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7 **BOARD OF EQUALIZATION**
8 **STATE OF CALIFORNIA**

9
10 In the Matter of the Appeal of:) **HEARING SUMMARY**
11) **PERSONAL INCOME TAX APPEAL**
12 **GARY MELLINGER AND**) Case No. 811123
13 **CHRISTA MELLINGER**)

14
15 Year Proposed
16 2007 \$16,816

17 Representing the Parties:

18 For Appellants: Philip Garrett Panitz, Attorney
19 Barbara E. Lubin, Attorney
20 Law Offices of Panitz & Kossoff, LLP

21 For Franchise Tax Board: Judy F. Hirano, Tax Counsel III

23 QUESTION: Whether appellants have shown that the Franchise Tax Board (FTB or respondent)
24 erred by not allowing damages awarded in a settlement agreement to be excluded
25 from their taxable income.

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1 HEARING SUMMARY

2 Background

3 Facts

4 Appellant-husband started working for the Fire Department for the City of Los Angeles
5 in 1974. Appellants provide background information and a Complaint (discussed below) indicating that
6 appellant-husband was discriminated against and harassed by his employer, particularly from about
7 September of 2003 through to his termination in January of 2005, based on his age, association with two
8 other employees of the Fire Department who were being discriminated against, and reporting of
9 discrimination. (App. Reply Br., pp. 2-4, exhibit A, p. 31 et seq.) Appellants state that, as part of this
10 discrimination, he was ordered to run heavy drills and, on May 2, 2004, he was injured and sought
11 medical treatment from doctors for injuries to his back and knees. Appellant-husband was kept out of
12 work due to these injuries for approximately one month while he underwent physical therapy, and was
13 subsequently cleared to return to work on June 4, 2004. Appellant-husband continued regular medical
14 monitoring, and reported increased pain in his left knee and an interest in arthroscopic surgery in July of
15 2004, at which time his physician listed him as temporarily disabled. Appellant-husband's condition
16 lessened and improved through to at least October of 2004, the last medical statement provided in the
17 record, at which time appellant-husband stated that he was prepared to return to work pending medical
18 clearance. (App. Reply Br., exhibit D.) Appellant-husband was granted regular service retirement on
19 January 25, 2005. (Resp. Op. Br., exhibit B, p. 7.)

20 Legal Action

21 On July 19, 2005, appellant-husband joined the two aforementioned coworkers in filing
22 a Complaint against the City of Los Angeles and certain employees behind the discriminatory behavior.
23 (App. Reply Br., exhibit A, "Complaint.") Of the twelve charges listed in the Complaint, the four
24 charges that applied to appellant-husband were for violations of the Fair Employment and Housing Act
25 (FEHA) in the form of discrimination, harassment, retaliation, and failure to investigate and take
26 appropriate remedial action. (*Id.* at exhibit A, p. 2.) On August 4, 2006, a mediation brief was filed on
27 behalf of appellant-husband and his co-plaintiffs. The Introduction for this mediation brief states that
28 "The subject lawsuit arises out of claims for discrimination, harassment, retaliation and failure to take

1 remedial action” (*Id.* at exhibit B, p. 2.) Appellant-husband’s trial began on September 12, 2006,
2 and the jury reached a verdict about a week later on September 20, 2006. The court dismissed the
3 causes of action alleging age discrimination and harassment, leaving only the retaliation and failure to
4 prevent discrimination causes of action. The verdict included an award of \$277,001 and concluded that
5 one of the individually named defendants was potentially subject to punitive damages. Thereafter,
6 appellant-husband reached a settlement for the lawsuit in the amount of \$350,000, which included any
7 claims for punitive damages, attorney’s fees, and costs, and the case was dismissed on January 4, 2007.
8 (App. Reply Br., exhibit E, pp. 70-71.) Appellant-husband subsequently received a letter from his
9 attorney with a check dated February 5, 2007, providing him with his net payment of \$189,473.77.¹
10 (Resp. Op. Br., exhibit D.)

11 Appellant-husband also filed claims for workers’ compensation. One claim was for
12 cumulative injuries over the period of the beginning of his career with the fire department through the
13 end of 2004. The second claim was for specific injuries to his lower back and left knee that were
14 incurred on May 2, 2004. The parties stipulated that appellant-husband sustained a permanent disability
15 of 56 percent, and that he was adequately compensated for all injuries through weekly payments of \$200
16 that began on June 27, 2005, up to a total amount of \$66,800. (Resp. Op. Br., exhibit B.)

