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FOR EMPLOYMENT RESEARCH

A Study of Claim Resolution
Structured Settlement Agreements
Final Report

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1 INTRODUCTION

The Washington legislature mandated a series of studies of claim resolution structured settlement agreements (CRSSAs) to give stakeholders an objective, third-party assessment of its implementation. These studies were scheduled for 2015, 2019, and 2023. The legislative language calling for the proposed studies is clear about content: the study must evaluate the quality and effectiveness of settlements for state fund (SF) and self-insured (SI) claims, must provide information on the impact of the CRSSAs to SF and SI employers, and must evaluate the outcomes for workers. Under contract to the Department of Labor and Industries (L&I), the Upjohn Institute for Employment Research conducted the 2015 study (see Dillender, Hollenbeck, and Hunt 2016), and has conducted the second study, which is documented herein. It should be noted that the time frame covered under this review is from the implementation of CRSSAs through June 30, 2018.

In satisfying the legislative mandate for the study, much hinges on the definitions of quality and effectiveness and on their measurability. We have operationalized these concepts as follows:

Quality	Effectiveness
Results in positive outcomes for workers	Outreach information is accurate and disseminated widely to potential applicants
Perceived to be fair/equitable by workers and employers	Processing is timely
Horizontally (i.e., equal treatment for equal circumstances)	Reasonable administrative cost per claim
Vertically (i.e., other things equal, more need or more immediacy gets higher level of attention)	Wide employer awareness and perception that program reflects employer input
Unbiased (non-skewed) participation behavior	Benefits accrued exceed the costs of the program
Positive outcomes for employers	
Minimal unintended consequences	

While maintaining a focus on these key characteristics of quality and effectiveness in this study, we addressed the following issues:

- How the CRSSA processes have evolved since our earlier study
- How CRSSAs are effectuated for workers injured while employed by firms that are SI
- How the potential fiscal benefits of CRSSAs compare to the costs

To accomplish the study, we have analyzed four sources of data. The first source of data is an extract of claims data from the L&I Data Warehouse. These data have been used to estimate models of structured settlement application and receipt, to tabulate measures of processing time and cost, and to examine the impact on employers. The data contain information on all individuals who received a settlement prior to July 1, 2018 and all other individuals who met the age and claim maturity eligibility criteria for a settlement before that date.

The second source of data are the archived structured settlements arrived at by workers and self-insured (SI) employers through June 2018. This archive was supplied to us by the Structured Settlement Unit (SSU) of L&I. We would note that this archive was quite unwieldy to use for analyses. Some contracts were extremely detailed and consisted of dozens of pages; others had no details about the settlement—just worker name and settlement date. The inconsistency across contracts in this archive stems from their source. As explained below, the BIIA interprets the statute to preclude it from disclosing any CRSSA materials submitted to it for approval, which requires the department to rely on the parties to supply a correct version of the approved contract. We drew two random samples from these archived contracts: one to measure the size of settlements and another for implementing our mailed survey of applicants.

Third, we have conducted a random survey of workers who applied for a settlement prior to July 1, 2018. The purpose of this survey is to collect variables that provide information about individuals' application motivation and process, opinions about the settlement process for those who settled and self-reported outcome variables, such as employment and major expenditures.

The last type of information is qualitative data collected through interviews and focus groups. These data help us to gauge stakeholders' perceptions. The interviews and focus groups included workers with SF and SI employers. Furthermore, employers or their legal representatives were interviewed—again, some SF and some SI employers, and their legal representatives. The main purposes of these interviews or focus groups was to gauge perceptions about the fairness/equity of the CRSSAs, to gain an understanding of the outreach efforts by L&I, and to learn about the extent of employers' input into the settlement process.

We would note that, through the last three sources of data, we were able to capture the perspectives of a substantial number of stakeholders involved in the structured settlement process when the injured worker was covered by a self-insured employer, which was one of the special focuses of this study. In general, we worry that a lack of accessible information on self-insured cases inhibits studying them in Washington, and we wanted to be able to shed light on structured settlements by this important segment of the workers' compensation system.

The next section of the report paints a broad picture of the structured settlement process for injured workers and employers. That is followed by a section that provides analyses of data concerning workers, including perceptions of the application and approval processes as well as information about outcomes after receiving the settlement. The fourth section of the report examines structured settlements from the viewpoints of employers and attorneys, who are active participants in many of the settlements. The final section provides a summary of key findings, conclusions, and recommendations.

2 STRUCTURED SETTLEMENTS: THE BIG PICTURE

As with any workplace insurance program, workers' compensation rules and regulations balance the interests of employers and the interests of (injured) workers. According to L&I staff, the insertion of CRSSAs in a series of reforms to the workers' compensation system in 2011 was no different. In general, the employer community would like the certainty of having claims permanently closed such as in a "compromise and release" system. Similarly, many workers would prefer to receive a lump sum payment and exit the workers' compensation system rather than to continue meeting workers' compensation requirements. However, as recovery from injury and future income needs can be uncertain, the legislature and labor representatives were concerned about injured workers forfeiting access to workers' compensation benefits, particularly medical treatment.

The compromise that got enacted into law was that for workers over the age of 55 (changed to age 53 on January 1, 2015 and to age 50 on January 1, 2016) with claims that are at least 180 days old and have a final allowance order, a structured settlement could be negotiated that would end indemnity payments. However, future medical expenses related to the worker's injury would continue to be covered by the workers' compensation system (L&I or SI employer). The "structured" aspect of the settlements comes from the fact that the settlements are paid out over the course of months in amounts prescribed by the statute, with workers typically receiving a larger amount for their first payment. Attorneys receive the structured settlements for represented workers, and the attorneys then distribute the payments to the workers after taking their fees, which can be up to 15 percent of the settlement payment.

Trends

For SF workers, the pace of applications has been relatively stable over the past three years, but the number of approved contracts seems to have accelerated. In our first report, we noted that through calendar-year 2015, there had been 1,225 applications received from workers who had worked for SF-insured employers, and contracts had been finalized with 230 workers. According to the weekly reports from the SSU, at the end of 2017, there had been 2,456 applications from and 474 contracts with SF workers. Thus, at the end of the two years between these data points, the cumulative number of SF applications and contracts virtually doubled. In other words, the activity during those two years was virtually equal to the activity that had occurred in the first four years of the program.

Since the end of 2017, the SF application rate has stayed level at about 50 per month. However, there has been an increase in contracts. On average in calendar-years 2016 and 2017, the number of SF contracts was 122. In 2018, there were 210 approved contracts, well above the prior years' average. Through the first four months of 2019, this rate of approximately 20 contracts per month has continued (94 approved contracts). Presumably these increases in the rate of contracts reflect more familiarity with the program as well as some changes in administrative procedures, particularly at the Board of Industrial Insurance Appeals (BIIA). After the *Zimmerman* Appeals Court decision in 2014 determined that if an injured worker had legal representation, the BIIA did not need to decide whether the settlement was in the best interest of the worker. That would be determined by the legal representative together with the

worker. Structured settlement amounts for the SF workers have remained steady over the course of the program, with the average settlement being just under \$100,000 for both the early and later years.

The pace of SI contracts also seems to have accelerated, although we only have recent data on them, and do not have any data on applications. Through the end of calendar 2017, the total number of SI contracts received by L&I was 254. Over the six years of the program, that would be an average of about 42 contracts per year, but we know that the pace increased after the *Zimmerman* ruling. In 2018, L&I received a total of 166 SI contracts, which is quite an increase compared to the previous years' averages. The average of about 14 contracts per month has continued into 2019. The change in attitude at the BIIA was noted by nearly all the attorneys that we interviewed.

SSU indicated that there have been a few significant changes in the process of analyzing applications and developing contracts since our earlier report. These changes include streamlining the contract language, standardizing the application analysis, and undertaking a targeted collaboration with internal L&I employees for referrals. The unit is no longer sending outreach materials to all workers who become eligible for a settlement. They feel that the program has become institutionalized and well-known enough that outreach efforts are no longer as important as they were when the program first started. This seems to be true for SI employers as well as for SF-insured employers.

Referrals

In addition to applications directly from injured workers, the weekly reports of SSU activity indicate that the unit receives approximately 20 to 30 referrals per week, which may be another reason why the SSU has reduced its outreach effort. Many of the referrals come from internal L&I staff members—claim consultants, claim managers, vocational service specialists or the vocational dispute resolution office. Some of the referrals come from the Attorney General's office, which has a large labor and industries division. A few referrals come from a third party or other external source such as employers, retro rating groups, or vocational rehabilitation counselors, assigned to assist workers in returning to work.

Referrals are systematically followed up to determine whether the worker should be encouraged to apply for a CRSSA. In general, the SSU will rely on information in the claim file to ensure that the worker is eligible and to note whether the worker had been represented by an attorney who would then be contacted on behalf of the worker.

Analysis of Applications from State Fund Workers and Development of Contracts

Applications may be received from represented or unrepresented workers. Employers may also submit an application on behalf of a worker, though we learned that employers rarely submit the applications. The SSU has program specialists who analyze the applications to determine whether a settlement should be considered. The specialists examine each applicant's claim file to make a determination about medical fixity, as claims are generally considered eligible for settlements once a

worker reaches maximum medical improvement. In addition, the specialist tries to determine whether a settlement would be in the best interest of both the *pro se* worker and L&I.¹

Other indicators that a settlement would be advisable include workers who are interested in continuing to work, usually on a part-time basis, and individuals who are not interested in being retrained. The initial review is faster for represented workers than for unrepresented ones, largely because ensuring that the CRSSA is in the worker's best interest is ultimately their attorney's responsibility instead of the SSUs for represented workers.

In the case of unrepresented, or *pro se*, workers, the SSU has the dual responsibility of making the offer and considering whether that offer would be in the best interest of the worker. In our interviews, several employer representatives told us that they are reluctant to deal with *pro se* workers as they generally feel these unrepresented workers do not sufficiently understand the process or implications of entering into a CRSSA, which makes it unduly difficult to negotiate settlements with such workers. This is particularly true for SI employers.

If the program specialist determines that a settlement may be in the best interest of the worker and L&I the program specialist proposes a settlement offer to the L&I Director's designee for approval. If approved, the offer is communicated to the worker (through their representation, if appropriate) and to the worker's employer, if that employer is a party to the settlement (i.e., the settlement would affect the employer's experience rating). In many cases, the worker's employer may waive its right to participate in the negotiations and leave it up to the SSU. Negotiations involve a back and forth with offers and counteroffers about half the time according to SSU.

Even though the SSU's criteria for settling a claim mean that structured settlements should be advantageous to all parties, including employers, it is sometimes the case that employers will object to them. In our qualitative data collection, employers and workers both implied that a common reason for employers objecting to structured settlements is the employer's opinion that the worker is not "worthy" of a settlement. In those cases, the SSU may wait until the claim drops off the employers' experience rating period (three years of experience, which may involve the last 4 or 5 calendar years) in which case the employer is no longer a party to the negotiations.

Once a settlement has been agreed upon, the process is rather rote. A contract is formally drafted and approved by the Attorney General's office as to form. Signatures are obtained, and the contract is submitted to the BIIA for approval. In our previous study, we were told that this could be a difficult step, particularly before the *Zimmerman* decision. However, current reports are that things have improved considerably at the BIIA. After approval by the BIIA, both parties have 30 days to revoke their consent to the agreement.

