

28-33-25

LABOR AND LABOR RELATIONS

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28-33-25. Settlement for lump sum or structured-type payment.

(a)(1) In case payments have continued for not less than six (6) months, the parties may petition the workers' compensation court for an order approving a settlement of the future liability for a lump sum or structured-type periodic payment over a period of time.

(2)(i) In considering the petition, a judge shall give due weight to the fact that it is the policy of this chapter that compensation be paid weekly.

(ii) The petition shall be considered by a judge of the court and may be granted where it is shown to the satisfaction of the court that the payment of a lump sum or structured-type payment in lieu of future weekly payments will be in the best interest of all parties including the employee, employer, insurance carrier, and where applicable, the workers' compensation administrative fund and the center for Medicare and Medicaid services (CMS) as their interests may appear. Any proposed settlement that exceeds one hundred four (104) weeks of compensation for partial incapacity may be rejected by the chief judge in his or her discretion. The employee shall be entitled to a finding amortizing the net settlement over his or her life expectancy.

(iii) In determining whether the settlement is in the best interest of all parties, the judge may refer the employee for a rehabilitation evaluation pursuant to the provisions of § 28-33-41.

(3) Upon payment, the employer and insurer shall be entitled to a duly executed release, which fully and finally absolves and discharges the employer and insurer from any and all liability arising out of the injury.

(b) The provisions of this section shall be strictly construed and all hearings for commutation shall be conducted in open session.

(c) No case may be settled to a lump sum or structured-type periodic payment while the Rhode Island temporary disability insurance fund and/or the department of social and rehabilitative services has a claim for payments made under chapter 41 of this title unless agreement is made to pay any claim from the lump sum or structured-type periodic payments.

(d) Attorneys' fees shall be fixed by the court, but in no event shall any attorney's fee for representing an employee in connection with a petition brought pursuant to this section exceed a sum equal to twenty percent (20%) of the lump sum or twenty percent (20%) of the structured-type periodic payment reduced to present day value.

(e) No case shall be settled for a lump sum or structured-type periodic payment unless it is placed upon the record in open session, that the employer, if insured, has been advised by the insurer or its agent of the potential effect of the settlement on its workers' compensation premium, and has the opportunity to appear and state its disapproval of the settlement.

(f) Settlements must be paid within fourteen (14) days of entry of an order to pay or the date(s) upon which payment(s) is/are due pursuant to a court order, and a penalty of one hundred dollars (\$100) shall be assessed for every day payment is delinquent.

History of Section.

PL 1912, ch. 831, art. 2, § 25; G.L. 1923, ch. 92, art. 2, § 25; G.L. 1938, ch. 300, art. 2, § 25; G.L. ch. 300, art. 2, § 26; PL 1954, ch. 3297, § 1; G.L. 1956, § 28-33-25; PL 1969, ch. 150, § 1; PL 1982, ch. 32, art. 1, § 6; PL 1984, ch. 142, art. 6, § 8; PL 1984 (S.S.), ch. 450, § 3; PL 1985, ch. 187, § 1; PL 1990,

ch. 332, art. 4, § 3; PL 1992, ch. 31, § 5; PL 1995, ch. 44, § 2; PL 2004, ch. 273, § 3; PL 2004, ch. 293, § 3.

Compiler's Notes.

PL 2004, ch. 273, § 3, and PL 2004, ch. 293, § 3, enacted identical amendments to this section.

Court Rules

2.26. SETTLEMENTS. -- (A) PROCEDURE FOR LUMP SUM SETTLEMENT OR STRUCTURED-TYPE PAYMENT. -- (1) Every petition for approval of a lump sum settlement or structured-type payment shall set forth the pertinent facts, including but not limited to, the date of the injury, a description of all injuries, the periods of incapacity totaling at least six (6) months, the settlement amount, the amounts of any liens, the amount of any Medicare set-aside, any settlement structure, and whether the medicals will be left open.

(2) The following documents shall be attached to the petition at the time of filing, and the court shall not accept any petition for filing unless accompanied by all necessary documents:

(a) Legible copies of all agreements, orders, and decrees establishing liability for the injury or injuries, the weekly compensation rate, the periods and degree of incapacity, and the receipt of specific compensation.

(b) A statement, dated within thirty (30) days of the date of the filing of the petition, on the letterhead of and signed by the physician who is currently treating the employee for the injury for which the employee is receiving compensation, describing the employee's present medical condition and ability to return to the workforce as it relates to the work-related injury; or in the event that the employee is no longer treating, the medical report of the employee's last date of treatment, describing the employee's medical condition and ability to return to the workforce as it relates to the work-related injury accompanied by an affidavit signed by the employee or her/his attorney attesting that the employee is no longer treating.

(c) A copy of correspondence notifying the employer, as distinguished from the insurer, of the details of the proposed settlement, and of its right to be heard thereon. Failure of the employer to appear at the hearing following receipt of sufficient notice shall be deemed a waiver of the employer's right to be heard.