17 Tax Return and Audit

18 Appellants filed a joint 2007 resident tax return reporting a federal adjusted gross income
19 (AGI) of \$103,525, and subtracted \$3,264 in social security benefits as Schedule CA subtractions to
20 reach a California AGI of \$100,261. Appellants reported \$46,365 in deductions, a taxable income of
21 \$53,896, and a tax of \$1,428. Appellants applied exemption credits of \$776, tax withholding of \$652,
22 and were issued a claimed refund of \$243. Appellants did not include in their AGI the \$189,743.777
23 payment received as appellant-husband’s net settlement payment. (Resp. Op. Br., exhibits F & G.)

24 Respondent examined appellants’ return, and issued an Audit Issue Presentation Sheet
25 (AIPS) to appellants in February of 2012. (Resp. Op. Br., exhibit H.) Respondent and appellants
26 exchanged correspondence during the audit period, and respondent concluded the audit by issuing a
27

28 ¹ Respondent notes that appellant-husband was receiving pension income from the City of Los Angeles, reported on a Form 1099-R, but the City did not issue a Form 1099-MISC to report the settlement payment amount.

1 Notice of Proposed Assessment (NPA) in June of 2012. (*Id.* at exhibits I & J.) The NPA added the
2 \$189,474 of previously excluded settlement payment to appellants' taxable income, reflected a revised
3 taxable income of \$243,370, and proposed an additional tax due of \$16,816, plus interest.² (*Id.* at
4 exhibit J.) Appellants protested the NPA. After considering appellants' protest, respondent issued a
5 Notice of Action affirming the NPA. (*Id.* at exhibit K & L.) This timely appeal followed.

6 Contentions

7 Appellants' Contentions

8 Appellants contend that payments received on account of workers' compensation or the
9 amount of any damages received on account of personal physical injuries or physical sickness are
10 excluded from gross income under IRC section 104(a)(2). Appellants cite *Domeny v. Commissioner*,
11 wherein the U.S. Tax Court determined that the taxpayer's settlement award from her employer should
12 be excluded from her gross income. (*Domeny v. Commissioner*, T.C. Memo 2010-9.) The taxpayer in
13 *Domeny, supra*, quit her previous employment in response to her MS diagnosis and sought new
14 employment that would not exacerbate her symptoms. Her new employment, however, did exacerbate
15 her symptoms because of the tense nature of her relationship with her supervisor and she became too
16 sick to work, which ultimately led to the settlement agreement. Appellants refer to the court's
17 statements in *Domeny, supra*, stating that when determining the nature of damages awarded by a
18 settlement, the starting point is the language of the underlying agreement. Here, appellants contend that
19 the settlement agreement specifically states that the payments are not compensation for lost wages or
20 punitive damages, but are instead for appellant-husband's claims alleging physical injuries, emotional
21 distress, personal injuries, and pain and suffering. Appellants therefore assert that the \$189,473.77
22 payment was unambiguously made specifically as compensation for physical injuries. (Appeal Letter,
23 pp. 2-3.)

24
25 ² It appears respondent's proposed assessment revised appellants' income by adding the net amount of the award they
26 received, rather than including the entire award including attorney's fees. Attorney fees awarded to a prevailing party
27 generally are considered earned by the party and non-excludable if the award is not exempt from income. (See, e.g., *Sanford*
28 *v. Commissioner*, T.C. Memo 2008-158.) The portion paid for attorneys' fees may be deductible, but is not excludable
absent some other provision of law. (*Commissioner v. Banks* (2005) 543 U.S. 426, 436.) Respondent should be prepared to
discuss how it became aware of the unreported income and how it calculated appellants' proposed assessment. However, the
only assessment amount before the Board is the amount reflected in the NOA, which is based on the net amount paid to
appellant and apparently does not include any award of attorney's fees.