¹ The program specialist makes this determination based upon discussion with the worker and consideration of whether the settlement would be financially detrimental to the worker.

Contracts with Workers from Self-Insured Employers

Whereas there is considerable information online about the processes for SF workers, there is very little information online about applicants from SI employers. The L&I website indicates only that any settlement for SI workers is strictly an agreement between the worker and employer. In Washington, about 25 percent of the workforce has workers' compensation coverage through SI employers. Interestingly, about 40 percent of CRSSAs are with SI workers. Thus, it may be concluded that SI employers and possibly their injured workers are more likely to seek structured settlement agreements.

As noted above, there seems to have been a significant increase recently in the number of contracts with SI workers. To investigate whether the increase results from additional outreach or marketing by or on behalf of SI employers, we interviewed the Ombuds for Injured Workers of Self-Insured Employers to determine her hypotheses about the basis of this trend. She indicated that her office deals mainly with traditional workers' compensation issues, but in the very recent past, staff have become aware of and trained about CRSSAs. The Ombuds indicated that her staff refrain from making any legal representations, and so staff persons are likely to advise unrepresented workers, who are considering structured settlements, to obtain representation.

An important consideration in the process of approving settlements is a determination of whether the settlement is in the best interest of the worker. Unrepresented SF workers complete an application for settlement, either online or in hard copy, that collects information about household income and expenditures. These applications are reviewed and kept apart from the claim file in electronic form by the SSU. Unrepresented SI applicants must also convince the BIIA that a settlement is in their best interest, but there is no standardized application for SI workers. It should be noted that the [2018 Report to the Governor](#) from the Office of the Ombuds indicates that that office is developing an application for SI workers that parallels the SSU application. A few employer attorneys that we interviewed favored such a development as leading to greater consistency in processing.

Based on information provided by workers and included in their claim file, the applicant's representation must formulate a desired settlement amount and negotiate with the employer (presumably through the employer's attorney or through a TPA). Once the settlement amount has been finalized, a contract will be developed. L&I has provided contract templates for attorneys to use for SI workers, although the templates do not have to be used. Once the contract has been approved, and the 30-day revocation period has passed, the contract is supposed to be sent to the department for inclusion in the claim file. This has proved to be challenging for the department since the BIIA interprets the statute to preclude it from disclosing any CRSSA materials submitted to it for approval. This requires the department to rely on the parties to supply a correct version of the approved contract.

Process Changes over Time/Use of Data

Since the program's inception, other than having the age eligibility for settlements decreased twice, there have been few changes in the processes of application and contract development. The SSU did suggest that it has become more experienced and efficient in processing applications, however

The SSU develops weekly reports on the number and status of referrals, applications, and contracts. It indicated that the data in weekly reports are analyzed closely as part of the unit’s work process and that agency actuaries monitor trends to be able to predict rates. However, we did not learn of any systematic analyses of data for program improvement or accountability purposes.

Benefit-to-Cost Analysis

As noted above, an important criterion of CRSSA program effectiveness is having the benefits exceed the cost. Conducting a full-blown benefit-to-cost analysis can be complex. In the context of CRSSAs, costs and benefits accrue to at least three entities. Workers (and their representation) invest time and energy into the process and receive the monetary and nonmonetary benefits that come from a structured settlement that are presumably valued more than their flow of future indemnity payments. Because there are time and energy costs, and nonmonetary benefits, estimating workers’ benefits and costs is probably an intractable exercise.

For employers, the cost-benefit ratio is, in all likelihood, quite positive. In general, their costs are minimal, and as noted below, they receive benefits in the form of premium reductions.

We have not attempted a full-blown benefit-to-cost analysis. Instead, we focus on the potential costs and benefits that the department (i.e., taxpayers) accrue from the SF perspective. For L&I, the major costs involved in administering CRSSAs are the budget allotments and charges.² These are readily available and presented in Table 1.

Table 1 Structured Settlement Unit Budgetary Allotments and Charges, by Fiscal Year

Fiscal Year	Dates	Allotment (in \$millions)	Charges (in \$millions)
2012	7/1/2011 – 6/30/2012	2.18	1.28
2013	7/1/2012 – 6/30/2013	1.80	0.89
2014	7/1/2013 – 6/30/2014	0.67	0.49
2015	7/1/2014 – 6/30/2015	0.78	0.66
2016	7/1/2015 – 6/30/2016	0.80	0.71
2017	7/1/2016 – 6/30/2017	0.86	0.65
2018	7/1/2017 – 6/30/2018	0.75	0.66
TOTAL		7.84	5.34

SOURCE: Data supplied by the L&I budget office

For L&I, the benefits to the SF are the reductions in indemnity payments over the life of injured workers’ claims that would have occurred had they had not taken a structured settlement. To estimate these benefits, we rely on the assumption made in the fiscal note for the original legislation that a target for the unit was to settle for approximately 80 percent of the expected claim cost. If this target is being met, on average, then the average benefit per contract would be 20 percent of the lifetime reserves, or about one quarter of the settlement.

²This analysis somewhat underestimates the cost because it does not include the funding of the BIIA nor does it include any costs borne by non-SSU employees of L&I.

Data reported in the following section indicate that the median settlement is \$90,000, which indicates that the median estimated benefit per contract is \$22,500. Through June 30, 2018, there had been 558 SF settlements. Using a conservative estimate of a benefit to the SF of \$20,000 per contract (i.e. the average settlement is slightly more than 80 percent of reserves) suggests that the benefit-to-cost ratio of the CRSSAs for the SF through that date was about 2.10 (total estimated benefit of about \$11.16 million and total charges to L&I budget of \$5.34 million.) If these assumptions hold, then this ratio indicates that CRSSAs are quite advantageous to the Department and (indirectly) to employers.

3 STRUCTURED SETTLEMENTS: INJURED WORKERS' PERSPECTIVES

We rely on three sources of information to garner the perspectives of injured workers about their experiences in applying for and, if applicable, receiving structured settlements. The three sources of information are: 1) qualitative data collected through focus groups, 2) survey responses from injured workers who applied for structured settlements, and 3) administrative data from the L&I data warehouse. The qualitative data come from five focus groups with sixteen structured settlement recipients. Twelve of these workers were injured while working at state-fund employers and four were injured workers at establishments where the employer was SI. These focus groups were conducted in April 2019 at L&I offices in Tumwater, Tukwila, Tacoma, and Vancouver. We are reluctant to draw broad conclusions from such a narrow sample. Instead, we relay some of the more notable experiences and observations and try to indicate how broadly shared each sentiment is throughout.

To supplement our analyses of qualitative data, we conducted a mail survey of CRSSA applicants.³ Specifically, we developed a survey instrument that collected information in four general areas: knowledge about and motivation for applying for a structured settlement, experience with receiving a structured settlement, financial stability and recent expenditures, and demographics. The survey was conducted anonymously and was administered through an initial and a follow-up mailing. The initial mailing was sent to a random sample of one-third of the approximately 2,300 SF insured individuals who had applied for a structured settlement through June 2018 and to a random sample of one-third of the 381 individuals for whom the SSU had received copies of settled contracts from SI employees as of that date.

For the initial mailing, which was sent in early January, we replaced those recipients for whom we received returns because of bad addresses within the first week or two after the mailing. This resulted in a sample of 857 SF-insured applicants (initial sample of 764 and 93 replacements) and 140 individuals with settlements with SI employers (127 initial sample and 13 replacements). From the initial mailing, we received 99 completed responses.

For the follow-up mailing, we sent a reminder letter and survey and posted return envelope to everyone in the sample except for the bad address returns. The follow-up letter imposed a March 15th

³ We gave respondents the option of replying to the survey online; however, we only received five responses that way, so we will refer to the survey as a mail survey in this document.

deadline. This mailing went to 858 individuals. Since the survey was anonymous, we indicated in the letter that individuals who had previously sent in the survey should ignore the follow-up request. This mailing engendered another 32 completions, 29 cases with bad addresses, one returned survey in which it was indicated that the addressee was deceased, and one returned survey that was not completed.

All together, the effective sample size was 827, from whom we received 131 completions for a response rate of 15.8 percent, which is approximately what might be expected from a voluntary mail survey with no incentive offered.

As with the qualitative data, we are reluctant to generalize from the survey data, because the response may not have been random. Individuals with settlements seem to be overrepresented as 72 of the responses (55 percent) came from individuals who reported that they had received settlements. According to the weekly report data compiled by the SSU, the expected rate of settlement for this hybrid sample of SF applicants and SI individuals with settlements would be 42.6 percent. Because of the unevenness of response, the statistics presented here will often disaggregate across the two sets of individuals, those who applied and those who received settlements.

The administrative data come from L&I's data warehouse and include information on claims that were eligible for structured settlement any time from the start of 2012 until the end of fiscal year 2018 (June 30, 2018). We received separate data files on basic claim information, vocational assessments, vocational rehabilitation, structured settlement applications and outcomes, and employment information. We merged these data sets using a scrambled claim ID. As L&I collects very limited data on SI employers, our analyses of the administrative data pertain only to workers from employers insured through the SF.

The Initial Trauma

All of the workers' paths to structured settlements begin with injuries or occupational diseases. For some workers, catastrophic injuries have left them with issues that they will have to navigate all their lives. For others, repetitive stress injuries and years of physical labor have finally taken a toll. All of the workers in our focus groups indicated that their injuries or diseases precluded them from returning to their previous occupation, and most of them felt that they were not physically able to hold any job. The section below about employment outcomes shows that these sentiments were shared by the CRSSA applicant pool in general.

After their initial trauma, the injured workers interact with L&I, the self-insurer, or the self-insurer's third-party administrator as claimants for medical expenses and, if eligible, for indemnity payments. As noted above, workers whose claim has been open for at least 180 days and whose claim allowance is final become eligible for a structured settlement if they are at least 50 years of age. Many of the people we talked to in focus groups relayed to us that their experiences with the workers compensation system (including, but not limited to, independent medical exams) were frustrating and

often demeaning.⁴ These individuals expressed a desire to be done dealing with the system as a reason for why they took a structured settlement. As noted below, many responses to the applicant survey concurred.

Sources of Information about CRSSAs

The mail survey asked respondents to list all the sources of information from which they learned about structured settlements and their opinion about how informed they felt. The information source that had the highest level of responses modal was the injured worker's attorney (40.0 percent and 46.5 percent for the entire sample of applicants and for those with settlements, respectively). A letter from the SSU and information provided by a claims manager were the next largest response categories (each noted by about 25 percent). The L&I website was mentioned by about 10 percent of the respondents. Employers, family members, friends, and coworkers were all mentioned less than 10 percent of the time. We also allowed respondents to provide an open-ended response to this item, and found that vocational counselor and physician were mentioned often.

Of the survey respondents who received a settlement, about half felt that they were “very” or “mostly” informed about the CRSSA process during the application process. Of the respondents who answered the survey who applied but did not get a settlement, only about one-fifth felt that they were “very” or “mostly” informed about the CRSSA process as they were applying.

Motivation for Applying

Aside from wishing to be free of the workers compensation system, another reason for considering a structured settlement that we heard repeatedly was that workers did not want to go through the retraining process. Several did not think they would get hired or could earn a reasonable wage after vocational rehabilitation, while others thought that they would physically be unable to do the new job. None expressed enthusiasm for learning a new skill at their age. The workers we spoke to questioned the sense in starting over on a new career path as they neared retirement.⁵

Some workers chose to pursue structured settlements because they felt they were unlikely to receive a pension from L&I or because they were dissatisfied with the level of the pension that they were offered. This raises an important limitation in analyzing structured settlements and highlights a tough decision for the worker—it is impossible to know what the worker would have received if not for the structured settlements.

