Insurance & Personal Injury

Think Twice Before You Decide to Accept a Settlement Offer

Dilemma – to accept or not to accept?

This article’s focus is on early settlement offer by the employer or wrongdoer or their insurance company well before the injured person has the opportunity to seek legal advice or even before the injured person’s condition is stabilized.

When a person sustains injuries while at work or as a result of the negligent act of a wrongdoer, he may receive an offer of settlement soon after the accident. This would put the injured person in a dilemma, in particular to those who are under grave financial difficulties because they are unable to work after the accident and that they have no means to seek legal advice. The acceptance of the settlement sum could be the quickest way to solve the injured person’s financial problem but the injured person should also concern whether the sum offered is a reasonable compensation. Therefore, the questions are :-

1. Should the injured person accept an early settlement offer?
2. If he now accepts the offer, can he later go back on his previous settlement agreement?

Should the injured person accept an early settlement offer?

There are various tempting reasons for accepting an early settlement offer. Apart from the injured person’s financial reason as mentioned above, some injured persons who sustained injury while at work may think that acceptance of the offer can keep their rice bowl. Some other injured persons, though not under financial difficulties, may think that acceptance of an early settlement offer saves time and money in seeking legal advice and removes the uncertainties in legal proceedings.

If the injured person sustains only minor injuries, it is understandable that he would choose to accept an early settlement offer. Nonetheless, acceptance of early settlement offer poses problems even for minor injuries. It is because notwithstanding that the injuries may seem minor initially, the symptoms of injuries could gradually develop and manifest to a not minor injury, such as injury to tendons which would not be revealed by x-ray examination done by government hospital where the injury is first treated. Moreover, it is not easy to know the extent of injuries and the residuary disabilities resulting from the injuries before the injuries become stabilized. It is therefore not advisable to accept an early settlement offer when the injured person’s condition is not yet stabilized.
If the injured person now accepts the offer, can he later go back on his previous agreement for settlement?

If the injured person accepts the settlement offer, he is required to sign a Discharge Form. A Discharge Form is a legally binding contract. Generally, Discharge Form is drafted by lawyers engaged by insurance company to protect the interest of the insurance company and their insured. The typical example of a Discharge Form reads as follows:-

In consideration of [the employer / wrongdoer / the insurance company] agreeing to pay [the injured person] HK$[settlement sum], [the injured person] agrees to accept the said settlement sum in full and final settlement and satisfaction of all claims whatsoever [the injured person] has against the [the employer / wrongdoer / the insurance company] in respect of all liability, injury, damage, costs, interest, and all other losses and expenses incurred whether now and hereafter to become manifest arising directly or indirectly from the alleged accident on [date].

[The injured person] further agree upon receipt of the settlement sum to release and discharge [the employer / wrongdoer / the insurance company] from all liability, actions, claims, proceedings, damages, interest, costs and expenses whatsoever and howsoever they may have arisen or arise in the future which [the injured person] have or may have had at any time and [the injured person] agree not to bring any further claim or legal action he has upon or against [the employer / wrongdoer / the insurance company] in respect of the alleged accident.

The wordings of the Discharge Form means that after receipt of the settlement sum, the injured person’s right to claim is extinguished. The injured person cannot bring a claim even if it later transpires that his entitlement to compensation is much more than the settlement sum he would receive under the Discharge Form.

There have been a number of cases where the injured persons contested that the Discharge Forms they signed were invalid. They claimed that they received little education and did not have such experience. They said they were not explained their right and entitlement under the Employees' Compensation Ordinance and under common law. They also claimed that they did not have the benefit of legal advice. In many cases the Court found that the Discharge Forms were written in Chinese and the wordings were clear and unambiguous. The injured persons fully understood that they were signing a settlement and the intent to settle was beyond dispute. As a result, the injured persons’ claims were struck out.

Therefore, unless the injured person can prove that he was misled into signing the Discharge Form or was under threat at the time of signing, it is very difficult for him to say that the Discharge Form has no legal effect.
For employees’ compensation claim, section 31(1) of the Employees’ Compensation Ordinance, Cap.282 states that the settlement agreement shall be null and void if it purports to remove or reduce the liability of any person to pay compensation under the provision of the Ordinance. Therefore, if an injured worker signs a Discharge Form regarding employees’ compensation only, his right is better protected in the sense that the settlement sum cannot be less than the minimum compensation. However, the Discharge Form is still valid if the settlement sum is in excess of the minimum but conceivably less than what the injured worker might have obtained according to his condition. It should be noted that there is no similar protection of section 31(1) when the injured person’s claim is under common law.

**Conclusion**

As can be seen from above, a Discharge Form would very likely be accepted by the Court as valid except the injured person was misled or under threat. It means that signing of a Discharge Form would most certainly release the employer / wrongdoer and their insurer from liability. The injured person cannot have a second round of claim out of the same accident. Therefore, it is crucial for the injured person to think carefully and not to plunge into a settlement agreement. He should never accept an early settlement offer if his condition is not yet stabilized. Besides, he should always obtain proper legal advice on his right and entitlement to the claim of compensation / damages before he signs the Discharge Form.