1 Appellants contend that the “crux” of the claim for damages against the City of
2 Los Angeles was for physical injuries to appellant-husband’s knee and back from retaliatory drills, and
3 that his discrimination claim probably would not have gone very far since he was a Caucasian male in
4 his mid-fifties.³ Appellants state that appellant-husband’s claim against the city was vastly different
5 than his co-plaintiff’s claim, in which she suffered no physical injuries and was awarded \$6.2 million in
6 damages for discrimination and harassment. (App. Reply Br., p. 6 & exhibit E, p. 72.) Appellants
7 contend that, “the juxtaposition between the ADEA damages award Ms. Lee [co-plaintiff] received and
8 the physical damages award [appellant-husband] received are apparent.” (*Id.* at p. 7.) Appellants assert
9 that appellant-husband is not in a protected class under the Equal Protection Clause,⁴ contrasting his
10 situation from the taxpayer in *Commissioner v. Schleier*⁵ in which the taxpayer was fired per airline
11 policy when he reached the age of sixty, and contend that his settlement award was instead based on
12 permanent injury to his knee and back from retaliatory and punitive drills. Appellants cite *Rickel v.*
13 *Commissioner*, and contend that as long as a settlement is for damages stemming from a personal injury,
14 the entire award is exempt from tax, even if part of the award is allocated for other items including lost
15 wages.⁶ Appellants assert that the settlement payment is entirely excludable because it is proximately
16 related to a personal injury, and none of the payment was allocated to punitive damages “or other
17

18 ³ As noted above, the Los Angeles Board of Fire Commissioners’ review of appellant-husband’s case in its Audit and
19 Assessment of Fire Department Litigation states that the court dismissed appellant-husband’s age discrimination and
20 harassment claims. (App. Reply Br., exhibit E, p. 70.)

21 ⁴ Appeals staff notes that the Age Discrimination in Employment Act (ADEA) as well as the FEHA forbids age
22 discrimination against people who are age 40 or older, and that it is unlawful to harass a person because of his or her age,
23 including offensive remarks about a person’s age that result in a hostile or offensive work environment. Appellant-husband
24 was over 40 years of age during the years at issue in his discrimination case against the City of Los Angeles.

25 ⁵ *Schleier, supra*, is a 1995 case that has since been superseded by statute when IRC section 104 was amended to limit the
26 exclusion to “physical” injuries and sickness, as well as removing the requirement that the underlying cause of action giving
27 rise to the recovery was based in tort or tort type rights. (See *Perez v. Commissioner* (2015) 144 T.C. 4, fn. 6; *Hennessey v.*
28 *Commissioner*, T.C. Memo 2009-132.)

29 ⁶ The *Rickel v. Commissioner* decision, a 1990 case from the United States Court of Appeals for the Third Circuit, goes on to
30 state that payments for back pay or lost wages are taxable if they are “nonpersonal.” (*Rickel v. Commissioner* (3d Cir. 1990)
31 900 F.2d 655.) This decision provides an analysis that is not accurate under the current law, for example, providing that
32 “injuries” under IRC section 104(a)(2) includes both physical and nonphysical injuries, and focusing on the tort or tort type
33 right requirement that has since been removed from the statute. The decision has received negative review, including
34 disapproval from both the Third and Tenth Circuits. (See, e.g., *Robinson v. Southeastern PA. Transp. Auth* (3rd Cir. Pa
35 1991) 982 F.2d 892; *Gray v. Commissioner* (10th Cir. 1997) 104 F.3d 1226.)

1 exceptions.” (*Id.* at p. 8.)

2 Appellants contend that respondent’s argument is flawed because it focuses on the fact
3 that no physical injury is alleged in the Complaint, whereas the analysis of what the settlement is for
4 begins and ends with the language of the settlement agreement. Appellants assert that the settlement
5 language is unambiguous in its statement that the payment is “specifically for all claims made and/or
6 alleged by him for physical injuries, emotional distress, personal injuries, and pain and suffering.”⁷
7 Appellants contend that the original claims for discrimination had transitioned during the course of
8 litigation into settlement based on physical injuries. Appellants assert that respondent is attempting to
9 create ambiguity where there is none, that the unambiguous terms of the settlement agreement state that
10 the payment was compensation for personal injury, and that the payment qualifies for IRC section
11 104(a)(2) exclusion from taxation. (App. Reply Br., pp. 8-11.)

