

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc.

WORKERS' COMPENSATION COURT

VS.

W.C.C. NO. –

PETITION FOR SETTLEMENT FOR LUMP SUM WITH MEDICARE SET-ASIDE

Respectfully represent Petitioner and Respondent as follows:

1. That on _____, the Petitioner sustained the following injuries:

arising out of and in the course of employment with the Respondent.

2. That the Petitioner was incapacitated from _____ to

_____ as a result of the compensable injuries.

3. That the Respondent has paid to the Petitioner compensation for not less than twenty-six (26) weeks.

4. That the payment of a lump sum in lieu of future weekly benefits will be in the best interest of all parties involved.

5. That Petitioner hereby represents that, to the extent that any other new, separate, different, omitted, specific or permanent injuries were sustained, any other physical or psychological effects resulted or flowed from the Petitioner's injuries, the Petitioner expressly includes and incorporates them in this Petition.

6. That the Petitioner has incurred medical expenses in accordance with the Workers' Compensation Act as a result of the aforementioned injuries, but that, upon

information and belief of the parties, all such medical bills incurred to the date of the final approval of this settlement, either have been paid or will be paid by the Respondent if duly and diligently presented.

7. That the amount of the settlement as determined under the Workers' Compensation Act to be paid by the Respondent to the Petitioner in lieu of all future compensation benefits under the Workers' Compensation Act is the sum of \$ _____.

8. That the Petitioner is a Medicare beneficiary.

9. That a Medicare Set-Aside Allocation Report has recommended that a Medicare set-aside account be created for petitioner in the amount \$ _____.

10. That the parties have applied to the Centers for Medicare and Medicaid Services (CMS) for pre-approval of the set-aside in the amount proposed.

11. That it is anticipated that it may take four to six months for Medicare to communicate its decision as to whether it will pre-approve a set-aside in the proposed amount.

12. That in order to allow the petitioner to receive a partial payment toward the commutation, on the assumption that CMS will approve the set-aside in an amount which will be acceptable to the parties and the Court, the parties have agreed, and hereby do request permission from the Court to pay to petitioner the sum of _____ Dollars from the proposed settlement, provided that from the date of the approval of this settlement, the Respondent, shall cease paying to petitioner weekly indemnity benefits until such time as the advanced payment as calculated at the rate of \$ _____ per week, which is petitioner's compensation rate is exhausted, or this court holds a second hearing following receipt of the response from CMS, whichever shall occur sooner.

13. In the event that CMS pre-approves the establishment of a Medicare Set-Aside Trust in the amount of \$ _____ the balance remaining of the proposed commutation once the amount necessary to fund the set-aside, and a counsel fee of \$ _____ for

Attorney _____ have been deducted, shall be paid to petitioner by the employer or its insurance carrier.

14. In the event that CMS does not approve a set-aside in the amount proposed but does pre-approve a set-aside in a different amount which is acceptable to the parties and the Court, the balance remaining of the settlement, once the amount of the set-aside and the attorney's fee have been deducted, and following review by the court, shall be paid to the employee.

15. From the first hearing on this proposed commutation until the hearing finally approving the set-aside, any and all medical bills that are reasonably necessary to cure, relieve or rehabilitate the employee from the effect of the compensable injury shall continue to be paid by the insurer or self-insured employer.

16. In the event the court ultimately approves the settlement after receipt of the response from Medicare as to the amount acceptable for a Medicare Set-Aside, the employer and its insurer shall pay no medical bills incurred by the Petitioner after the date of the hearing which approves the settlement.

17. In the event that CMS refuses to pre-approve a set-aside in an amount acceptable to the parties and the Court, the commutation shall not be approved. In that event, the Petitioner shall retain the right to receive weekly indemnity benefits and reimbursement or payment for necessary and reasonable medical bills to cure, relieve or rehabilitate the employee from the effects of the injury; provided however, under those circumstances, the Respondent and its carrier, shall be entitled to receive a 100% credit against all weekly indemnity benefits due from the date of the first hearing regarding settlement, up to the date of the hearing following the receipt of the response from CMS when the commutation is denied. In the event that the full amount of the monies prepaid to the employee has not been exhausted at the rate of \$ _____ per week, by the date of this last hearing, the Respondent and its insurer shall be entitled to receive a credit of the balance of the amount remaining at the rate of \$ _____ per week, taken

against future weekly indemnity benefits, until such time as the Respondent and its insurer have received a complete credit for the advance payment.

18. That the petitioner intends to be the custodian of a self-administered set-aside account, which shall be funded by the sum set forth above, or such other amount approved by CMS and agreed to by the parties and this Court, deducted from the total settlement approved by the Court.

19. That the funds deposited into this Medicare Set-Aside Account shall be used by the Petitioner only to pay medical expenses which Medicare would otherwise pay for the work-related injury.

20. That the Petitioner agrees to indemnify and hold harmless
and
from any cause of action, including, but not limited to, an action to recover or recoup Medicare benefits paid, or a loss of Medicare benefits should the Centers for Medicare and Medicaid Services determine that the money set-aside was inadequate or spent inappropriately, or for any recovery sought by Medicare, including present or future liens.