Survey responses accorded with the sentiments we heard in focus groups about injured workers' motivation for applying. Respondents were given eight categories for which they could choose as many

⁴ In both the focus groups and applicant survey, some responses to questions seem to refer to workers compensation experiences that were unrelated to structured settlements.

⁵ An interesting anecdote is that one of the respondents in our focus groups indicated that he had been quite interested in retraining to become a surgery technician (he had been in the service), but found out that the wait time to get into such a program was excessive.

as were applicable. Almost one-half of the respondents indicated that the following were their reasons, with almost no difference between those who got a settlement, and those who did not: “Resolve uncertainty about what I would receive for my injury,” and “To no longer have to deal with workers’ compensation.” About a quarter of the responses were “Provide bridge until Social Security,” “Did not want to go through training,” and “Wanted to work.”

The survey asked individuals who had a settlement whether they had an L&I pension at the time of the settlement, and if not, their opinion about how likely they were to get a pension. Only a single respondent indicated that they had a permanent L&I pension. About 60 percent of the remaining individuals felt that it was “not likely;” and about 20 percent each responded that they felt it “somewhat” or “highly likely.”

The Application and Negotiation Process

Once workers have learned about CRSSAs and are motivated to apply, they or their employer or their legal representation submit an application. The only information that is collected on the application is name of the worker, employer, and representation, if applicable, contact information, and claim number. An important condition of the CRSSA is that it is not financially detrimental to the worker. SF workers who are not represented complete an Income and Expense Worksheet that requests a considerable amount of information about the workers’ income and circumstances so that the department can base its opinion about whether a settlement would be in the best interest of the worker on these data. For CRSSA applicants (SF or SI) who are represented, the assumption is made that the worker’s attorney will determine whether the settlement is in the best interest of the worker.⁶

The survey asked applicants how difficult it was to complete and submit the application and to provide an opinion about how they felt about the process of applying. The largest share of respondents felt that completing an application was not difficult. Almost two-thirds of individuals who had received a settlement indicated that their attorneys had completed the application. In all, about one-quarter of all applicants (less than one-fifth of individuals with a settlement) felt that the application was difficult to complete. Of course, it is important to remember that workers who were discouraged from completing an application because they found it too intimidating or onerous would not be in the applicant survey.

Using a scale that ranged from 1= “Very Satisfied” to 5= “Very Dissatisfied,” the average rating of the application process for the entire sample of applicants was 3.4, i.e., between “Neither” and “Dissatisfied.” The ensuing question on the survey asked for specific complaints. About 40 percent of the sample indicated that they felt that the process “was complicated or confusing” and that “there was not enough information from the Department of L&I.” About one-fourth of the sample felt that they had “to reveal too much personal information.” Finally, about one-fourth of the sample noted that they had “no complaints about the application process.” The survey respondents who received a settlement were slightly more satisfied with the application process: their average rating was 3.1. However, the distribution across the types of complaints was almost identical to the distribution for all applicants.

⁶ For SI applicants who are *pro se*, the BIIA is presumed to determine whether the settlement is in the best interest of the worker.

As noted above, one of the criteria for judging the effectiveness of the CRSSAs is timely processing. Using claims data, we can analyze this for SF workers. Table 2 displays characteristics of structured settlement applications, both for all years of the program and separately for the early years of the programs and for the more recent years of the program.⁷ The first five rows of Table 2 summarize the outcomes of applications as well as the origins of applications. The percent of applications that result in structured settlements has remained steady over time at 17 percent. However, there are several notable trends for other variables. For example, the SSU initiated a higher share of the applications in 2016–2018 than in 2012–2015 (59 percent versus 35 percent), which has likely contributed to the department rejecting a smaller share of applications in recent years (28 percent in more recent years compared to 44 percent in earlier years). The share of applications with a lawyer has increased by nearly 50 percent in the later years, which is consistent with lawyers becoming more likely to suggest structured settlements to their clients.

Table 2 Means of Characteristics of Applications from SF Workers

Characteristic	First Applied 2012–2018	First Applied 2012–2015	First Applied 2016–2018
% of applications where agreement is reached	17	17	17
% of applications rejected by department	37	44	28
% of applications that enter negotiations but do not settle	44	36	54
% of applications initiated by department	45	35	59
% with lawyer	25	21	30
Months from claim start to first application	53.0	48.5	59.2
Months from application to agreement	4.8	6.1	3.1
Months from application to rejection	0.6	0.6	0.4
Months from application to negotiations being terminated	0.3	0.4	0.2
Months from application to reaching BIIA	3.3	4.4	1.6
Months from reaching BIIA to agreement	1.6	1.7	1.5
Months from first application to final agreement	9.0	10.9	6.4
Amount of structured settlement (\$)	97,086	98,261	95,500

NOTE: The data come from L&I’s data warehouse. The data contain information on the 1,862 structured settlement applications from eligible claims for state–fund employers from 2012 through 2018.

The next seven rows of Table 2 display the mean number of months from claim start to application and from application to various points in the structured settlement process. The mean number of months from claim start to application has risen by nearly a year from 2012–2015 to 2016–2018. A possible explanation for this trend could be that more recent claims are more straightforward to settle and therefore moved through the CRSSA process more quickly. Alternatively, as CRSSAs have become more popular, workers with older claims may have felt more comfortable applying for them in

⁷ The data contain information on the 1,862 structured settlement applications from 1,057 workers. All of the numbers in this section come from the data we received from L&I’s data warehouse and may differ slightly from L&I’s internal numbers.

more recent years. The mean duration of each part of the process has fallen significantly over time. For applications where an agreement is reached, the mean number of months from application to agreement has fallen from 6.1 months in 2012–2015 to 3.1 months in 2016–2018. This trend likely reflects that many of the participants in the process have grown more efficient with experience.⁸

Table 3 25th Percentile, Median, and 75th Percentile of Characteristics of the Application Process for SF Workers

Characteristic	First Applied: 2012–2015			First Applied: 2016–2018		
	25th Percentile	Median	75th Percentile	25th Percentile	Median	75th Percentile
Months from claim start to first application	19.3	33.8	63.1	24.5	42.6	76.6
Months from application to agreement	3.8	5.4	7.3	2.5	2.9	3.5
Months from application to rejection	0.1	0.2	0.7	0.1	0.2	0.5
Months from application to negotiations being terminated	0.0	0.2	0.5	0.0	0.1	0.2
Months from application to reaching BIIA	2.3	3.6	5.4	1.1	1.4	1.9
Months from reaching BIIA to agreement	1.4	1.6	1.9	1.4	1.4	1.6
Months from first application to agreement	5.0	7.1	14.6	2.9	4.4	7.7
Amount of structured settlement (\$)	60,000	90,000	130,000	60,000	88,000	120,000

NOTE: The data come from L&I’s data warehouse. The data contain information on the 1,862 structured settlement applications from eligible claims for state–fund employers from 2012 through 2018.

Table 3 displays the 25th, 50th, and 75th percentiles for several variables and indicates similar patterns for the different points of the distribution. For instance, the 25th percentile number of months from first application to agreement fell from 5.0 to 2.9, while the median fell from 7.1 to 4.4. . Note that the median number of months from first application to first agreement is much lower than the mean. In contrast to medians, means tend to be much more influenced by outliers (i.e., a few claims having long processing times).

Settlements

For SF workers, the SSU reviews applications/referrals, and the claim file, and decides whether to offer a settlement. Negotiations then proceed with the worker or worker’s attorney. For injured workers whose employers were SI, it is the workers, or most often, the worker’s attorney who initiates the settlement process, and the negotiation takes place with the SI employer’s attorney.

The final rows of Tables 2 and 3 display statistics that describe the amount of structured settlements for SF workers, conditional on an application resulting in a structured settlement. The mean amount of settlements has remained steady in the mid-\$90,000s. Table 3 indicates that settlement

⁸ While the data suggest that processing times have gotten shorter each year, readers should be aware of the statistical issue of censoring, which almost certainly occurs in this setting. Censoring occurs here because applications with lengthy processing times in the early years of the program show up in the data as having the lengthy processing time, while similar applications initiated in 2018 that are also destined to have lengthy processing time will merely look like an application that has not settled.

amounts have not grown at the 25th, 50th, or 75th percentiles of the distribution. In fact, the 75th percentile of settlements is \$10,000 less for those who first applied in 2016–2018 than it was for those who first applied in 2012–2015. Note that the settlement amounts have not been adjusted for inflation, meaning that the real value of settlement amounts have fallen.

In order to get a sense of the size of SI settlements, we reviewed a random sample of 50 of these settlement contracts through June 2018.⁹ The settlements seem to be considerably smaller than for SF workers. The mean for this sample was \$61,095, whereas the median was \$48,000. To compare to Table 3, the 25th percentile was \$24,950; median was \$61,095; and the 75th percentile was \$82,861.

Though a few workers expressed that they thought they deserved a larger settlement, a majority of focus group participants seemed pleased with their outcomes. It is worth noting that all worker attorneys complained about the low settlement values. Compared to the focus groups conducted for the first report, we heard more complaints from injured workers in this study’s focus groups about the periodic payments that are a part of structured settlements by design. While some injured workers stated that they agree with and support the rationale for structuring the payments, a few expressed a desire to have access to all of their settlement immediately.

The survey respondents who received settlements were asked to provide an opinion about the settlement process and with the settlement itself. Again, the scale that was used ranged from 1= “Very Satisfied” to 5= “Very Dissatisfied.” In general, the survey respondents seemed to indicate more dissatisfaction than did the focus group participants. The mean of the ratings for satisfaction with the process was 3.3, whereas it was 3.5 for satisfaction with the outcome. More than half of the individuals with a settlement were dissatisfied with the outcome, but less than half were dissatisfied with the process.

When asked for specifics about the negotiation process, almost 90 percent of the survey respondents indicated that the settlement offer was too low. More than half complained that the process took too long; just under half said there was too much hassle involved; and just under half responded to an open-ended prompt asking whether there was something else. Many of those “other” comments indicated that the injured worker felt that there was an asymmetry to the negotiation process—they wrote that they felt as though they were not given an option to negotiate. The survey asked respondents to compare the size of the settlement to their expectations. About a quarter of the individuals responded that the settlement was “about what I expected.” The remainder, with only the exception of two respondents, indicated that the settlement was “lower” or “much lower” than expected.

Analyzing the Characteristics of Workers Who Applied for and Who Received Settlements

During our interviews with employers (discussed in more detail later), many were eager to discuss the age limits for structured settlement eligibility. These employers were generally pleased that the minimum age was lowered to 53 in 2015 and to 50 in 2016, but they wanted even younger people to be eligible for settlements. Some wanted to eliminate the age requirement altogether. Although we are

⁹ Approximately a 15 percent random sample.

agnostic about the age minimum, Table 4 displays the mean, 25th percentile, median, and 75th percentile of SF applicants' age at the time of the first application by year to help better gauge the demand for structured settlements by age. Panel A displays these statistics for applicants who did not receive a settlement, while Panel B displays the statistics for people who eventually received structured settlements.