12 Respondent’s Contentions

13 Respondent asserts that appellants have failed to establish entitlement to exclude
14 appellant-husband’s settlement payment from gross income under IRC section 104(a)(2), and
15 respondent’s determination disallowing the exclusion of income is correct. Respondent cites *United*
16 *States v. Burke* (1992) 504 U.S. 229, and contends that when a payment is received pursuant to a
17 settlement agreement, the nature of the claim that was the actual basis for the settlement controls
18 whether the payment is excludable under IRC section 104(a)(2). Respondent contends that the pertinent
19 question in determining the tax treatment of a settlement payment is, “in lieu of what was the settlement
20 amount paid”? (Resp. Op. Br., p. 10 [quoting *Bagley v. Commissioner* (1995) 105 T.C. 396, 406, affd.
21 (8th Cir. 1997) 121 F.3d 393].) Respondent quotes *Bagley, supra*, as stating, “. . . an express allocation
22 set forth in the settlement is not necessarily determinative if other facts indicate that the payment was
23 intended by the parties to be for a different purpose.” (*Ibid.*)

24 Respondent asserts that the payment statement relied upon by appellants is undermined
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26 ⁷ The payment statement part of the settlement agreement references “*Murphy v. I.R.S.*, 960 F.3d 79,” which presumably
27 refers to *Murphy v. IRS* (D.C. Cir. 2006) 460 F.3d 79. As respondent notes, this decision was a 2006 decision that was
28 subsequently vacated and reversed on rehearing, finding that the award at issue was not received on account of physical
injury and was not excludable under IRC section 104(a)(2). (Resp. Op. Br., p. 14, fn. 27; *Murphy v. IRS* (D.C. Cir. 2007)
493 F.3d 170, cert. den. (2008) 553 U.S. 1004.)

1 by other settlement agreement statements. Respondent contends that the settlement agreement
2 specifically states that it is intended to settle and release the City and defendants from appellant-
3 husband's claims asserted in his civil action Complaint. Respondent notes that nowhere in appellant-
4 husband's civil action Complaint is there any allegation of specific physical injuries incurred for which
5 damages were sought.⁸ Respondent asserts that appellant-husband's settlement payment was based on
6 his civil suit against his employer, and that the Complaint contained claims for recovery of economic
7 losses, punitive damages, and emotional distress, which are not claims for physical injury or physical
8 sickness. Respondent contends, therefore, that the settlement payment was not based on any claims for
9 physical injuries. (Resp. Op. Br., pp. 11-12, 15-16.) Respondent notes that appellant-husband's claims
10 for age discrimination and harassment were dismissed, leaving only his retaliation and failure to prevent
11 discrimination causes of action at issue in the civil complaint. Respondent contends that this explains
12 why his award was much less than his co-plaintiff's award.⁹ (Resp. Reply Br., pp. 7-9.)

13 Respondent notes that the payment statement in the settlement agreement refers to,
14 among other things, "physical injuries," and respondent indicates appellants asserted at audit and
15 protest that the settlement award was payment for his left knee and back injury. However, respondent
16 notes that appellant-husband's workers' compensation claim was already providing compensation for
17 his left knee and lower back, and that the settlement agreement expressly did not release the workers'
18 compensation claim. Respondent contends that workers' compensation is generally an employee's
19 exclusive remedy against an employer for job-related personal injuries, and that appellant-husband was
20 barred from maintaining a civil suit for damages for injuries to his left knee and back because he was
21 compensated for those injuries under the workers' compensation scheme. (Resp. Op. Br., pp. 12-15;
22 Cal. Lab. Code, §§ 3600, subd. (a) & 3602; *LeFiell Mfg. Co. v. Superior Court* (2012) 55 Cal.4th 275,
23 279, 283-284.)

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25 ⁸ Respondent notes that the settlement agreement also references a discrimination complaint filed by appellant-husband
26 against the same defendants with the Department of Fair Employment and Housing (DFEH) agency. While the settlement
27 agreement indicates that this matter was partially decided by a jury, a copy of this complaint has not been provided, but
respondent asserts there is no evidence that it contained any claims for physical injuries.

28 ⁹ Respondent also notes that co-plaintiff Lee's jury verdict of \$6.2 million was reversed on appeal and her case remanded for
a new trial, before she apparently settled her case for a presumably lesser amount. (Resp. Reply Br., p. 8 & fn. 13; App.
Reply Br., exhibit E, pp. 72-73.)

