



Death of the Washington Second Injury Fund?

By Shawna G. Fruin ■ June 12, 2017

Historically, a pension with Second Injury Fund relief was a desirable outcome for both Washington injured workers and employers, allowing workers to obtain the pension that they desired, but reducing employer liability to only permanent partial disability, assuming the substantive criteria for accessing the Fund were satisfied. That meant that employers were paying essentially the same amount as they would with claim closure (i.e., permanent partial disability), but could avoid time-consuming and costly litigation fighting about a worker's ability to truly return to work versus that worker's total and permanent disability. Back in the day, Second Injury Fund was a win for everyone.

Everyone...except the Second Injury Fund itself. Once workers and employers realized the benefits of Second Injury Fund relief, requests to access the fund came pouring in: the Second Injury Fund, which is financed by assessments to the Department's accident fund and self-insurers, was considerably depleted. The legislature then changed the Second Injury Fund rules and as of July 1, 2009, began assessing additional experience-rated premiums against self-insured employers who access the Fund.¹ Although the specific effect of the access premiums varied from case to case, the additional premiums frequently increased the cost of Second Injury Fund relief to 75 percent of the cost of a direct-effects pension.

Then in October 2016, the costs of Second Injury Fund "relief" took a drastic turn for the worse. In 2016, the Second Injury Fund premium rates were .0796, but for fiscal year 2017 they nearly doubled, increasing to .1326. The Department's publication about the rate increase cited funding shortages due to falling investment returns. Since that time, our firm has received direct-effects pension estimates and Second Injury Fund premium estimates on many cases, and in the vast majority of them, the Second Injury Fund premium was within 10 percent of the costs of a direct-effects pension. When considering that employers also have to pay permanent partial disability to access the Second Injury Fund, the costs of Second Injury Fund "relief" were actually greater than a direct-effects pension – i.e., no relief at all.

If you are considering pursuing a Second Injury Fund pension for one of your cases, we encourage you to contact the Department of Labor and Industries,

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obtain your pension and Second Injury Fund rate estimates, and carefully consider whether it is truly the best resolution option for your case. The attorneys of Reinisch Wilson Weier PC are available and happy to assist with any questions or concerns you have regarding this important issue. ■

¹ RCW 51.44.040.

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