Table 4 Age Distribution of SF Structured Settlement Applicants, by Year

Year	Mean	25th Percentile	Median	75th Percentile
Panel A: Age at first application for workers who did not receive a settlement				
2012	60.7	58	60	63
2013	60.2	57	60	63
2014	58.6	55	57	63
2015	55.3	54	55	56
2016	54.5	52	54	57
2017	56.1	54	56	57
2018	56.0	54	57	58
Panel B: Age at first application for workers who received a settlement				
2012	62.0	59	61	64
2013	61.4	57	61	64
2014	58.5	55	57	61
2015	55.2	54	55	56
2016	54.3	52	54	57
2017	55.9	53	56	58
2018	56.3	54	55	58

NOTE: The data come from L&I's data warehouse. The data contain information on the 1,862 structured settlement applications from eligible claims for state-fund employers from 2012 through 2018. In 2015, the minimum eligible age was lowered from 55 to 53, and in 2016, the minimum eligible age was lowered to 50.

As younger people have been able to enter into structured settlements, the ages of people applying for and receiving structured settlements has fallen across all parts of the age distribution. The mean age of applicants shown in the table was the lowest in 2016, which is when the minimum requirement for a settlement was lowered to age 50. The fact that the mean age rose slightly in the subsequent years suggests that there was some pent-up demand for structured settlements for younger ages.

The age distribution of the survey respondents is not comparable to the information in Table 4 because the survey requested current age, whereas the table displays age at the time of the first CRSSA application. For survey respondents who received a settlement, the mean age was 65.1 and the median was 65. For survey respondents who did not receive a settlement, the mean was 63.6 and the median was 63.

Table 5 considers characteristics of SF workers who were eligible for structured settlements. Column 1 displays characteristics of eligible workers who did not apply for structured settlements. Column 2 displays characteristics of workers who first applied for a settlement in 2012–2015 but did not receive a structured settlement. Column 3 displays characteristics of workers who first applied for a

settlement in 2012–2015 and eventually received a structured settlement. Column 4 displays characteristics of workers who first applied for a settlement in 2016–2018 but did not receive a

Table 5 Means of Characteristics of Eligible Workers

Characteristic	All years	First applied: 2012–2015		First applied: 2016–2018	
		Did not apply	Applied but did not settle	Settled claim	Applied but did not settle
% Male	65	71	85	70	71
% Married at time of injury	60	56	63	56	61
Pre-injury monthly wage (\$)	3,650	3,672	4,381	3,776	3,893
Medical costs to date (\$)	16,904	50,788	60,584	60,213	75,089
Paid to date (indemnity and medical) (\$)	39,320	159,247	297,079	202,014	333,172
% Received PPD	43	83	20	79	23
PPD amount (\$)	6,643	19,500	3,734	20,031	5,440
% with closed claims that have been reopened*	7	15	20	14	24
% Assessed for vocational rehabilitation	23	87	98	94	100
% Declared able to work	12	34	22	29	20
% Eligible for vocational rehabilitation	5	51	77	71	82
% Started vocational rehabilitation	5	51	52	67	43
% Completed option 1 of vocational rehabilitation	3	21	46	25	35
% Received option 2 money	2	28	1	40	5
% with lawyer for the claim	10	26	39	43	64
% with 1 to 2 IMEs	40	54	56	55	51
% with 3 or more IMEs	8	33	27	36	41
% with 1 to 2 Protests	29	40	45	37	33
% with 3 or more protests	10	34	30	42	52
% with 1 to 2 appeals	10	23	26	23	37
% with 3 or more appeals	6	22	19	24	29
Observations	30,693	568	182	443	135

NOTE: The data come from L&I's data warehouse for eligible claims for state-fund employers from 2012 through 2018.

*Data come from workers having multiple dates of claim closure in the administrative data from the department. We are not meaning to imply that the claims were reopened after the structured settlement. These are likely claims that were reopened prior to the settlements. In fact, since the inception of the structured settlements program, there have only 35 post final settlement date reopening applications received by L&I; and only 8 claims reopened.

structured settlement. Column 5 displays characteristics of workers who first applied for a settlement in 2016–2018 and eventually received a structured settlement.

As we discussed in Dillender, Hollenbeck, and Hunt (2016), the data indicate that people with costlier and more severe claims are more likely to apply for a structured settlement. Not only is the pre-injury monthly wage higher for applicants than for non-applicants, average medical costs are higher as well. This suggests that injured workers who apply for structured settlement are more severely injured than non-applicants. Conditional on applying, workers who receive structured settlements have even greater medical costs and paid-to-date amounts than other applicants. The data also show little overlap between workers who have received a settlement and workers who have received a PPD settlement or

who have opted for VR Option 2.¹⁰ This is likely because the latter two result in the closing of the worker's claim, so there is no reason to offer a CRSSA.

A much higher share of people who applied for structured settlements had at least three Independent Medical Exams (IMEs) relative to eligible workers who did not apply for structured settlements. This suggests claims where the etiology or degree of disability has been in contention. The share of applicants receiving at least three IMEs has grown over time as well. While 27 percent of people receiving settlements in 2012–2015 had at least three IMEs, 41 percent of people receiving settlements in 2016–2018 had at least three IMEs. In contrast, the share of eligible workers without structured settlements with three IMEs is only 8 percent. In our focus groups, injured workers often told us that frustration with meeting workers' compensation requirements was a motivation for settling. IMEs, in particular, were mentioned frequently.

While the vast majority of workers who are assessed as being eligible for vocational rehab enter into a vocational rehab program in general, a high share of CRSSA recipients assessed as being eligible for vocational rehab do not enter into a vocational rehab program. In 2016–2018, 82 percent of CRSSA recipients were assessed as being eligible for vocational rehabilitation, but nearly half do not enter into a program. Hesitancy over learning a new trade at older ages was another motivation for a CRSSA that injured workers commonly mentioned in focus groups.

Another notable trend is that the share of settlements with a lawyer has risen over time, from 39 percent for those who first applied in 2012–2015 to 64 percent for those who first applied in 2016–2018. The share of applicants with a lawyer rose by a similar amount. These trends are likely the result of lawyers becoming more likely to suggest structured settlements to workers they are representing.

The first two rows of the table show the gender and marital status of the SF eligible workers. These data were also collected in the applicant survey, and are quite comparable. Males compose 69 percent of the applicants and individuals with settlements. About two-thirds of both groups reported being married.

While these descriptive statistics are informative, they may miss or overstate underlying relationships among variables. For instance, the number of IMEs and medical costs are correlated with each other and with other worker characteristics, which can complicate the interpretation of the correlation between IMEs and structured settlement receipt or between medical costs and structured settlement receipt. Regression analysis can help identify relationships while controlling for confounding factors.

We estimate regression models of the following form:

$$y_i = \alpha + \beta \text{Claim}_i + \varepsilon_i,$$

¹⁰ Note that vocational rehabilitation option 1 is the receipt of vocational training through a plan developed by one of L&I's vocational rehabilitation counselors, while option 2 is the receipt of a vocational award and the ability to develop one's own plan for vocational rehabilitation.

where i indexes the individual, y represents the application decision or outcome, $Claim$ is a vector of claim and worker characteristics that includes demographic characteristics of the worker, the log of the worker's pre-injury wage, an indicator variable for whether or not the worker received PPD, an indicator for whether or not the claim had been reopened, an indicator variable for whether or not the individual was assessed as being able to work, an indicator for the worker being eligible for a vocational rehabilitation plan, an indicator for having returned to work, an indicator for having completed vocational rehabilitation's option 1, an indicator for having money for vocational rehabilitation's option 2, an indicator for having a lawyer, an indicator for having 1 to 2 IME's, an indicator for having 3 or more IME's, an indicator for having 1 to 2 protests, an indicator for having 3 or more protests, an indicator for having 1 to 2 appeals, and an indicator for having 3 or more appeals.

Table 6 displays the estimates for various dichotomous outcomes. When estimating the equation with indicator variables as the dependent variables as in Table 6, we estimate logit models and display the average partial effects of the estimates.¹¹ A coefficient can be interpreted as how that variable is correlated with the dependent variable after accounting for all of the other variables in $Claim$.¹² In column 1 of Table 6, the dependent variable is an indicator for applying for a structured settlement. In column 2, the dependent variable is an indicator for the department having initiated the application. In column 3, the dependent variable is an indicator variable equal to one if the worker initiated the application. In column 4, the dependent variable is an indicator variable equal to one if the worker received a structured settlement conditional on applying.

Even after controlling for other covariates, several of the variables are associated with an increased likelihood of applying for and receiving a settlement. Each additional percent increase in medical spending is associated with a 2.3 percent increase in applying for a structured settlement and a 6.2 percent in the likelihood of an applicant receiving a settlement. Each additional percent increase in pre-injury wages is associated with a 0.5 percent increase in applying for a structured settlement but is not statistically significantly associated with a higher likelihood of receiving a settlement conditional on applying for one.

¹¹ The logit model is a regression model that is used to examine the relationship of a set of variables to an event with a binary outcome (e.g., applied versus did not apply). The name comes from an assumption that the error term has a standard logistic distribution.

¹² Our null hypothesis is that there is no relationship between each independent variable and the dependent variable, but our model generally produces a non-zero estimate. The stars in Tables 6 and 7 indicate how confident we are that the coefficient is not equal to zero. One star means that there is a 90 to 95 percent chance that the independent variable is related to the dependent variable after controlling for other factors. Two stars indicate that there is 95 to 99 percent chance that the independent variable is related to the dependent variable after controlling for other factors. Three stars mean that there is over a 99 percent chance that the independent variable is related to the dependent variable after controlling for other factors. A coefficient that is statistically indistinguishable from zero will have no stars. For these "statistically insignificant" variables, we say that we cannot reject the null hypothesis of no relationship between the independent variable and the dependent variable. While a coefficient could be statistically indistinguishable from zero because the independent variable is not meaningfully related to the dependent variable, the lack of significance could also arise if we do not have enough precision to identify the relationship.

Table 6 Average Marginal Coefficients from Logit Model for Who Applies and Receives Structured Settlements

Characteristic	(1) Applied for structured settlement	(2) Department initiated application	(3) Worker initiated application	(4) Received structured settlement
Male	0.007*** (0.002)	0.000 (0.002)	0.007*** (0.002)	0.009 (0.018)
Married	0.000 (0.002)	0.000 (0.001)	-0.000 (0.002)	0.030* (0.016)
Log of pre-injury wage	0.005*** (0.002)	0.001 (0.001)	0.003** (0.001)	0.014 (0.013)
Log of medical spending	0.023*** (0.002)	0.008*** (0.001)	0.016*** (0.001)	0.062*** (0.011)
Received PPD	-0.027*** (0.003)	-0.001 (0.002)	-0.024*** (0.002)	-0.276*** (0.014)
Claim reopened	-0.007** (0.003)	-0.010*** (0.002)	0.004 (0.002)	0.174*** (0.022)
Assessed as able to work	0.014*** (0.003)	0.003 (0.002)	0.012*** (0.002)	-0.037** (0.019)
Eligible for vocational rehabilitation plan	0.070*** (0.004)	0.019*** (0.004)	0.051*** (0.003)	0.127*** (0.021)
Returned to work	-0.006 (0.004)	-0.004 (0.003)	-0.004 (0.004)	-0.089*** (0.033)
Completed option 1	-0.002 (0.004)	0.012*** (0.004)	-0.011*** (0.003)	-0.064*** (0.020)
Received option 2 money	0.015*** (0.005)	0.021*** (0.004)	-0.005 (0.003)	-0.284*** (0.029)
Had lawyer	0.009*** (0.003)	0.009*** (0.002)	-0.001 (0.002)	0.151*** (0.017)
Had 1 to 2 IMEs	0.018*** (0.003)	0.011*** (0.003)	0.010*** (0.003)	-0.049** (0.023)
Had 3 or more IMEs	0.013*** (0.004)	0.013*** (0.003)	0.002 (0.004)	-0.074*** (0.027)
Had 1 to 2 protests	0.008*** (0.003)	0.006*** (0.002)	0.003 (0.002)	-0.005 (0.019)
Had 3 or more protests	0.010*** (0.004)	0.009*** (0.002)	0.000 (0.003)	-0.019 (0.023)
Had 1 to 2 appeals	0.001 (0.003)	-0.001 (0.002)	0.003 (0.002)	0.006 (0.020)
Had 3 or more appeals	0.005 (0.004)	0.002 (0.002)	0.002 (0.003)	-0.028 (0.025)
Sample	All eligible workers	All eligible workers	All eligible workers	All eligible applicants
Mean of Dependent Variable	0.041	0.017	0.024	0.010
Observations	30,693	30,693	30,693	1,322

NOTE: *, **, and *** indicate significance at 10%, 5%, and 1%. In columns 1, 2, and 3, the sample includes all workers that were ever eligible for a structured settlement between 2012 and 2018 and have values for all of the variables in the model. In column 4, the sample includes the workers for which applications were filed to settle the claim that have values for all of the variables in the model. The table displays average marginal effects from logit models. Robust standard errors are in parentheses below the coefficient estimates.