1 Respondent contends that the treatment of the settlement agreement by appellant-
2 husband's employer indicates that the payment statement was inserted on behalf of appellant-husband's
3 behalf with the tax consequences of the settlement payment in mind. Respondent states that the
4 payment statement expressly excluded taxable punitive damages and taxable lost wages, despite these
5 types of damages being specifically sought in the Complaint, and instead attempts to include language
6 that would meet the exclusions provided for in IRC section 104(a)(2), despite there being no claims for
7 physical injuries in the Complaint. Respondent asserts that the City had no interest in the way the
8 settlement payment was allocated and no motive to ensure the payment statement was an accurate
9 representation. Respondent also references the sentence following the payment statement, wherein the
10 City disclaimed any liability for the tax consequences of the settlement, and asserts that it creates
11 ambiguity as to the validity of the payment allocation for tax purposes. (Resp. Op. Br., pp. 16-18; Resp.
12 Reply Br., pp. 10-11.) Respondent contends that the payment statement does not dictate the nature of
13 the settlement payment because it was drafted with a tax motivation, citing *Bagley, supra*. (Resp. Op.
14 Br., p. 17.)

15 Applicable Law

16 It is well established that a presumption of correctness attends respondent's
17 determinations as to issues of fact and that the taxpayer has the burden of proving such determinations
18 erroneous. (*Appeal of Oscar D. and Agatha E. Seltzer*, 80-SBE-154, Nov. 18, 1980.) To overcome the
19 presumed correctness of respondent's finding as to issues of fact, a taxpayer must introduce credible
20 evidence to support his assertions, and if he does not support his assertions with such evidence,
21 respondent's determinations must be upheld. (*Ibid.*)

22 Revenue and Taxation Code (R&TC) section 17071 incorporates IRC section 61, which
23 defines "gross income" to include "all income from whatever source derived" except as expressly
24 provided by statute. R&TC section 17131 incorporates IRC section 104. IRC section 104(a)(1)
25 excludes amounts received under workers' compensation acts as compensation for personal injuries or
26 sickness. IRC section 104(a)(2) excludes from gross income "the amount of any damages (other than
27 punitive damages) received (whether by suit or agreement and whether as lump sums or as periodic
28 payments) on account of personal physical injuries or physical sickness[.]" (Int.Rev. Code, § 104(a)(2).)

1 When a settlement agreement exists, determining the exclusion from gross income
2 depends on the nature of the claim that was the actual basis for settlement. (*Stocks v. Commissioner*
3 (1992) 98 T.C. 1, 10.) In determining whether a settlement was paid “on account” of alleged personal
4 physical injuries, a court begins “by looking at the language in the settlement agreement. The language
5 contained in an agreement will be respected to the extent the settlement agreement is entered into in an
6 adversarial context, at arm’s length, and in good faith.” (*Massot v. Commissioner*, T.C. Memo 2000-
7 24.) Courts have also looked at the special verdict form returned by a jury to see if they found an
8 underlying physical injury or sickness as a cause for an award. (*Nancy J. Vincent v. Commissioner*, T.C.
9 Memo 2005-95.) The U.S. Tax Court has explained as follows: “Under California law, . . . we must
10 consider all credible evidence to determine whether the language of the agreement is fairly susceptible
11 of more than one interpretation, and if it is, we must consider extrinsic evidence relevant to prove which
12 one of these meanings reflects the intent of the contracting parties.” (*Simpson v. Commissioner* (2013)
13 141 T.C. 331, 340.) If the settlement agreement lacks express language stating what the settlement
14 amount was paid to settle, then the most important factor in determining any exclusion under IRC
15 section 104(a)(2) is the intent of the payor regarding the purpose in making the payment. (*Ibid.*) What
16 the settlement agreement actually settled is a question of fact. (*Ibid.*)

17 The U.S. Supreme Court focused on the phrase “on account of” from IRC section
18 104(a)(2) in *O’Gilvie, supra*, finding that those words impose a stronger causal connection, making the
19 provision applicable only to those personal injury lawsuit damages that were awarded by reason of, or
20 because of, the personal injuries. This analysis was followed in *Murphy v. Internal Revenue Service*, in
21 which it was similarly found that a taxpayer must demonstrate that he or she was awarded damages
22 “because of” his or her physical injuries to be entitled to tax exclusion under IRC section 104(a)(2).
23 (*Murphy v. Internal Revenue Service* (2007) 493 F.3d 170.)

