

**Effective 5/14/2019**

**63G-9-302.5 Special master proceeding for damages cap claims.**

- (1) As used in this section:
- (a) "Claimant" means an individual who submits an excess damages claim to the board of examiners.
  - (b) "Damages cap" means the amount to which a personal injury claim is or would be reduced because of the operation of Subsection 63G-7-604(1)(a) or (d).
  - (c) "Damages cap settlement" means a settlement:
    - (i) between an individual with a personal injury claim that exceeds the damages cap and the governmental entity against which the personal injury claim is asserted; and
    - (ii) that provides for the governmental entity to pay the individual an amount equal to the damages cap to settle the personal injury claim.
  - (d) "Excess damages amount" means the amount of a personal injury claim that:
    - (i) exceeds the damages cap; and
    - (ii) a governmental entity would be liable to pay except for the operation of Subsection 63G-7-604(1)(a) or (d).
  - (e) "Excess damages claim" means a claim for an excess damages amount.
  - (f) "Government attorney" means:
    - (i) an attorney representing a political subdivision, if the personal injury claim that results in an excess damages claim was asserted against the political subdivision; or
    - (ii) the attorney general, if:
      - (A) the personal injury claim that results in an excess damages claim was asserted against the state; or
      - (B) the attorney general chooses to participate on behalf of a political subdivision, as provided in Subsection (9)(b).
  - (g) "Personal injury claim" means a claim for damages for personal injury that is subject to the operation of Subsection 63G-7-604(1)(a) or (d).
  - (h) "Responsible governmental entity" means:
    - (i) the political subdivision against which the personal injury claim was asserted, if an excess damages claim results from a personal injury claim against a political subdivision; or
    - (ii) the state, if an excess damages claim results from a personal injury claim against the state.
  - (i) "Special master list" means a list compiled under Subsection (7).
  - (j) "Statement of claim" means a statement detailing an excess damages claim.
  - (k) "Third party claim" means a personal injury claim that:
    - (i) arises out of the same underlying facts as the facts that provide the basis for an individual's personal injury claim against a governmental entity; and
    - (ii) the individual asserts against a person who the individual claims is also liable, in addition to the governmental entity, for the individual's personal injury claim.
- (2) An individual may seek payment of an excess damages claim by submitting a written statement of claim to the board of examiners after, but no later than 180 days after, as applicable:
- (a)
    - (i) the date of a final, nonappealable judgment in favor of the individual on a personal injury claim in an amount that would have exceeded the damages cap except for the operation of Subsection 63G-7-604(1)(a) or (d); or
    - (ii) the date of a damages cap settlement; or
  - (b) the date that all third party claims the individual has asserted are resolved by final, nonappealable judgment or settlement, if that date is later than the applicable date under Subsection (2)(a).

- (3) A statement of claim shall include:
  - (a) a recitation of the facts and explanation of the evidence supporting the excess damages claim;
  - (b) the excess damages amount;
  - (c) if applicable, a list and description of each third party claim the individual has asserted and an explanation of the disposition of the third party claim, including the amount of any judgment or settlement and the amount actually recovered;
  - (d) if applicable, a summary of a damages cap settlement; and
  - (e) if applicable, the amount of a final judgment awarded to the claimant against the governmental entity with:
    - (i) the amount of the judgment before operation of Subsection 63G-7-604(1)(a) or (d); and
    - (ii) a description of each element of damages awarded and the amount awarded for each element.
- (4) A claimant shall submit with a statement of claim a copy of:
  - (a) a final judgment in favor of the claimant on the claimant's personal injury claim that forms the basis of the claimant's excess damages claim, together with any findings of fact and conclusions of law entered by the court, if the claimant has recovered a judgment that exceeds the damages cap; or
  - (b) the agreement memorializing the damages cap settlement, if the claimant is asserting an excess damages claim following a damages cap settlement.
- (5) An excess damages claim may not include an amount recovered by a claimant from any source as compensation for damages for the claimant's personal injury claim.
- (6) A claimant with a personal injury claim that is subject to the aggregate limit under Subsection 63G-7-604(1)(d) may not submit a statement of claim under this section before the amount of the personal injury claim has been determined after application of Subsection 63G-7-604(1)(d).
- (7)
  - (a) The board of examiners shall compile a list of at least five retired Utah judges to serve as a special master under this section.
  - (b) A retired judge included in the special master list shall meet qualifications established by the board of examiners.
- (8)
  - (a) Except as provided in Subsection (8)(b), the board of examiners may require a claimant's excess damages claim to be submitted to a special master, as provided in this section, to make a recommendation concerning:
    - (i) the governmental entity's liability for the personal injury claim that forms the basis of the excess damages claim;
    - (ii) the amount of the claimant's damages and excess damages claim; or
    - (iii) both the governmental entity's liability and the amount of the claimant's damages and excess damages claim.
  - (b) The board of examiners may not require a claimant's excess damages claim to be submitted to a special master to the extent that the excess damages claim is based on a court judgment following a verdict by a trier of fact determining the governmental entity's liability or the amount of damages or both.
- (9)
  - (a) A political subdivision that is the responsible governmental entity may choose whether to have an attorney representing the political subdivision participate in proceedings under this section to represent the interests opposing approval of the excess damages claim.