A higher number of IMEs is associated with an increased likelihood of applying for a structured settlement but with a decreased likelihood of an applicant receiving a settlement after accounting for covariates. Having a lawyer is associated with a 0.9 percentage point higher likelihood of applying for a settlement and 15.1 percentage point higher likelihood of receiving a settlement conditional on applying. Being male and having more protests are associated with statistically significant higher

likelihoods of applying for a settlement but not statistically significant higher likelihoods of receiving settlements conditional on applying. As column 2 indicates, the association between protests and applying for a settlement appears to come from the SSU being more likely to suggest applications for workers with more protests.

Assessed as being eligible for a vocational rehabilitation plan is associated with a 7 percentage point higher likelihood of applying for a settlement and a 12.7 percentage point likelihood in receiving a settlement conditional on applying for one. However, assessed as being able to work is associated with a 3.7 percentage point reduction in the likelihood of receiving a settlement conditional on applying. As has been noted elsewhere, receiving alternative lump-sum amounts is associated with reductions in the likelihood of receiving a settlement conditional on applying for one. Receiving PPD is associated with a 27.6 percentage point reduction in the likelihood of receiving a settlement, while receiving option 2 money for vocational rehabilitation is associated with a 28.4 percentage point decrease in the likelihood of receiving a settlement. Completing option 1 for vocational rehabilitation is associated with a 6.4 percentage point decrease in the likelihood of receiving a settlement conditional on applying.

In Table 7, we estimate models that describe various outcomes conditional on receiving a structured settlement. In the first column, the dependent variable is the number of months the process took from first application until an agreement was reached. A concern with using the total elapsed time as a dependent variable is that the results may be sensitive to outliers. Therefore, in column 2 we show results that use the natural logarithm of total elapsed time as the dependent variable. When the number of months from first application to agreement is the dependent variable, a coefficient can be interpreted as the change in the number of months of processing time from a one-unit increase in the independent variable. When the log of the number of months from first application to agreement is the dependent variable, a coefficient can be interpreted as the percent change in processing time from a one-unit increase in the independent variable.

Most of the coefficients in columns 1 and 2 are statistically insignificant, meaning we cannot be confident that they are different from zero. This statistical insignificance may occur because the estimates are noisy due to the small sample size or because most of these factors do not explain the length of the process. Note that having a lawyer is associated with a longer time from the first application until an agreement is reached. This relationship could arise because lawyers result in more processing time, but it could also reflect that workers with more complicated claims or who are having more difficulty navigating the structured settlement process are more likely to seek the services of a lawyer. Being eligible for a vocational rehabilitation plan is associated with a shorter time from the first application until a settlement is reached, which might suggest that more knowledge has already been obtained about these workers and more alternative options have already been explored, which could result in a simpler settlement process.

Column 3 of Table 7 shows coefficients from a regression with the amount of the structured settlement as the dependent variable, while column 4 shows coefficients from a regression with the log of the amount of the structured settlement as the dependent variable. After controlling for several additional variables, higher pre-injury wages and higher medical spending are still associated with higher

structured settlement amounts. Assessment as being eligible for a vocational rehabilitation plan is associated with a lower settlement amount, which likely indicates that being able to return to work is associated with a lower expected cost of a claim for L&I. Similarly, having returned to work is associated with a 28.3 percent reduction in the settlement amount. A notable difference between the estimates in Table 7 and the estimates from similar analysis in the first report is that the positive coefficient on having a lawyer is no longer statistically significant when the amount of the structured settlement is the dependent variable. While we cannot say for sure why having a lawyer is no longer statistically

Table 7 Estimates from Linear Regression Models

Characteristic	(1) Months from first application to agreement	(2) Log (Months from first application to agreement)	(3) Amount of structured settlement (\$)	(4) Log (Amount of structured settlement)
Male	1.787 (1.100)	0.207** (0.104)	-1,741 (5,745)	0.019 (0.062)
Married	0.590 (0.945)	0.059 (0.086)	12,781*** (4,880)	0.142*** (0.051)
Log of pre-injury wage	1.402* (0.801)	0.129* (0.074)	36,250*** (4,810)	0.420*** (0.047)
Log of medical spending	1.371* (0.741)	0.051 (0.064)	21,988*** (3,520)	0.233*** (0.035)
Received PPD	-0.713 (1.827)	-0.084 (0.146)	12,858 (9,472)	0.103 (0.087)
Claim reopened	0.133 (1.691)	0.000 (0.143)	-14,408 (9,340)	-0.108 (0.084)
Assessed as able to work	1.365 (1.218)	0.106 (0.107)	-6,112 (5,935)	-0.076 (0.064)
Eligible for vocational rehabilitation plan	-3.326** (1.297)	-0.340*** (0.111)	-27,433*** (7,201)	-0.271*** (0.062)
Returned to work	0.771 (3.326)	0.077 (0.266)	-32,789*** (7,616)	-0.283*** (0.090)
Completed option 1	1.436 (0.938)	0.171* (0.088)	-10,703** (4,923)	-0.149*** (0.051)
Had lawyer	2.672*** (0.851)	0.171** (0.084)	6,077 (4,938)	0.062 (0.051)
Had 1 to 2 IMEs	-0.530 (1.254)	-0.035 (0.114)	-1,334 (6,389)	-0.030 (0.070)
Had 3 or more IMEs	0.695 (1.513)	0.080 (0.136)	-6,703 (8,558)	-0.099 (0.085)
Had 1 to 2 protests	-0.237 (1.068)	-0.003 (0.106)	18,448*** (6,360)	0.216*** (0.069)
Had 3 or more protests	0.110 (1.198)	0.050 (0.119)	13,805** (6,972)	0.204** (0.080)
Had 1 to 2 appeals	-1.499 (1.062)	-0.189* (0.102)	-2,447 (6,670)	-0.053 (0.066)
Had 3 or more appeals	-2.189 (1.450)	-0.328*** (0.120)	-1,911 (6,956)	-0.044 (0.068)

NOTE: *, **, and *** indicate significance at 10%, 5%, and 1%. In columns 1, 2, and 3, the sample includes all 317 workers that received a structured settlement between 2012 and 2018. The table displays coefficients from linear regression models. Robust standard errors are in parentheses below the coefficient estimates.

significantly associated with a higher settlement amount, one possible explanation is that, as lawyers suggest structured settlements for more workers, lawyers may be more likely to be involved with less complicated injuries/claims.

Settlements with Self-Insured Employers

We have two sources of information about settlements with SI employers –a small number of focus groups participants and respondents to our anonymous mail survey. We present information from both sources, although it should be emphasized that the information from both comes from very limited sample sizes.

As noted above, four of the individuals who participated in focus groups received their settlements from SI employers. For the most part, these individuals were satisfied with their settlements and the settlement process. All four workers had been represented, and they felt that having representation had been important in traversing the process and interacting with their former employers.¹³

As described above, the list that was used for sampling for the applicant survey included all of the SI settlements to date. However, as noted, the survey was completed anonymously, so we cannot know for sure whether a response came from among those settlements. The survey did ask individuals who had received a settlement if their employer was SI or covered by the SF. A “Don’t Know” option was also available. Of the 72 responses with a settlement, 16 indicated that their employer was SF, 30 indicated SI, and 26 responded that they did not know. Relative to the respondents whose employers were in the SF or for whom the respondent did not know, the individuals with settlements from SI employers were slightly more satisfied with their settlements. The overall ratings of satisfaction with the settlement and with the settlement process were about 0.3 points higher than the overall average for all respondents with a settlement. The only specific complaint for which the percentage of respondents with SI employers exceeded the overall percentage was for the lengthy duration of the process.

Life After the Structured Settlement

Of interest is how injured workers have fared after their settlement. In this section, we analyze household expenditures, medical incidents and expenditures, and employment.

Expenditures and saving

In our focus groups, we asked each individual what they had done with their settlement. About half had used part or all of the funds for a major expenditure such as a vehicle, home renovation, or

¹³ While most of the focus group conversations with these workers were positive, we did hear a couple of complaints. In one case, the employer had been late in making the payments that were required in the settlement contract, and the injured worker felt as if she had little recourse. Another individual was quite indignant about his employer’s third-party administrator (TPA). The individual noted that several of his coworkers had had difficulty with this TPA, although we were not sure if this individual’s comments were addressing compensation or structured settlement issues.

vacation. About half said that they had used some or all of the settlements to pay off debt, and about a quarter of the individuals indicated that they had invested the funds in a savings or portfolio account.

The mail survey asked questions about post-settlement major expenditures, financial investments, and levels of savings after receiving a settlement. Just over one-fifth of the respondents indicated that they had purchased a major appliance, and the same fraction had invested in home repair or renovation. Just over a quarter had purchased a vehicle. Over one-third had medical expenses. Finally, a handful of respondents had purchased a new home, gone on a vacation, or paid for educational expenses.

About 15 percent of the mail survey respondents with settlements self-reported having invested in stocks, mutual funds, or bonds in the past year. Furthermore, a little more than a quarter reported that their “savings today are greater than they were a year ago.”

Medical expenses

An important provision of the CRSSA legislation is that post-settlement medical costs associated with the claim(s) that has(have) been closed with a settlement will be covered. Evidence from our mail survey suggests that even though this is a point of emphasis for the SSU and for the BIIA, there still *may* be a lack of understanding on the part of some workers. In addition to asking whether respondents had recent large medical expenses, the mail survey drilled down and asked whether respondents had “medical expenditures for work-related injuries” after receiving their settlement.¹⁴ If the respondent answered affirmatively, the survey asked whether the expenditures were paid by L&I, other health insurance, or out-of-pocket. About 44 percent of respondents with a settlement indicated that they had such medical expenditures. Only 22 percent of those indicated that the expenses were paid in full by L&I. For the 78 percent of respondents who had medical expenditures for work-related injuries since accepting a settlement that were **not** paid in full by L&I, only 13 percent indicated that their employers were in the State Fund. About half indicated that their employers were self-insured, and about 40 percent were not sure.