(d) A copy of correspondence notifying the employer, as distinguished from the insurer, of the potential effect of the proposed settlement on its workers' compensation insurance premium.

(e) The report from the most recent impartial medical examination performed at the direction of the Medical Advisory Board and/or the court.

(f) A statement listing all health care providers known to the parties who have provided any services to the employee and a list of balances owed for treatment.

(g) The parties shall agree to and submit a joint proposed order and final decree. If the parties are unable to agree on a joint proposed order, the parties may set the matter for hearing before the judge.

(3) Any dispute as to the reasonableness of any charge for medical services shall be brought to the attention of the judge hearing the petition who may, in her/his discretion (a) conduct a hearing pursuant to G.L. 1956 § 28-35-20 et seq., to address the charges in dispute; (b) continue the hearing on the petition for settlement until the dispute is resolved; or (c) dismiss the petition for settlement without prejudice.

(4) The petition shall be considered by a judge of the court and may be granted where it is shown to the satisfaction of the judge that the payment of a lump sum or structured-type payment in lieu of future weekly payments will be in the best interest of the parties, including the employee, employer, and insurance carrier.

(5) The judge shall determine the fees and costs of the employee's attorney in accordance with G.L. 1956 § 28-33-25, which shall be set forth in the order and decree.

(6) If the judge determines after hearing on the record that the proposed settlement is in the best interest of all parties, the judge shall enter an order so finding and directing that the lump sum shall be paid within fourteen (14) days of the entry of the order. The judge shall schedule a hearing date for the entry of a final decree following entry of the order. In the case of a structured-type settlement, payment shall commence in accordance with the terms of the settlement agreement.

(7) On the date and time set by the judge, the parties shall appear and submit a final decree for entry by the court. The decree shall contain an agreement signed by all counsel that all payments ordered at the time of the approval of the settlement have been made and that all health care expenses incurred in the care and treatment of the employee's work-related injuries which are the subject of the settlement have been paid.

(8) Any pending petitions regarding the work-related injury which is the subject of the settlement must be withdrawn or otherwise resolved prior to the entry of the order approving the settlement.

(9) Petitions seeking approval of settlements with open medicals must be filed utilizing the forms promulgated by the court.

(10) Petitions for settlement with open medicals shall be heard no sooner than one (1) week after the petition is filed with the court.

Reporter's Notes. The amendment to this rule recognizes recent changes in the Medicare Rules and Regulations that may require an employee to set aside a certain portion of the settlement proceeds to satisfy any potential obligation to Medicare for medical expenses for treatment of the work-related injury. The rule also addresses settlements in which the employer/insurer remains liable for future medical expenses for treatment of the work-related injury.

(B) PROCEDURE FOR SETTLEMENT OF DISPUTED CASES. – (1) Every petition for approval of a settlement of a disputed claim pursuant to G.L. 1956 § 28-33-25.1 shall set forth the pertinent facts of the case, the amount of the proposed settlement, including the net amount to be realized by the employee, and, if applicable, the amount of any liens, the amount of any Medicare set-aside, and any settlement structure.

PARTIAL ADVANCE PAYMENT WITH
MEDICARE SET ASIDE STRUCTURED

STATE OF RHODE ISLAND
PROVIDENCE, SC.

WORKERS' COMPENSATION
COURT

«Petitioner»
«EE_Street_Address»
«EE_City_State_Zip»

-vs-

W.C.C. NO: «Year_for_WCC_No»

«Respondent1»
«Respondent2»
«ER_Address_1»
«ER_Address_2»

PETITION FOR SETTLEMENT FOR LUMP SUM

Respectfully represents Petitioner as follows:

1. That on «DOI», Petitioner sustained an injury to «hisher» «Injury», arising out of and in the course of «hisher» employment with the Respondent.
2. That the Petitioner was incapacitated from «Incapacity_Date» to the present and continuing as a result of the compensable injury.
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, and/or any other accidents, injuries or conditions were suffered at any time while in the employ of said Respondent, the Petitioner expressly includes and incorporates them in this Petition.

6. 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 «Gross_Settlement_Amt».

7. That the Petitioner is a Medicare beneficiary and/or is Medicare eligible.

8. That «SetAside_Vendor_Name», has prepared a Medicare Set-Aside Allocation Report and has recommended that a Medicare set-aside account be created for the Petitioner in the amount of «Medicare_SetAside_Amt».

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

10. That it is anticipated that it may take four to six months for CMS to communicate its decision as to whether it will pre-approve a set-aside in the amount of «Medicare_SetAside_Amt», or will require some different amount to be deposited into a Medicare Set-Aside Account.