24 The California Labor Code, at sections 3600 and 3602, provide generally that the right
25 to compensation through the workers’ compensation system is the exclusive remedy against an
26 employer for any injury arising out of and sustained during the course of employment. The code
27 provides that, when the conditions set forth in section 3600 are met, “the right to recover compensation
28 is . . . the sole and exclusive remedy of the employee . . . against the employer.” (Cal. Lab. Code, §

1 3602, subd. (a).) Specific exceptions are provided that allow employees to bring a civil action for
2 damages as if Labor Code section 3602 did not exist, but are limited to situations in which the injury or
3 death is caused by a willful physical assault by the employer, the injury is aggravated by the employer's
4 fraudulent concealment of the existence of the injury and its connection to employment, or the injury is
5 caused by a defective product manufactured and sold or leased by the employer to a third party and
6 subsequently used by the employee.

7 STAFF COMMENTS

8 The damages awarded to appellant through the settlement agreement in 2003 will be
9 excludable from his taxable income if they were received on account of personal physical injury or
10 sickness sustained by appellant. (Int.Rev. Code, § 104(a)(2).) Appellants assert that the language of the
11 settlement agreement is unambiguous in the characterization of the settlement payment as being for
12 physical injuries and other harms that fall under the exclusion provided by IRC section 104(a)(2).
13 Respondent asserts that the settlement payment was paid by the City and other defendants to resolve the
14 claims made by appellant-husband in his Complaint, and none of his claims in the Complaint included
15 physical injuries or other assertions that would fall under IRC section 104(a)(2).

16 Generally, unambiguous language will be followed to determine the purpose and nature
17 of a payment for purposes of IRC section 104(a)(2). Here, the settlement agreement states in one part
18 that the payment is directly related to appellant-husband's civil case which has no causes of action
19 related to physical injuries, but then states in another part that the payment is for physical injuries. The
20 Board should determine whether it finds ambiguity in the statements of the settlement agreement that
21 appear to be fundamentally inconsistent. If the Board finds that the settlement agreement provides
22 uncertainty as to whether the payment is for the discrimination-based FEHA violations asserted in the
23 civil case or for physical injuries, then the Board should consider evidence outside the settlement
24 agreement to determine the true purpose of the settlement payments. What the settlement payment
25 actually settles is a question of fact. A review of the timing of events might aid in that decision.

26 Appellant-husband experienced the alleged violations of the FEHA from late 2003
27 through the end of 2004. In the middle of that period, on May 2, 2004, appellant-husband was injured
28 on the job. Appellant-husband began receiving compensation for these injuries through his workers'

1 compensation claim on June 27, 2005. On July 19, 2005, appellant-husband filed his Complaint
2 against the City and other defendants alleging violations of the FEHA. The trial took place during the
3 middle of September of 2006, with a jury verdict awarding appellant-husband \$277,001, plus potential
4 punitive damages to be determined, for two of his four causes of action. The case was subsequently
5 dismissed when appellant-husband agreed to instead settle the dispute for \$350,000. It appears to staff
6 that the above sequence of events suggests that appellant-husband was compensated for his work-
7 related injuries through workers' compensation before he filed his civil suit, and that the settlement
8 payment was directly related to his causes of action in the civil suit which were for violations of the
9 FEHA (i.e., not for personal physical injury or physical sickness). The parties should be prepared to
10 discuss this timeline and any alternative analyses.

11 The parties should also be prepared to discuss the exclusivity principle stating that work-
12 related injuries are generally compensated only through workers' compensation, and therefore
13 appellant-husband would not have been able to file a civil action for his work-related injuries since he
14 was already receiving workers' compensation. Appellant-husband's workers' compensation statement
15 states that appellant-husband was adequately compensated for his injuries suffered on May 2, 2004,
16 through the payments that began on June 27, 2005. Appellants should discuss how they would be
17 entitled to additional payments or compensation for physical injuries through a settlement agreement
18 when appellant-husband was already being compensated through workers' compensation, and physical
19 injuries were not included in the causes of action in appellant-husband's Complaint for which the
20 settlement was entered. Appellants state that during the trial period the complaint transitioned from
21 claims of discrimination into a settlement based on physical injuries. The parties should discuss
22 whether the exclusivity provisions of the California Labor Code would have allowed appellant-husband
23 to file a civil suit for physical injuries already being compensated for by workers' compensation, and, if
24 not, then also discuss whether the City of Los Angeles would pay a settlement of \$350,000 for physical
25 injuries for which appellant-husband could not sue.

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28 Mellinger_jj