Employment

One of the focuses of the legislature’s mandate for this study is the extent of employment after settlements. We use two of our sources of information to consider employment after settlements. Unfortunately, both sets of data have shortcomings that constrain the analyses. The “bottom line” of our analyses is that, by far, the majority of individuals with settlements are not working and do not intend to work, but that at least 10 to 15 percent of individuals who received a settlement are employed, mostly on a part-time basis.

¹⁴We would note that the survey wording did not specify precisely that the ‘work-related’ injuries referred to the injury(ies) that engendered the claim(s) that was(were) closed with the settlement. However, as noted below, few workers with settlements became employed, so it seems unlikely that the individual with a settlement would have experienced an injury in a post-settlement job. However, it should be noted that the medical expenditure to which the survey respondent is referring may not been related to the compensable injury.

As noted above, one of the response categories in the mail survey about individuals’ motivations for applying for a settlement was “wanted to work.” Almost 30 percent of the survey respondents who indicated that they had received settlements noted this reason as one of their motivators. In other words, there was some sense that continued receipt of indemnity benefits was getting in the way of productive employment on the part of some workers.

The mail survey provides self-reported information about post-settlement labor force behavior. These data should be interpreted carefully because they are subject to the survey’s response bias. For example, some individuals may not have responded to the survey because they felt they were too busy or too tired after working. In any case, of the 72 respondents to the mail survey who indicated that they had received a settlement, 71 provided information about their current labor force status. Three of the individuals were self-employed; seven were working for an employer—one was full-time, and the rest were part-time; 7 individuals indicated that they were not employed but were looking for work; and the remaining 54 individuals reported that they were either planning to look for work in the future or not planning to work at all. The employment rate for this sample of individuals is then 14 percent (10 out of 71). The unemployment rate is 41.2 percent (7 looking for work divided by 17 either looking or employed).

Table 8 provides frequency distributions about characteristics of this worker sample. The individuals who reported working are preponderantly male, over 60, and with some college as their highest level of education.

Table 8 Characteristics of the Mail Survey Sample of Individuals with a Settlement, by Employment Status

Characteristic	Employment (including self-employed)		Looking for work currently		Not in the Labor Force	
	Count	Percentage	Count	Percentage	Count	Percentage
Sex						
Male	7	70.0	5	71.4	40	74.1
Female	3	30.0	2	28.6	14	25.9
Marital Status						
Married, partner present	7	70.0	5	71.4	37	68.5
Not married	3	30.	2	28.6	17	31.5
Age (current)						
< 60	1	10.0	1	14.3	10	18.5
60 – 65	5	50.0	1	14.3	20	37.0
>65	4	40.0	5	71.4	24	44.5
Education						
HS grad or lower	2	20.0	1	14.3	16	29.6
Some college (incl. assoc. degree)	5	50.0	4	57.1	28	51.9
Bachelor’s or higher	3	30.0	2	28.6	10	18.5
Spouse working	2	20.0	2	28.6	15	27.8
TOTAL	10	100.0	7	100.0	54	100.0

NOTE: Percentages do not include missing values.

In addition to having employment data from our mail survey, we also use data on employment from administrative data that were accessed from the L&I data warehouse. We create four indicator variables for different amounts of weekly hours worked by dividing a worker’s quarterly hours by 13,

which is the number of weeks in a quarter. We consider indicator variables for workers working any hours in a quarter, for workers having positive hours but averaging less than 20 hours of work per week, for workers averaging 20 to 39 hours of work per week, and for workers averaging at least 40 hours of work per week.

Figure 1 plots the means in the eight quarters after the last application separately for applicants who received a structured settlement and for applicants who did not receive a settlement. For all definitions of work, people who received settlements are less likely to work than applicants who did not receive settlements. Similar patterns were found in Dillender, Hollenbeck, and Hunt (2016), and as we explained in the previous report, these differences should not be interpreted to mean that receiving a settlement inhibits work activity. As noted elsewhere, more severely injured workers are more likely to receive settlements. In fact, note that the share of settlement recipients working any hours in quarter 8 is more than twice the share that had positive hours in the quarter of settlement receipt. Most of this increase appears to come from people being more likely to work less than 40 hours per week.

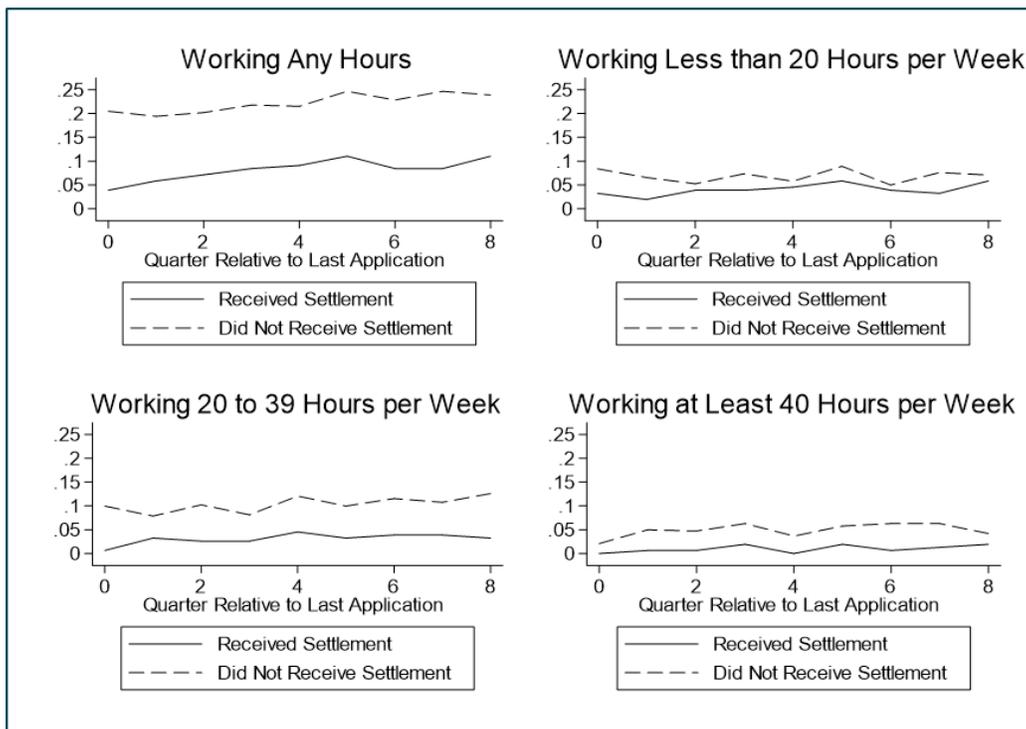


Figure 1 Fraction of Workers with Various Employment Status, by Number of Quarters Since Last CRSSA Application

These trends are consistent with a majority of workers not returning to work after settling their claims, either because they cannot work or because they do not want to work again. However, these patterns also indicate that structured settlements may allow some workers to return to work, albeit in a limited capacity. In focus groups, we heard a similar gamut of attitudes towards working after settlements. While some workers said that settlements allowed them to eventually return to work, others explained that the settlements helped them retire.

4 STRUCTURED SETTLEMENTS: EMPLOYERS' AND ATTORNEYS' PERSPECTIVES

We conducted semi-structured interviews with 12 employers with structured settlement agreements (7 SI and 5 SF) and 8 attorneys (4 employer representatives and 4 worker representatives). Potential contacts for our interviews were suggested by L&I staff, the Washington Self-Insurers Association, and others. We retained a contractor to make the initial contacts and set up the appointments. All interviews were conducted over the phone between February 11 and March 5, 2019. Unlike the first evaluation in 2016, it was easier to recruit SI employers than SF employers.

Out of 7 SI employer representatives interviewed, one represented several employers in a SI group, 3 were third party administrators (TPAs) and 3 were individual SI employers. Their experience with structured settlements ranged from one claim to dozens. So, there was considerable diversity among our SI sources.

Our 5 SF employers ranged from a small agricultural firm to a large department of State Government. They ranged from less than 20 employees to several thousand in employment; most of them had seen only one structured settlement by the time of our interviews. The large organizations were seeing 2-3 per year. So the incidence of structured settlements in Washington is still very low. Some employer representatives expressed surprise that settlements were not more popular.

Obvious advantages to the employer of structured settlements include the permanent closure of the claim for indemnity benefits, and the likelihood that there was a net savings in overall claim costs. The employers we spoke with unanimously feel that the structured settlement option in Washington is a very good addition to the program. The only partial exception was one respondent who had experience with a full compromise and release (C&R) environment. He pointed out that such an arrangement was even better because it was more flexible.

A good deal of frustration with the structured settlement process, mainly the BIIA review, was reported by attorneys and SI employers in our earlier review. This was especially true before the *Zimmerman* decision in 2014, which validated the role of the worker's attorney in determining whether the settlement was "in the best interests of the employee." There were several stories offered about the early "pickiness" of the BIIA in reviewing draft structured settlement agreements.

That situation has improved significantly, according to current respondents. Those who have been in their positions long enough to remember, all agreed that the problems with BIIA review were much less frequent. However, there is still an element of criticism about the arbitrary nature of BIIA objections to draft contracts. The feeling is that general communications from the BIIA to the workers' compensation community could be improved. It is also still affirmed by some that there is an "anti-structured settlement agreement philosophy" among some at the BIIA.

All employers who expressed an opinion felt that the age limitation on structured settlements was not needed, and just served as an unnecessary restriction on the availability of structured

settlements. One employer with a young workforce maintained that the provision was discriminatory because most of its employees were not eligible. When asked for policy recommendations, nearly all employer representatives recommended ending the age restriction. Several employers also indicated that they preferred dealing with an attorney, rather than directly with the worker. And one cited the lower level of attorney fees on structured settlements (at 15 percent) as possibly limiting the financial appeal to worker attorneys and reducing the availability of structured settlements.

We received a number of suggestions for changes in policy and procedure with regard to structured settlements from employers. In addition to changes in the age limit, a minority of employers felt that structured settlements should be allowed on claims that were denied. This would move the Washington program in the direction of traditional compromise and release systems. There was also sentiment for allowing settlement (meaning permanent closure) on medical matters.

In addition, there were suggestions that settlements should be made more predictable, more “formulaic.” It was also mentioned that settlements might be “capped” with the average work expectancy at the time of settlement. We also heard from several who felt that more attention should be paid to determining the “true value” of the claim. These testimonials urged L&I to include allowance for more than just the actuarial value of the claim. Factors such as future cost of living, cost of administering the claim, and the possibility of failure to complete vocational rehabilitation or other remedial possibilities should be considered.

Attorney Perspectives

As mentioned earlier, we also interviewed 8 workers’ compensation attorneys, four who represent injured workers and four who represent employers. Employer attorneys ranged from 4 years to 33 years of experience with workers’ compensation claims. Problem areas identified by the employer attorneys included getting the BIIA to accept the language of a draft agreement. One complained that he had to submit one draft three times to the BIIA before the settlement was approved and did not feel that the changes demanded were necessary or logical.

Getting clients to sign off on the agreement is the biggest hurdle for attorneys who represent employers. These attorneys wonder why structured settlements have not expanded as expected back in 2011. Some believe it is due to the opposition of injured worker attorneys, while others blame the BIIA. They all would like to see the age limit lowered to 40 or less.