11. That in order to allow the Petitioner to receive a partial, advance payment toward this settlement, on the assumption that CMS will approve the set-aside in the amount of «Medicare_SetAside_Amt», or in some slightly greater amount which will be acceptable to the parties and the Court, the parties have agreed, and do hereby request permission from the Court to pay to the Petitioner the sum of «Advance_Payment_Amt» from the proposed «Gross_Settlement_Amt» settlement, provided that from the date of the approval of the advance payment, The Beacon Mutual Insurance Company, the

carrier of the Respondent, shall cease paying to the Petitioner any weekly indemnity benefits until such time as the advance payment of «Advance_Payment_Amt», calculated at the weekly compensation rate of «CompRate» is exhausted, or this Court holds a second hearing following receipt of the response from CMS, whichever shall occur sooner.

12. That in the event that CMS pre-approves the proposed set-aside of «Medicare_SetAside_Amt», the balance remaining of the «Gross_Settlement_Amt», once the «Medicare_SetAside_Amt» for the pre-approved set-aside, a counsel fee in the sum of «Attorney_Fee», and a credit to The Beacon Mutual Insurance Company for the advance payment in the sum of «Advance_Payment_Amt» have been deducted, shall be paid to the Petitioner by The Beacon Mutual Insurance Company.

***13. That in the event the Petitioner should die after the preliminary hearing, but before the subsequent hearing, the Respondent and The Beacon Mutual Insurance Company shall pay the agreed future indemnity benefits to the Estate of the Petitioner, inclusive of the counsel fee of Attorney «EE_Atty_Name», with a credit to The Beacon Mutual Insurance Company for the partial payment in the sum of «Advance_Payment_Amt».

14. That in the event that CMS does not approve the proposed set-aside in the amount of «Medicare_SetAside_Amt», 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 «Gross_Settlement_Amt», once the amount of the approved set-aside, the counsel fee in the sum of «Attorney_Fee» and the credit to The Beacon Mutual Insurance Company in

the sum of «Advance_Payment_Amt» for the advance payment to the Petitioner have been deducted, shall be paid to the Petitioner.

15. That in the event CMS does not agree to pre-approve a Medicare set-aside in the amount of «Medicare_SetAside_Amt», or in some other amount acceptable to the parties and the Court, the settlement shall not be approved. In that event, the Petitioner shall retain «his/her» right to receive weekly indemnity benefits and payment of necessary and reasonable medical bills to cure, relieve or rehabilitate «him/her» from the effects of «his/her» injury; provided however, under those circumstances, the Respondent and its carrier, The Beacon Mutual Insurance Company, shall be entitled to receive a full credit against all weekly indemnity benefits due from the date of the preliminary hearing on settlement up to the date of the hearing following the receipt of the response from CMS when the settlement is denied; and, in the event that the full amount of the advance payment of «Advance_Payment_Amt» has not been exhausted, at the weekly compensation rate of «CompRate» by the date of the denial of the settlement, The Beacon Mutual Insurance Company and the Respondent shall be entitled to receive a credit of the remaining balance at the rate of «CompRate» per week, taken against future weekly indemnity benefits, until such time as The Beacon Mutual Insurance Company and the Respondent have received a full and complete credit for the «Advance_Payment_Amt» advance payment.

16. That from the date of the final approval of this settlement, no further weekly indemnity benefits shall be paid to the employee.

17. That attached hereto as Appendix A are the names and addresses of all medical care providers who have treated the Petitioner with respect to his aforementioned injuries, based upon information and belief.

18. 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 Petitioner, all such medical bills incurred to the date of the preliminary hearing on this proposed settlement have been paid or will be paid by the Respondent if duly and diligently presented.

19. That from the date of the preliminary hearing on this proposed settlement until the second hearing granting final approval of the Medicare set-aside and settlement, any and all medical bills that are reasonably necessary to cure, relieve or rehabilitate the employee from the effects of «his/her» injury shall continue to be paid by The Beacon Mutual Insurance Company on behalf of the Respondent. In the event the Court ultimately grants final approval of the Medicare set-aside and settlement, The Beacon Mutual Insurance Company and the Respondent shall pay no further medical bills incurred by the Petitioner after the Court orders such final approval.

20. 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 Petitioner's work-related injury ("past medical expenses") which were paid by Medicare and which have not been reimbursed by The Beacon Mutual Insurance Company. 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 «his/her» work-related injury, The Beacon

Mutual Insurance Company will reimburse Medicare for those past medical services in accordance with the Workers' Compensation Act.

21. That the Petitioner intends to be the custodian of a self-administered set-aside account, which shall be funded by the sum of «Medicare_SetAside_Amt», or such other amount approved by CMS and agreed to by the parties and this Court, deducted from the settlement of «Gross_Settlement_Amt», in order to pay all medical bills related to «his/her» work-related injury which would otherwise be paid by Medicare.