21. That the parties are unaware of any medical expenses incurred prior to the date of this settlement hearing for the care and treatment of the work-related injury (“past medical expenses”) which were paid by Medicare and which have not been reimbursed by the employer or its workers’ compensation insurer. If there are any past medical expenses paid by Medicare for medical services which were necessary to cure, relieve, or rehabilitate the Petitioner from the effects of the work-related injury, the employer or its workers’ compensation insurer will reimburse Medicare for those past medical services in accordance with the Workers’ Compensation Act.

22. That the Petitioner is aware that not all medical expenses which may be incurred after the date of this settlement hearing for the care and treatment of the work-related injury (“future medical expenses”) are to be covered by the Medicare Set-Aside Account, as Medicare

does not cover all medical expenses. Your petitioner acknowledges that this settlement will end any and all liability of the Respondent and its insurance carrier, for the payment of any future medical expenses, and that the Petitioner will be responsible for paying any Medicare covered expenses out of the Medicare Set-Aside Account, and paying any non-Medicare covered expenses from own funds.

23. It is not the intention of the Petitioner, the Respondent or the Respondent's Workers' Compensation Carrier, to shift responsibility of future medical benefits to the Federal Government. The sum which is to be set aside in this case is intended to be a reasonable allocation for future medical expenses which expenses Medicare would otherwise cover and is intended directly and solely for payment of such expenses. Upon proof that the Medicare qualified expenses exceed the amount placed into the Medicare Set-Aside, those expenses may be forwarded to Medicare for payment of Medicare covered expenses with proper documentation. It is the responsibility of the Petitioner to submit all required documentation to Medicare evidencing the payment of the bills relating to the work-related injury or illness equaling the amount placed in the Medicare Set-Aside Account in this case, before Medicare will make payment on any covered expenses related to the work-related injury or illness. The amount placed in the Medicare Set-Aside in this case is based upon the projected amount of the anticipated future medical treatment needs of the Petitioner, to be paid in accordance with the Rhode Island Workers' Compensation fee schedule. The Petitioner should be certain that all payments to providers are paid in accordance with the Rhode Island Workers' Compensation fee schedule, and any monies paid in excess of the fee schedule will not count toward the amount held on deposit in the Medicare Set-Aside Account which must be expended before Medicare will pay for any medical treatment related to the work injury.

24. The Petitioner agrees that the amount set aside for the payment of future medical expenses which Medicare would otherwise cover must be paid in accordance with any applicable requirements of The Centers for Medicare and Medicaid Services. The Petitioner understands

that until _____ becomes entitled to payment of covered expenses for the care and treatment of the compensable injury by Medicare, the amount placed in the Medicare Set-Aside Account to cover future medical expenses, which Medicare would otherwise cover, may not be used to pay the Petitioner's personal medical expenses.

25. The Petitioner understands that the funds in the Medicare Set-Aside Account must be placed in an interest bearing account, and that the account must be maintained separate from any other personal checking and savings accounts. The funds in the Medicare Set-Aside Account may only be used for the payment of medical services related to the work-related injury that would otherwise be paid by Medicare. If payments from this account are used to pay for services that are not covered by Medicare, Medicare will not pay injury-related claims until such funds are restored to the Medicare Set-Aside Account, and then properly expended.

26. That the Petitioner further understands that annual reports must be prepared for submission to the appropriate Medicare office or subcontractor, to include summaries of the transactions and status of the account. These summaries are to include the date of each service, the procedure performed, and the diagnosis and must be accompanied by a receipt from the provider or a cancelled check.

27. That the Petitioner agrees that the cost of future medical care is in dispute. The parties realize that time may reduce or increase the need for future medical care, and as a compromise have agreed that from the total settlement amount the entire amount pre-approved by Medicare and agreed to by the parties and the court, will be placed into a Medicare Set-Aside Account, self-administered by the Petitioner, and the Petitioner will release the Respondent and its insurance carrier, from all liability for future medical expenses which Medicare would otherwise cover. The parties have reached this compromise after careful consideration of all the medical reports and opinions, as well as the Petitioner's own knowledge of the compensable conditions and symptoms.

28. That the Petitioner's counsel, _____, intends to request a
counsel fee of \$ _____.

29. That the net settlement to the Petitioner in the amount of \$ _____
represents a lifetime settlement over the Petitioner's life expectancy of _____ years / _____ weeks
at \$ _____ per week.

30. That attached hereto as Appendix A are the names and addresses of all medical
care providers who have treated the employee, based upon information and belief.

WHEREFORE, the parties pray that all future liability be settled for the sum of
\$ _____ and the parties will ever pray.

Attorney for Petitioner

Employee

Attorney for the Respondent(s)

STATE OF RHODE ISLAND
PROVIDENCE, SC.

In _____, on the _____ day of _____, 20 __, before me
personally appeared the Petitioner, _____, to me known and known by me to be
the party executing the above Petition, and first being sworn and deposes and says that the facts
set forth in the Petition are true and that the lump sum settlement herein prayed for would be in
the best interests of the Petitioner.

NOTARY PUBLIC