One suggested that use of structured settlements should be made more advantageous to SF employers, pointing out that the claim drops off the employer experience rating within five years. This means a very small savings for the employer, at least in what is paid in premiums. This attorney argues that higher returns for the employer would lead to more utilization of the structured settlement tool.

Attorneys who represent injured workers have a different set of concerns. Our interviewees were all highly experienced, ranging from 20 to 35 years of experience with workers’ compensation claims. They all agreed the biggest problem with structured settlement agreements was the valuation. This is

understandable, given that they are representing injured workers, but perhaps the issue deserves more consideration. One very thoughtful observer urges L&I to improve their valuation through allowance for risk and uncertainty, dropping the erroneous assumption that all programs will be completed with no failures, stopping dependence on inaccurate pension reserves, and adding some allowance for future changes in the cost of living.

One worker attorney argued that L&I was more reasonable when the program was new, because they wanted it to succeed. But now they are making more minimal offers. Another offers that the SSU staff is very personable, but their settlement offers are very low. Yet another argues that L&I undervalues structured settlements because they are linking their offers to the pension reserve for the claim.

Aside from their concerns about the undervaluation of settlements, the worker attorneys were not critical of the SSU. Comments included, “the SSU will correct their errors if identified” and it is “very straight-forward” dealing with the structured settlement unit. Only one was critical of the BIIA and that was about timing.

Employers with Structured Settlements

This section will compare the distribution of SF employers with workers who received structured settlements to the distribution of SF employers who had workers that were eligible for settlements according to the requirements for eligibility (age of worker and duration of claim) but who did not pursue such settlements. So, the comparison is between those employers with structured settlements (referred to as structured settlement employers) and those with eligible workers who did not have structured settlements (referred to as eligible employers) during the 2012–2018 period. This analysis will serve to indicate whether there is broad access to the structured settlement program across the Washington economy, or whether it has been confined to a narrow group of employers.

Table 9 shows the distribution of employers by industry for the sample of structured settlements and the broader eligible population.¹⁵ Workers at firms in construction, real estate, health care, and public administration appear to be more likely to secure structured settlements. While workers in agriculture, professional services, and food and accommodation seem less likely to receive settlements. This may reflect the nature of the employment relationships in these sectors, including wage levels and the permanence of employment. Despite these modest differences, it seems clear that structured settlements have been widely distributed since nearly all sectors of the economy are represented.

¹⁵ The smaller number of observations reflects the fact that some employers had multiple CRSSAs.

Table 9 Employer Industry Distribution

2-digit industry	Eligible employers		Structured settlement employers	
	Number	Percentage	Number	Percentage
Agriculture	987	6.7	6	2.1
Mining	41	0.3	0	0
Utilities	59	0.4	0	0
Construction	2,743	18.7	68	23.9
Manufacturing	1,302	8.9	31	10.9
Wholesale trade	930	6.4	16	5.6
Retail trade	1,453	9.9	25	8.8
Trans & warehouse	922	6.3	21	7.4
Information	102	0.7	2	0.7
Finance & insurance	143	1.0	1	0.4
Real estate	515	3.5	20	7.0
Professional services	439	3.0	4	1.4
Management	9	0.1	0	0.0
Administration	928	6.3	19	6.7
Education	181	1.2	2	0.7
Health care	1,284	8.8	32	11.2
Arts & entertainment	196	1.3	2	0.7
Food & accommodation	1,093	7.5	6	2.1
Other services	937	6.4	17	6.0
Public administration	367	2.5	13	4.6
TOTAL	14,631	100.0	285	100.0

NOTE: The data come from L&I's data warehouse for eligible claims for state-fund employers from 2012 through 2018.

Table 10 reports the distribution of structured settlements by the employment level of the firms where those injured workers were employed. It is clear that structured settlements are much more common among larger firms. In fact, 10.5 percent of settlements involve employers of over 500 full-time equivalent employees whereas these employers make up only 2.4 percent of all eligibles. The full impact is obvious in the fact that the mean employment level among employers with settlements is 475 employees, while it is only 86 employees for all eligibles. But once again, the distribution is well populated across employer size, indicating that a wide swath of workers and their employers have secured structured settlements to date.

Table 10 Employer Size

FTE	Eligible employers		Structured settlement employers	
	Number	Percentage	Number	Percentage
Up to 10	3,673	32.1	50	25.0
10–25	2,368	20.7	32	16.0
25–50	1,775	15.5	24	12.0
50–100	1,530	13.4	29	14.5
100–500	1,820	15.9	44	22.0
> 500	273	2.4	21	10.5
TOTAL	11,439	100.0	200	100.0
Mean	85.6 ees		474.7 ees	
Standard deviation	533.4		3,021.0	

NOTE: The data come from L&I's data warehouse for eligible claims for state-fund employers from 2012 through 2018. FTE is defined as 1,920 hours. The reduced number of employers reflects missing data on this item.

Table 11 shows total medical treatment costs for workers' compensation claims for all employers with eligible workers and for those with structured settlements. Note that there is a dearth of structured settlement employers with total medical treatment costs below \$25,000. Employers with less than \$25,000 aggregate workers' compensation medical costs made up nearly 60 percent of all eligible employers, yet they only accounted for 6 percent of structured settlements. Over 75 percent of employers with structured settlements had aggregate medical costs over \$50,000 for their workers' compensation claims. This result supports the earlier finding that CRSSAs tend to go to workers with high medical costs (Tables 6 and 7).

Table 11 Employer Medical Treatment Costs

Medical treatment cost	Eligible employers		Structured settlement employers	
	Number	Percentage	Number	Percentage
< \$2,500	1,880	12.8	0	0.0
\$2,501–10,000	3,486	23.8	2	0.7
\$10,001–25,000	3,390	23.1	16	5.6
\$25,001–50,000	2,582	17.6	53	18.5
\$50,001–100,000	1,961	13.4	87	30.4
\$100,001–250,000	1,142	7.8	82	28.7
Over \$250,000	218	1.5	46	16.1
TOTAL	14,659	100.0	286	100.0
Mean	\$40,624		\$234,012	
Standard deviation	125,441.4		738,752.8	

NOTE: The data come from L&I's data warehouse for eligible claims for state-fund employers from 2012 through 2018.

Finally, assessed quarterly premiums for workers' compensation coverage is compared in Table 12 for SF employers. The assessed premium level is much higher for employers with structured settlements, due to their level of employment. The mean assessed premium level for all eligible employers is \$126,363 per quarter, while it is \$641,183 for employers with structured settlements. But when standardizing for the level of full-time equivalent employment, structured settlement employers pay \$1,351 per worker and eligible employers without CRSSAs pay \$1,476 per worker in workers' compensation premiums.

Table 12 Employer Assessed Premium Levels¹⁶

Quarterly premium	Eligible employers		Structured settlement employers	
	Number	Percentage	Number	Percentage
Up to \$10,000	2,609	22.8	35	17.5
\$10,000–25,000	1,989	17.4	21	10.5
\$25,001–50,000	1,708	14.9	23	11.5
\$50,001–100,000	1,751	15.3	20	10.0
\$100,001–250,000	1,990	17.4	30	15.0
Over \$250,000	1,392	12.2	71	35.5
TOTAL	11,439	100.0	200	100.0
Mean	\$126,363		\$641,183	
Standard deviation	413,173		2,265,467	

NOTE: The data come from L&I's data warehouse for eligible claims for state-fund employers from 2012 through 2018.

Our conclusion is that there is no obvious employer bias in access to the structured settlement program. Employees of larger employers are much more likely to secure a structured settlement. But

¹⁶The reduced number of employers reflects missing data on this item.

workers for all kinds and all sizes of employers have been able to access the structured settlement process.

Impact of CRSSAs on State Accident Fund

The impact of structured settlements on the SF depends primarily on the comparison between the amount of the settlements and the future benefits that would have been paid without the settlements, less the cost of administering the system. Thus, they will reflect the bargaining over the amount of the structured settlement between L&I or a SI employer and the injured workers. Assuming consistent administration by L&I, the injured workers' time preference for money will largely determine the potential SF savings from CRSSAs. If injured workers have a marked preference for dollars today versus dollars in the future (discount rate), then the savings from CRSSAs will be larger. If this is not the case, then savings from CRSSAs will be smaller.

Casual observation suggests that discount rates of workers are relatively high, certainly much higher than current market interest rates. This is illustrated by the use of payday loans, credit card balances, and other high interest rate transactions. In previous research with the New York workers' compensation system, Thomason and Burton estimated that the implicit discount rate for workers accepting lump-sum settlements in New York was about 24–25 percent.¹⁷ That means that the typical injured worker who accepted a lump-sum settlement was willing to accept \$75 in a lump sum today in exchange for \$100 received in periodic payments over the next year. So there apparently is an opportunity for SF savings that actually increase the perceived well-being of injured workers who accept CRSSAs, provided they have a high personal discount rate.

In addition to the discount rate of injured workers, the vocational rehabilitation option also plays an important role in motivating structured settlements in Washington. In the worker focus groups conducted for this evaluation, the desire to avoid the necessity to retrain for a new career was an important reason for injured workers to pursue and/or accept a structured settlement. Very few workers of age 55 years or more believed it made sense for them to return to school to learn a new skill and embark on a second career. In the first place, they likely had significant continuing physical limitations, or they would not have been on workers' compensation benefits at all. And the distaste for "starting over" among the injured workers we spoke to was nearly universal.

We investigated the possibility of using SF claim reserves as a way of estimating the likely future claim costs that would have been incurred in the absence of the structured settlement. However, we were told that the claim reserves were not kept up to date and would not accurately serve the purpose we intended. We estimated the duration of claims for CRSSA recipients using a statistical model based upon the characteristics of the individuals and their claims.¹⁸ We used a matched sample technique to compare the durations of CRSSA claims with other claims that applied or were eligible to apply but did

¹⁷ Thomason, Terry and John F. Burton, Jr. 1993. "Economic Effects of Workers' Compensation in the United States: Private Insurance and the Administration of Compensation Claims," *Journal of Labor Economics* 11(1): S1–S37.

¹⁸ This model was similar to those presented earlier on worker characteristics (Table 7) but the outcome (dependent) variable was duration of the claim in months.

not receive settlements. None of these efforts resulted in significant insight into the future cost of claims at the time of the settlement.

This appears to reflect the fact that L&I is carefully screening these claims and selecting those with greatest potential on the basis of characteristics that are not obvious, or not contained in the L&I data warehouse. A good deal of additional personal information is collected by the SSU on the application for structured settlement, and these items were not available to us because of confidentiality restrictions. Without a way of accurately estimating the cost to the SF of the alternative of “no CRSSA settlement” for these claims, we cannot determine the actual financial impact of such settlements on the SF.

Employer Cost Impacts

In principle, the impact of structured settlements on SI employer costs would be similar to the impact of structured settlements on the SF. The cost of the settlement is known, and the discount rate of the self-insured employer can be assumed to be relatively similar to that of the SF. The willingness of the worker to accept a settlement should be similar except for the possibility that a SI employer may be more aggressive in bargaining over the level of the settlement, which might affect the likelihood of the worker accepting the offer. Unfortunately, L&I does not have data on SI employers in the data warehouse and so we were not able to access such data, nor directly estimate the impact of settlements on SI employer costs.

The cost impact for SF insured employers is more complicated because it is determined not just by the level of the settlement and the cost of the alternative, but also by the actuarial insurance pricing mechanism that is used in Washington.