22. That the funds deposited into this Medicare set-aside account shall be used by the Petitioner only to cover medical expenses of the type which Medicare would otherwise cover for «his/her» work-related injury.

23. That 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 CMS.

24. That the Petitioner agrees to indemnify and hold harmless «Respondent1» «Respondent2» and The Beacon Mutual Insurance Company 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 spent inappropriately.

25. 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 «his/her» work-related injury (“future medical expenses”) are to be covered by the Medicare Set-Aside Account, as Medicare does not cover all types of medical expenses. Your Petitioner acknowledges that this settlement will end any and all liability of the

Respondent and its carrier, The Beacon Mutual Insurance Company for the payment of any future medical expenses, and that the Petitioner will be responsible for paying any future Medicare covered expenses out of the Medicare Set-Aside Account, and paying any non-Medicare covered medical expenses from «his/her» own funds.

26. That 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 set aside in this case is intended to be a reasonable allocation for future medical expenses which Medicare would otherwise cover and is intended directly and solely for payment of such expenses, in addition to paying taxes on the interest accrued on the Medicare Set-Aside Account. It is the responsibility of the Petitioner to submit documentation to Medicare evidencing payment of the bills relating to the work-related injury or illness totaling the amount placed in the Medicare Set-Aside Account in this case, before asking Medicare to make payment on any covered expenses related to the work-related injury or illness. The amount placed in the Medicare Set-Aside Account 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, as any monies paid in excess of the fee schedule will not count toward the «Medicare_SetAside_Amt», which must be properly expended before Medicare will pay for any medical treatment related to the work injury.

27. That 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 «his/her» 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 of the type 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.

28. 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, diagnosis and a receipt from the provider or a cancelled check.

****29. That the Petitioner's attorney, «EE_Atty_Name», intends to request a counsel fee of «Attorney_Fee», calculated at a rate of twenty (20%) percent of the settlement for future indemnity.

30. That the net settlement to the Petitioner in the amount of «Net_Settlement_Amt» represents a lifetime settlement over the Petitioner's life expectancy of «Life_Yrs» years / «Life_Wks» weeks at «Lifetime_weekly_rate» per week.

WHEREFORE, Petitioner prays that all future liability be settled for the sum of «Gross_Settlement_Amt» and Petitioner will ever pray.

«Petitioner»

STATE OF RHODE ISLAND
PROVIDENCE, SC.

In _____, on the _____ day of _____, 2013, before
me personally appeared the Petitioner, «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

STATE OF RHODE ISLAND
PROVIDENCE, SC.

WORKERS' COMPENSATION
COURT

«Petitioner»

-vs-

W.C.C NO: «Year_for_WCC_No»

«Respondent1»

«Respondent2»

INTERLOCUTORY ORDER

This cause came on to be heard and was argued by counsel, and the following findings of fact were made:

1. That the Petitioner has received compensation payments from the Respondent for not less than twenty-six (26) weeks by reason of the injuries referred to in the Petition for Settlement.
2. That the payment of a lump sum in lieu of future payments will be in the best interest of all parties involved.
3. That any other new, omitted, separate, different, specific or permanent injuries, and any other physical or psychological effects resulting from the aforesaid injuries of «DOI», or any other injury sustained while the Petitioner was employed by the Respondent, are expressly included in this settlement.
4. That the settlement is in the best interest of all parties including the employee, the employer, and, if appropriate, the insurance carrier.
5. That the Petitioner is a Medicare beneficiary and/or Medicare eligible.
6. That the Court recognizes it is the policy of the Workers' Compensation Act that compensation be paid weekly.

7. That the Petitioner's probable future potential Medicare covered medical expense for «hisher» work-related injury for«hisher» age and his life expectancy is projected by «SetAside_Vendor_Name» to be «Medicare_SetAside_Amt».

8. That the parties propose that a partial, advance payment in the sum of «Advance_Payment_Amt» from the «Gross_Settlement_Amt» settlement be paid to the Petitioner by this Interlocutory Order, and that upon such payment The Beacon Mutual Insurance Company shall suspend the payment of weekly indemnity benefits to the Petitioner until a subsequent settlement hearing is called following the receipt of the decision of the Centers for Medicare and Medicaid Services (CMS) on the proposed Medicare Set-Aside in the amount of «Medicare_SetAside_Amt», or the advance payment of «Advance_Payment_Amt», calculated on a weekly basis at the rate of «CompRate», has been exhausted, whichever first occurs.

9. That at the second hearing, if CMS has approved the proposed Medicare Set-Aside in the sum of «Medicare_SetAside_Amt», or an amount for the Medicare Set-Aside which is acceptable to the parties and this Court, that the Court shall order the amount of the CMS approved Medicare Set-Aside to be deducted from the «Gross_Settlement_Amt» settlement, and the remaining balance, once the counsel fee of «Attorney_Fee» has been deducted and a full credit for the «Advance_Payment_Amt» advance payment is taken, be paid to the Petitioner.