- (b) The attorney general may choose to participate in proceedings under this section to represent the interests opposing approval of the excess damages claim, whether or not the state is the responsible governmental entity.

(10)

- (a) If the board of examiners requires a claimant's excess damages claim to be submitted to a special master under this section, the claimant and the government attorney shall together select an individual from the special master list to act as special master.
- (b) If the claimant and the government attorney are unable to agree on an individual to act as special master, or if there is no government attorney participating in the proceedings before the board of examiners, the board of examiners shall randomly select an individual from the special master list to act as special master.

(11)

- (a) Within 20 days after appointment under Subsection (10), a special master shall:
  - (i) prepare a written budget of the special master's estimated fees and costs relating to the special master's anticipated services under this section; and
  - (ii) provide the budget to the claimant.
- (b) Within 20 days after receiving the special master's budget under Subsection (11)(a), the claimant shall:
  - (i) approve or reject the special master's budget; and
  - (ii) notify the board of examiners in writing of the approval or rejection.
- (c) If the claimant rejects the special master's budget, the claimant's excess damages claim is considered withdrawn.
- (d) If the claimant approves the special master's budget, the claimant shall pay all fees and costs of the special master in a special master proceeding under this section.

(12) Within 30 days after the approval of a special master's budget, the claimant shall provide the special master a written statement that includes:

(a)

- (i) a list of the name and last known address of each health care provider that has provided health care services to the claimant at any time during the period beginning five years before the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement;
- (ii) a description of the health care services provided by each health care provider listed in Subsection (12)(a)(i); and
- (iii) a statement describing and explaining any health care services described under Subsection (12)(a)(ii) that the claimant claims are immaterial to the claimant's personal injury claim;

(b)

- (i) a list of the name and last known address of each health care insurer or other entity to which a health care or other similar benefit claim has been submitted on the claimant's behalf at any time during the period beginning five years before the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement;
- (ii) a description of the health care or other similar benefits claimed under claims submitted to health care insurers or other entities listed under Subsection (12)(b)(i); and
- (iii) a statement describing and explaining any health care or other similar benefit described under Subsection (12)(b)(ii) that the claimant claims is immaterial to the claimant's personal injury claim;

- (c) a list of the name and address of each employer that employed the claimant at any time during the period beginning five years before the event giving rise to the claimant's personal injury claim and ending on the date that the claimant submits the written statement, if the

- claimant's personal injury claim includes a claim for lost wages or diminished earning capacity;
- (d) a list of the name and address of each state or federal entity holding a statutory lien on any recovery obtained by the claimant through the claimant's personal injury claim; and
  - (e) a statement as to whether the claimant has received any Medicare or Medicaid benefits and, if so, a description of those benefits, including the amount.
- (13) The claimant shall submit with the statement required under Subsection (12):
- (a) a copy of all documentary evidence supporting the claimant's excess damages claim; and
  - (b) a signed authorization from the claimant allowing the special master to obtain all documents, including any billing statements, relevant to the claimant's excess damages claim from each person listed under Subsections (12)(a)(i), (b)(i), and (c).
- (14) The special master:
- (a) shall objectively consider evidence related to the claimant's excess damages claim;
  - (b) may hold a hearing in connection with the special master recommendation regarding the excess damages claim;
  - (c) may request or allow a responsible governmental entity or government attorney voluntarily to provide information or argument to help the special master understand the factors weighing against an excess damages claim; and
  - (d) after considering the relevant evidence, shall make a recommendation concerning, as directed by the board of examiners:
    - (i) the governmental entity's liability for the personal injury claim that forms the basis of the claimant's excess damages claim;
    - (ii) the amount of the excess damages claim; or
    - (iii) both the governmental entity's liability and the amount of the claimant's damages and excess damages claim.
- (15)
- (a) Within 30 days after a hearing under Subsection (14)(b) or, if no hearing is held, after the special master's determination not to hold a hearing, the special master shall:
    - (i) prepare a written recommendation, including a brief, informal discussion of the factual and legal basis for the recommendation; and
    - (ii) deliver a copy of the written recommendation to the claimant, the attorney general, and the board of examiners.
  - (b) A written recommendation under Subsection (15)(a) may, but need not, contain findings of fact and conclusions of law.

Enacted by Chapter 229, 2019 General Session