Workers’ compensation insurance premiums are derived from estimates of the amount of benefits that will be paid to claims arising in a given year. They are generally expressed in dollars per hundred dollars of payroll. However, in Washington an hourly measure of labor input is used, so premiums are expressed directly in dollars and cents per hour of employment.

All workers’ compensation programs develop rate class premiums for insurance coverage based upon actual performance of firms in similar businesses, generally for about 300 rate classes. So, for example, all retail clothing stores will be grouped together to determine the average cost of workers’ compensation benefits expected from a given accident year. This figure will be added to the cost of program administration to derive a premium rate in dollars and cents per hour. All firms in the industry will use this base rate class premium as the starting point in figuring their cost of workers’ compensation insurance coverage.

Normally, all costs of the workers’ compensation system are included in the rate class premiums. In Washington this includes accident fund benefits, medical aid fund benefits, “Stay at Work” benefits and “Supplemental Pension Fund” benefits. The administrative costs of the system are also added to expected benefits to arrive at base rates by risk class.

Washington uses an experience rating system that modifies the rate class premium according to the firm's specific performance in the past. Based upon three years of actual historical performance, each firm insured with the SF receives an experience modification factor which expresses the relationship of their expected losses to the average for the rate class group. These experience modification factors are simple ratios with the rate class average experience rating being 1.0. Firms that have performed better than average in the past will have experience modification factors less than 1.0 and firms that have performed worse than average in the past will have experience modification factors greater than 1.0. When the firm's experience modification factor is multiplied by the base premium for their rate class, the annual premium rate for workers' compensation insurance coverage in dollars and cents per hour is the result. When this figure is multiplied by the number of hours of work for a quarter or a year, the estimated cost of insurance to the employer emerges.

There are a number of exceptions and refinements to the system that are designed to prevent extreme variation in employer premiums from year to year. For instance, there is an annual "swing limit" of 25 percent that is applied to experience modification factors. This will prevent premiums from going up or down by more than 25 percent between years.¹⁹ There is also a maximum claim value (\$277,022 in 2018) that prevents a single catastrophic loss from having too great an impact on an employer's cost of insurance. There is also a credibility factor that varies with the size of the firm. Larger firms have more predictability because of the larger numbers of employees involved; so, their credibility is higher and their own experience receives greater weight in the determination of experience modification factors. Smaller firms depend more on the rate class average. All these premium limiting factors have the effect of shifting the cost of the claim from individual firms to the rate group as a whole.

When viewed from the individual firm perspective, the experience modification factor is the major influence on how their premium differs from other similar firms in the same line of business. It is also the main way that SF employers can reduce their workers' compensation costs. If they can improve their performance relative to the average in their industry, workers' compensation costs will go down with their experience modification factor. Further, if structured settlements are generally for less than the future benefit costs of the claims, these settlements would also reduce the employer's premium.

Impact of Structured Settlements

How does a structured settlement impact employer premiums through this SF experience rating system? It is obvious that a structured settlement will speed up the payment of benefits over what would have happened in the absence of the settlement. But how are the ultimate cost of benefits and future premium costs impacted?

First, it is safe to assume that L&I will offer a lower settlement amount than the expected cost of future benefits for the claim, since a goal of structured settlements for L&I is to reduce costs for the SF.

¹⁹ However, where the "computed before limitation" experience factor is below 1.0 and the employer has an experience factor greater than 1.33 in the prior year, the factor is set to 1.00 which allows a change greater than 25 percent.

Assuming that the amount of the structured settlement is less than the anticipated future benefit costs, the result will be a reduction in premium for the employer. Let us turn to some illustrative examples.²⁰

Suppose we look at a \$20,000 structured settlement paid on a claim against a firm in the 0514 rate class (garage door installation) with a relatively high base rate for workers' compensation insurance of \$3.3158 per hour; with a date of injury that is within the 2018 experience period (2014–2016 date of injury); and that does not involve any extenuating circumstances like multiple employers, second injury fund relief, or third-party recoveries. Assume that the claim has previously paid \$110,000 in benefits at the time of settlement and anticipated future payments are \$35,000. The effect of the \$20,000 settlement is to reduce the overall claim cost from \$145,000 to \$130,000.

For a small firm in rate class 0514 with 10 full time equivalent (FTE) employees (19,200 annual hours of employment) their experience modification factor would decline by 2.7 percent, or about \$0.09 on the hourly premium rate. This would reduce their premium rate from \$3.316 per hour to \$3.225 per hour. On an annual basis this would result in total premium savings of \$1,745.

For a larger firm with 50 FTEs, the change in their experience modification factor would be just \$0.0322 per hour on the base premium, or about 1 percent. This would result in a reduction in their total annual premium of \$3,091. The larger firm receives relatively less relief because a greater proportion of the loss is credible in the actuarial model.

Larger settlements will have greater impacts, but the maximum claim cost and annual swing limits may come into play because of the higher dollar amounts. For the same small firm in class 0514 with a \$100,000 structured settlement and anticipated future claim payments of \$210,000, the expected cost of the claim would decline by \$110,000. The experience modification factor for this firm would decline by 10.5 percent, or \$0.349 per hour. This would mean a savings in total annual premium of \$6,716. The larger firm under the same assumptions would see a decline of 4.0 percent or \$0.1326 per hour. This firm would experience a total annual premium reduction of \$12,720.

While these amounts may seem small, it is clear that reaching a structured settlement agreement will benefit individual SF employers through small reductions in their premiums. This is true so long as the amount of the settlement is less than the anticipated future benefit payments, not including medical aid because CRSSA recipients are still entitled to medical benefits. And small amounts per hour count up when you figure that an employer with 50 full-time employees will multiply those per hour savings by 96,000 hours per year.

²⁰ Thanks to L&I Actuary Mark Phillips for developing these illustrations for us.

5 CONCLUSIONS

Quality Indicators

The program of structured settlements for workers' compensation claims in the State of Washington seems to accord well with the quality criteria listed above. The benefit-to-cost ratio to the State that we estimate to be around 2.0 suggests it is having substantial fiscal benefits to the state. Employers are also pleased with the program and believe that it is saving them money as well as clearing challenging claims from their rosters. Neither the data nor the responses from focus group or survey respondents suggest any sort of horizontal or vertical bias. Whereas, focus group and survey participants were generally unhappy with the size of their settlements, the fact that they accepted them and used the funds for major expenditures or enhanced saving suggests that the CRSSAs resulted in positive outcomes for workers.

Attorneys who were very critical of the performance of the BIIA four years ago, are now mostly satisfied with the reviews they receive. After the *Zimmerman* court decision in 2014, the BIIA reduced their focus on the question of the "best interests of the injured worker" when that worker has legal representation. Everyone seems to be more comfortable with the working of the CRSSA system now.

Worker attorneys tended not to be satisfied with the value of structured settlement awards. It is the general opinion of the claimant bar that L&I "low balls" the settlement offers to see if the worker will take it. There is evidence that personal bargaining power does make a difference, and there is sentiment for a more predictable or formulaic approach to setting settlement amounts. Worker attorneys also specifically complained about the alleged link between structured settlement amounts and claim pension reserve levels. We were not able to verify this allegation however.

Perhaps the best indicator of employer sentiment is the fact that nearly every employer contact resulted in a strong endorsement of the structured settlement program and recommendation of its expansion to younger workers and perhaps to denied or disputed claims. Employers would prefer to have these claims settled once and for all. The same attitude applies to medical aid benefits, which remain available after a structured settlement.

Effectiveness Indicators

The best indicator of effectiveness is the fact that structured settlements have now become a routine part of the workers' compensation system in Washington. All participants accept the program, specifically including SI employers. So, the program is meeting the need to close claims where further administrative treatment does not seem productive and where the injured worker is anxious to leave the system and get on with their life.

The administration of the program by the SSU of L&I can also be labeled as effective. Everyone's needs seem to be getting met and the most common assessment is one of "very good service by L&I." One area of criticism is the outreach and information function. L&I appears to have slowed the

promotion of the structured settlement option, presumably because it is believed that most know about it now. However, we found there is a good deal of confusion about the program among workers, including injured workers who have been through the program and received their structured settlements. It appears at this point that employers, especially SI employers are more familiar with the structured settlement program than their employees are.

Recommendations

We have the following recommendations for improving the structured settlement program:

- 1) **Information available to workers.** During our focus groups with injured workers, participants told us that they were confused about the structured settlement process. Furthermore, more than 10 percent of the applicants we surveyed indicated that they never applied for a settlement, and the largest percentage of complaints about the application process is that L&I did not supply enough information. Similarly, a relatively large percentage of individuals with settlements claimed post-settlement medical expenses paid for by other health insurance or out-of-pocket. As such, we recommend that the SSU provide more information about structured settlements to workers, perhaps via additional print or online material or by reminding settlement recipients of their right to continued medical care for their underlying injuries.²¹
- 2) **Best interest of worker determination.** The statute and implementation of the program require that any settlement needs to be in the best interest of the worker. During the settlement consideration process, that determination is made either by an analyst in the SSU, by a worker's attorney, or by the BIIA. During our study, we did not learn of any systematic way that best interest is determined. It would seem to us that the legislature would be interested in learning about how this determination is made and whether it can be made systematized. Explanations of how the SSU analysts and BIIA judges make the determination should be in the public domain. How attorneys make this determination cannot be regulated by legislation or regulation, but qualitative evidence from attorneys should be of interest.
- 3) **Structured settlements for SI employers.** As noted above, the settlement amounts for SI employers appear to be quite a bit smaller than the amounts for SF agreements. We would suggest to the legislature that this disparity should be investigated in the future. Of course, this investigation needs to be done in a careful manner using multivariate analyses to control for factors such as worker characteristics, occupation, injury severity, indemnity payments, representation, medical fixity, vocational rehabilitation participation, and so forth. Of course, if a well-specified regression analysis of settlement amounts results in a statistically significant

²¹According to the department, all SF contracts contain detailed language about the need to file a reopening application if a worker needs future claim-related treatment. Additionally, the program specialist who negotiated the agreement meets *pro se* workers personally to go over the terms of the contract and specifically highlights the need to return to L&I for claim-related medical treatment. Finally, when the *pro se* worker goes to the BIIA for the best interest conference, the BIIA judge goes over this provision in detail to make sure the worker understands that the medical benefit is not being settled.

positive or negative coefficient on the settlements for workers with SI employers, the legislature will be left with the implication that SI or SF-insured workers are receiving settlements that are relatively too high or too low.

- 4) **Standardization of structured settlement amounts.** We also heard from some that structured settlements should be more standardized and more predictable. This suggestion came from those who are concerned about inequities that arise from the differences in ability or willingness to bargain among workers or their representatives and the resulting negotiated settlement differences. Making such a change would require a thorough review of the facts in Washington and of policy options that might be considered.
- 5) **Consider expanding the use of structured settlements.** Employers favor expanding the structured settlement program by lowering or removing the age limit, including closed or disputed claims, and extending to medical aid claims. Doing this would represent essentially adopting a traditional compromise and release option, which is the dominant policy mode in other U.S. jurisdictions. This would clearly require adequate research to support a major change in policy. Such a change would have to be agreed to by all stakeholders and worked through the legislative process. Whether this represents the will of the people of Washington would have to be determined in the legislature. However, it does seem worth considering expanding the program given the success to date.

In conclusion, we hope that these recommendations will be of use to the Department of L&I and to the legislature as they continually attempt to improve the functioning of this program option.