**10. That in the event the Petitioner should die following the preliminary hearing, but before the subsequent hearing, the Respondent and The Beacon Mutual Insurance Company shall pay the agreed future indemnity benefits to the Estate of the

Petitioner, inclusive of the counsel fee of Attorney «EE_Atty_Name», with a credit to The Beacon Mutual Insurance Company for the partial payment in the sum of «Advance_Payment_Amt».

11. That the parties further propose that in the event CMS does not approve the Medicare Set-Aside in the amount of «Medicare_SetAside_Amt», or in an amount which is acceptable to the parties and this Court, the Petition for Settlement shall be denied at this subsequent hearing, the Respondent and The Beacon Mutual Insurance Company shall receive a full and complete credit for all payments of weekly indemnity due up to the date of this subsequent hearing; and if the advance payment of «Advance_Payment_Amt» made to the Petitioner has not been exhausted, when calculated at the weekly compensation rate of «CompRate», as of the date of the subsequent hearing, the Respondent and The Beacon Mutual Insurance Company shall receive a credit at the rate of «CompRate» per week against each payment of weekly indemnity benefits owed to the Petitioner after the date of the subsequent hearing until such time as the full «Advance_Payment_Amt» credit for the advance payment has been received.

12. That until such time as the Court grants final approval of the settlement at the subsequent settlement hearing, the Respondent and The Beacon Mutual Insurance Company shall continue to pay the fair and reasonable charges in accordance with the Workers' Compensation Act for all medical care necessary to cure, relieve or rehabilitate the employee from the effects of «his/her» work-related injury.

13. That upon final Court approval of the settlement and entry of the Order approving the settlement, the obligation of The Beacon Mutual Insurance Company and

the Respondent to pay for medical care of the Petitioner for treatment of «hisher» work-related injuries shall end.

14. That the Petitioner intends to be the custodian of a self-administered Medicare Set-Aside Account, which shall be funded by the sum of «Medicare_SetAside_Amt» deducted from the settlement of «Gross_Settlement_Amt», in order to pay any medical bills for future treatment related to «hisher» work-related injuries that would otherwise be paid by Medicare.

15. That the Medicare Set-Aside Account into which the Petitioner intends to deposit the payment of «Medicare_SetAside_Amt» shall be an interest bearing account.

16. That the funds deposited into the Medicare Set-Aside Account shall be used by the Petitioner only to cover medical expenses which Medicare would otherwise cover for «hisher» work-related injuries.

17. That the settlement to the Petitioner, net of the proposed Medicare Set-Aside and a counsel fee in the sum of «Attorney_Fee», in the sum of «Net_Settlement_Amt» represents a lifetime settlement over the Petitioner's life expectancy of «Life_Yrs» years / «Life_Wks» weeks at «Lifetime_weekly_rate» per week.

18. That no other counsel fees or costs are due and owing from the Respondent to the Petitioner, except as ordered pursuant to this settlement.

19. That the Petitioner represents that Medicare has not paid for any of the expenses or bills for the health care services provided to Petitioner for «hisher» work-related injuries of «DOI» to «hisher» left shoulder, and that if contrary to these representations, Medicare has paid medical bills or expenses for «hisher» work-related

injuries, The Beacon Mutual Insurance Company will reimburse Medicare for such past medical bills or expenses in accordance with the Rhode Island Workers' Compensation Act.

WHEREFORE, it is hereby ORDERED as follows:

1. That the future liability under the Workers' Compensation Act is hereby conditionally settled for the lump sum of «Gross_Settlement_Amt»
2. That the Respondent shall pay «Advance_Payment_Amt» forthwith to the Petitioner as a partial, advance payment towards the full settlement of future liability in the sum of «Gross_Settlement_Amt» under the Workers' Compensation Act.
3. That the Respondent shall continue to pay all bills for medical and related hospital services for treatment of the work-related injury which are due in accordance with the Workers' Compensation Act, as set forth in the Petitioner's Petition for Settlement, until such time as this Court has held a subsequent hearing following the receipt of the response from CMS as to whether it will pre-approve a Medicare Set-Aside in the amount of «Medicare_SetAside_Amt», or an alternate amount acceptable to the parties and this Court to be deducted from the «Gross_Settlement_Amt» settlement.
4. Until such time as this Court has held a subsequent hearing after the receipt of the response from CMS with regard to the Medicare Set-Aside proposal, or the advance payment of «Advance_Payment_Amt», calculated at the Petitioner's weekly compensation rate of «CompRate» per week has been exhausted, the Respondent and The Beacon Mutual Insurance Company shall suspend the payment of weekly indemnity benefits to the Petitioner.
5. In the event that this Court does not accept the proposed amount of the

Medicare Set-Aside at the subsequent hearing, the Respondent and its carrier, The Beacon Mutual Insurance Company, shall be obligated to continue to pay weekly indemnity benefits to the Petitioner until further order of this Court or agreement of the parties, and continue to pay any and all necessary reasonable medical and related hospital services in accordance with the Workers' Compensation Act; provided, however, the Respondent and The Beacon Mutual Insurance Company under those circumstances shall be entitled to receive a full and complete credit for each weekly indemnity benefit due up to the date of this second hearing, and shall receive a credit of «CompRate» per week, against any weekly indemnity benefits due after the date of this subsequent hearing, until such time as The Beacon Mutual Insurance Company has received a full and complete credit for the advance payment of «Advance_Payment_Amt».

