted 118 CRSSAs to the BIIA. All 118 CRSSAs were approved. Since the last report to the legislature in 2013, L&I has received 383 applications for CRSSAs and submitted 67 to the BIIA. All 67 were approved. In addition, two CRSSAs submitted in 2014 are awaiting approval by the BIIA, and 39 applications are under L&I's review, in negotiations or in contract drafting. So, of the 383 applications received, 108 are either approved or under consideration. The remaining applications received during this time period were not pursued, mainly because settlement was premature, it could not be shown that settlement was in the best interest of the worker or projected State Fund costs would not be reduced.

Tracking characteristics of State Fund CRSSAs

Certain characteristics of the claims of workers who enter into CRSSAs are being tracked for use in a series of studies ordered by the Legislature, which are discussed later in this report. The studies found that claims subject to a CRSSA could be open from 17 months to just over 47 years; however, the median length of time these claims were open was just under five years. The median age of the worker entering into a CRSSA was 62, and about half of all workers were represented. See Table 1 for more details.

Table 1: State Fund CRSSA characteristics

Claim characteristic	CRSSA data
Age range of claim	17 – 565 months
Median claim age	59 months
Age range of worker	55 – 77 years
Median age of worker	62 years
Percent of CRSSAs involving represented workers	50%

Source: L&I Data Warehouse

L&I does not track these same characteristics in self-insured CRSSAs because the department is not a party to those settlements. As of August 31, 2014, the BIIA had approved 28 self-insured CRSSAs.

CRSSA cost savings assumptions

L&I initially assumed Washington’s new CRSSA program would be similar to settlement programs in other states. However, based on the first year of experience with Washington’s program, L&I revised its cost savings assumptions in June 2013 to lower the number of expected CRSSAs. This change reduced the CRSSA savings assumptions by 75 percent. L&I made another adjustment in June 2014 after almost two years of CRSSA experience, reducing savings assumptions by an additional 40 percent. These two reductions resulted in combined savings estimates of \$70 million from the start of the program through September 30, 2014, and \$10 million annually thereafter.

ISSUES IMPACTING CRSSA IMPLEMENTATION

In the past, three issues were thought to have impacted the frequency and success of CRSSA implementation:

- Workers’ receipt of Social Security benefits.
- BIIA application of “best interest” test to the CRSSAs of represented workers.
- Worker privacy concerns related to the CRSSA approval process.

These issues have been or are being addressed as follows.

Social Security offset of CRSSA payments

In late 2013, the Social Security Administration (SSA) began taking offsets against workers' receipt of CRSSA payments when workers received both CRSSA payments and Social Security disability benefits. The SSA did not follow Washington's CRSSA law and viewed the payments as identical to time-loss or pension benefits, which may be offset by the SSA under certain circumstances. However, L&I's contract language clearly stated the payments were not for time-loss or pension benefits. When L&I became aware of the offsets, the department worked with the regional headquarters of the SSA. The problem has now been resolved and the SSA is no longer offsetting workers' payments.

BIIA application of best interest test to represented workers

As reported previously, the BIIA must review all CRSSAs. However, the statute also requires those CRSSAs involving unrepresented workers to be reviewed by a judge to determine whether the agreement is in the worker's best interest.

The BIIA had interpreted the CRSSA statute as requiring a determination of whether a CRSSA is in a worker's best interest regardless of whether a worker is represented by an attorney. As a result of this interpretation, the BIIA initially rejected some CRSSAs submitted by represented workers because they couldn't determine whether the agreements were in the workers' best interest.

On May 20, 2014, the Washington State Court of Appeals, Division II, issued a published decision in *Board of Industrial Appeals v. South Kitsap School District; Daniel Zimmerman; and Department of Labor & Industries*, commonly referred to as the "Zimmerman" decision. This decision overturned the BIIA interpretation that a best interest determination is required when a worker is represented. It affirmed a previous Superior Court decision that the applicable statute, as written, does not permit the BIIA to reject a proposed CRSSA for a worker represented by an attorney because of a best interest determination. The court noted: "This approach assigns the determination of one's own interest to those arguably best positioned to make that determination, workers with legal counsel."

This issue has been resolved and the BIIA no longer rejects CRSSAs for represented workers because of best interest determinations.

Worker privacy concerns

Although represented workers probably need to share less private information with the BIIA after the *Zimmerman* decision, unrepresented workers still must share extensive private information during the CRSSA approval process. Until recently, these workers had legitimate privacy concerns because there was no exemption from public disclosure to protect the information they were required to share. The information could include union and retirement benefits, spousal income, motivations for settling and information about medical conditions unrelated to their claim.

Senate Bill 6522, passed in 2014, resolved the worker privacy concerns. It amended the Public Records Act to exempt from public disclosure all information related to CRSSAs submitted to the BIIA, except final orders. The bill also made information gathered during the CRSSA process

inadmissible in future litigation. This amendment may encourage workers and their representatives to feel more secure about using the CRSSA option.

Conclusion

The CRSSA program is in its third year of implementation. Changes made in 2014 include:

- Process improvements have shortened processing time, and education and outreach continues to add value for all parties.
- Represented workers no longer must pass a best interest test at the BIIA.
- All workers' private information is protected from public disclosure at the BIIA.
- The Social Security Administration formally recognized the CRSSA law in Washington and is no longer offsetting workers who receive CRSSA payments.

CRSSA PROCESS

The most significant internal improvement L&I made to the CRSSA process was to standardize the CRSSA contract language. This change reduced the time it takes to draft a contract from days to hours. L&I continues to engage in education and outreach, as most customers, whether internal or external, still ask for more information about the CRSSA program.

CRSSA DATA AND SAVINGS PROJECTIONS

The number of CRSSAs approved by the BIIA this year increased from last year; however, the number of cases submitted for approval where a settlement is considered appropriate continues to be less than originally estimated, leading to a reduction in cost savings assumptions.

NEXT STEPS

In 2015, 2019 and 2023, L&I will contract for independent studies of claim resolution structured settlement agreements, which will be submitted to the legislature. These studies will:

- Evaluate the quality and effectiveness of structured settlement agreements of State Fund and self-insured claims.
- Provide information on the impact of these agreements on the State Fund and on self-insured employers.
- Evaluate the outcomes of workers who have resolved their claims through the CRSSA process.

L&I expects to submit the first report on these studies to the legislature by December 1, 2015.