6. In the event the Petitioner should die after the preliminary hearing and entry of this Interlocutory Order, but before the subsequent hearing, the Respondent and The Beacon Mutual Insurance Company shall pay the agreed future indemnity benefits to the Estate of the Petitioner, inclusive of the counsel fee of Attorney «EE_Atty_Name», with a credit to The Beacon Mutual Insurance Company for the partial payment in the sum of «Advance_Payment_Amt».

7. That if the settlement is ultimately approved, a counsel fee shall be paid to the Petitioner's attorney, «EE_Atty_Name», in the amount of «Attorney_Fee», which sum shall be deducted from the commutation amount; provided, however, no counsel fee shall be paid until the second hearing held after receipt of the CMS response. In the event the Court does not approve this settlement at this subsequent hearing, no counsel fee shall be paid or owed to Attorney «EE_Atty_Name».

ENTERED as an Order of the Workers' Compensation Court this ____ day of

_____, 2013.

ENTER:

PER ORDER:

JUDGE

ADMINISTRATOR

ASSENTED TO:

Attorney for Petitioner

«EE_Atty_Name», #

«EE_Atty_Firm»

«EE_Atty_Street_Address»

«EE_Atty_City_State_Zip»

«EE_Atty_Phone»

Attorney for Respondent

«ER_Atty_Name», #«ER_Atty_Bar_»

LAW OFFICE OF MICHAEL D. LYNCH

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STATE OF RHODE ISLAND
PROVIDENCE, SC.

WORKERS' COMPENSATION
COURT

«Petitioner»

-vs-

W.C.C. NO: «Year_for_WCC_No»

«Respondent1»

«Respondent2»

ORDER

This cause came on to be heard and was argued by counsel, and the following findings of fact were made:

1. That the Petitioner has received compensation payments from the Respondent for not less than twenty-six (26) weeks by reason of the injuries referred to in the Petition for Settlement.
2. That the payment of a lump sum and structured type periodic payments in lieu of future benefits will be in the best interest of all parties involved.
3. That any other new, separate, different, specific or permanent injuries, and any other physical or psychological effects resulting from the aforesaid injuries of «DOI» or any other injury sustained while the Petitioner was employed by the Respondent, are expressly included in this settlement.
4. That the Court recognizes it is the policy of the Workers' Compensation Act that compensation be paid weekly.
5. That no other counsel fees or costs are due and owing from the Respondent to the Petitioner, except as ordered pursuant to this settlement.

6. That the Petitioner is a Medicare beneficiary and/or is Medicare eligible.
7. That The Centers for Medicare and Medicaid Services have agreed that the Petitioner's projected future Medicare covered medical expenses for her work-related injury for her age and life expectancy is «Medicare_SetAside_Amt».
8. That the Petitioner intends to be the custodian of a self-administered set-aside account, which shall be funded by the sum of «Medicare_SetAside_Amt», deducted from the settlement of «Gross_Settlement_Amt» in order to pay any medical bills for future treatment related to «hisher» work-related injury that would otherwise be paid by Medicare.
9. The Medicare Set-Aside Account into which the employee shall deposit the sum of «Medicare_SetAside_Amt» shall be an interest bearing account.
10. That the funds deposited into this Medicare Set-Aside Account shall be used by the Petitioner only to cover medical expenses which Medicare would otherwise cover for «hisher» work-related injury.
11. That the settlement to the Petitioner, net of the payments made into the Medicare Set-Aside Account and counsel fee is «Net_Settlement_Amt» which represents a lifetime settlement over the Petitioner's life expectancy of «Life_Yrs» years / «Life_Wks» weeks at «Lifetime_weekly_rate» per week.
12. That a partial, advance payment in the sum of «Advance_Payment_Amt» from the settlement amount of «Gross_Settlement_Amt» was paid to the Petitioner under an Interlocutory Order dated _____.

13. That no other counsel fees or costs are due and owing from the Respondent to the Petitioner, except as ordered pursuant to this settlement.

14. That the Petitioner represents that Medicare has not paid for any of the expenses or bills for the health care services provided to Petitioner for «his/her» work-related injuries of «his/her» to «his/her» «Injury», and that if contrary to these representations, Medicare has paid medical bills or expenses for «his/her» work-related injuries, THE BEACON MUTUAL INSURANCE COMPANY will reimburse Medicare for such past medical bills or expenses in accordance with the Rhode Island Workers' Compensation Act.

WHEREFORE, it is hereby ORDERED as follows:

1. That the future liability under the Workers' Compensation Act is hereby settled for «Gross_Settlement_Amt», which sum shall be paid as follows: a lump sum of «Net_Settlement_Amt» to the Petitioner, with full credit for the partial advance payment to the Petitioner in the sum of «Advance_Payment_Amt» paid pursuant to the Interlocutory Order dated _____, a lump sum of «Medicare_SetAside_Amt» to establish a Medicare Set-Aside Account, a counsel fee in the sum of «Attorney_Fee» and payment of all bills for medical and related hospital services for treatment of the work-related injury rendered prior to the date of this Order, which are due in accordance with the Workers' Compensation Act, as set forth in the Petitioner's Petition for Settlement.

2. That the Respondent is ordered to make those payments and promises of payment as set forth in Paragraph 1 above.

3. That the Petitioner shall administer the Medicare Set-Aside Account in accordance with the Representations in «his/her» Petition.

4. That the counsel fee of «Attorney_Fee» paid to Attorney «EE_Atty_Name» from this settlement is approved.

ENTERED as an Order of the Workers' Compensation Court this _____ day of _____, 2013

ENTER:

PER ORDER:

JUDGE

ADMINISTRATOR

ASSENTED TO:
Attorney for Petitioner:

Attorney for Respondent:

«EE_Atty_Name», #
«EE_Atty_Firm»
«EE_Atty_Street_Address»
«EE_Atty_City_State_Zip»
«EE_Atty_Phone»

«ER_Atty_Name», #«ER_Atty_Bar_»
Law Office of Michael D. Lynch
One Beacon Centre Suite 200
Warwick, RI 02886
(401) 825-2700

STATE OF RHODE ISLAND
PROVIDENCE, SC.

WORKERS' COMPENSATION
COURT

«Petitioner»

-vs-

W.C.C. NO: «Year_for_WCC_No»

«Respondent1»

«Respondent2»

FINAL DECREE

This cause came on to be heard and was argued by counsel, and thereupon, the following findings of fact were made:

1. That the Respondent has paid to the Petitioner the sum of «Gross_Settlement_Amt» pursuant to the Order affixed hereto, and that the Petitioner has executed a release.
2. That the net settlement to the Petitioner in the amount of «Net_Settlement_Amt» represents a lifetime settlement over the Petitioner's life expectancy of «Life_Yrs» years / «Life_Wks» weeks at «Lifetime_weekly_rate» per week.
3. That the undersigned hereby state that based upon information and belief, all payments ordered at the time of the settlement have been made and that all medical expenses incurred in the care and treatment of the employee by the medical service providers listed on the statement filed pursuant to W.C.C. – R.P. 2.27(2)(f) have been paid.

And thereupon, upon consideration thereof, it is hereby

ORDERED, ADJUDGED AND DECREED:

1. That the Respondent and its Insurer be, and they hereby are, discharged from all liability under the Workers' Compensation Act by reason of every and all injuries, known or unknown, which were or may have been sustained directly or indirectly by said Petitioner on «DOI», or on any other date during the course of Petitioner's employment with Respondent, and for or by reason of injuries resulting from the aforesaid injuries.

2. That the Petitioner's representations in the Petition and his obligations in the Order with respect to Medicare benefits are incorporated in this Decree and shall remain in full force and effect.

ENTERED as a Decree of the Workers' Compensation Court this _____ day of _____, 2013.

ENTER:

PER ORDER:

JUDGE

ADMINISTRATOR

ASSENTED TO:

Attorney for Petitioner
«EE_Atty_Name», #
«EE_Atty_Firm»
«EE_Atty_Street_Address»
«EE_Atty_City_State_Zip»
«EE_Atty_Phone»

Attorney for Respondent
«ER_Atty_Name», #«ER_Atty_Bar »
LAW OFFICE OF MICHAEL D. LYNCH
One Beacon Centre, Suite 200
Warwick, Rhode Island 02886
(401) 825-2700

STATE OF RHODE ISLAND
PROVIDENCE, SC.

WORKERS' COMPENSATION
COURT

«Petitioner»

-vs-

W.C.C. NO: «Year_for_WCC_No»

«Respondent1»

«Respondent2»

AFFIDAVIT OF CLAIMANT

Now comes the undersigned and makes Affidavit and says:

1. Medicare has not paid for services or items furnished to me or on my behalf, relating to my work injury.

2. I intend to create a Medicare set-aside account to pay for future medical bills otherwise covered by Medicare.

3. If I do not create a Medicare set-aside account in the amount ordered by the court, or spend the funds not in accordance with my obligations, or Medicare subsequently determines the amount was inadequate, I shall hold GATEWAY HEALTHCARE, INC. and THE BEACON MUTUAL INSURANCE COMPANY harmless from any future payments made by Medicare for my work-related injuries.

«Petitioner»

SUBSCRIBED and sworn to before me this ____ day of _____, 2013.

NOTARY PUBLIC

My commission expires: _____

OPEN MEDICALS

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc.

WORKERS' COMPENSATION COURT

VS.

W.C.C. NO. -

PETITION FOR SETTLEMENT FOR LUMP SUM OPEN MEDICALS

Respectfully represents Petitioner and Respondent(s) as follows:

1. That on _____, 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 compensation to the Petitioner 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 date either have been paid or will be paid by the Respondent if duly and diligently presented.

7. Petitioner will hold _____ and _____ harmless from any action to recover any past or future payments made by Medicare for these work-related injuries.

8. 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 indemnity benefits under the Workers' Compensation Act, whether for weekly indemnity, or specific compensation, is the sum of \$ _____ and _____, counsel for the employee, requests a fee in the amount of \$ _____ to be drawn from the proceeds of the settlement resulting in a net payment of \$ _____ to the employee.

9. 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.

10. The parties have agreed, that in consideration of the amount set forth in the settlement, that the employer and, if applicable, its insurer, shall remain liable to pay for reasonable and necessary medical and related hospital services as well as prescription costs incurred subsequent to the date of the order approving the petition for settlement which are necessary to cure, relieve or rehabilitate the employee from the effects of the following injuries:

until further order or notice of this Court.

11. Attached hereto as Appendix A are the names and addresses of all medical care providers who have treated the employee.

12. The employee's claims for medical expenses in the future shall not be barred by the provision of R.I.G.L. §28-35-45 in that the respondent has explicitly waived this defense in any future proceedings to secure payment of medical expenses.

WHEREFORE, the parties pray that the employee's claim for future benefits be settled for the sum of \$ _____ and that the Court order that the employer shall remain liable for future medical expenses 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

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, Sc.

WORKERS' COMPENSATION COURT

VS.

W.C.C. NO. -

)
)
)
)
)

ORDER

This cause came on to be heard and was argued by Counsel, and the following findings of fact were made:

1. That the Petitioner has received compensation payments from the Respondent for not less than twenty-six (26) weeks by reason of the following injuries:
2. That the payment of a lump sum in lieu of future payments of weekly indemnity and specific compensation will be in the best interest of all parties involved.
3. That any other new, omitted, separate, different, specific or permanent injuries, and any other physical or psychological effects resulting from the aforesaid injuries of _____ are expressly included in this settlement.
4. That the settlement is in the best interest of all parties including the employee, the employer, and, if appropriate, the insurance carrier.
5. That the Court recognizes it is the policy of the Workers' Compensation Act that compensation be paid weekly.

6. 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.

7. That, as stated in the Petition, Medicare has not paid for any of the expenses or bills for the healthcare services provided to the Petitioner for the work-related injuries referred to in the Petition for Settlement for Lump Sum with Open Medicals.

8. That no other counsel fees or costs are due and owing from the Respondent to the Petitioner, except as ordered pursuant to this lump sum settlement.

WHEREFORE, it is hereby **ORDERED** as follows:

1. That the future liability for weekly indemnity, and specific compensation under the Workers' Compensation Act is hereby settled for the lump sum of \$ _____ and that the said Respondent is hereby ordered to pay forthwith to said Petitioner said sum in full settlement under the said Workers' Compensation Act, and in addition to pay all bills for medical and related hospital services, which are due in accordance with the Workers' Compensation Act, as set forth in the Employee's Petition for Settlement; provided, however, that if contrary to Petitioner's representations in the Petition, Medicare has paid for any medical bills or expenses or Petitioner has qualified for, or received Social Security or Medicare benefits, Petitioner shall reimburse Medicare and hold Respondent and harmless from any past or future payments made by Medicare for these work-related injuries.

2. A counsel fee is hereby awarded to the Petitioner's attorney in the amount of \$ _____, which sum shall be deducted from the lump sum settlement amount.

3. Respondent is hereby ordered to pay bills in accordance with the Workers' Compensation Medical Fee Schedule for medical and related hospital services as well as prescription costs incurred subsequent to the entry of this order over the lifetime of the petitioner which are necessary to cure, relieve or rehabilitate the employee from the effects of the following injuries:
and which are duly and diligently presented in accordance with the Workers' Compensation Act,

until further order or decree is filed with this Court. The parties expressly agree to waive the 10 year time limitation set forth in R.I.G.L. 28-35-45.

4. Any disputes relative to payment of said medical bills and related medical services shall be brought before this Court in the form of a Petition to Review the within order or a Petition to Adjudge in Contempt if applicable.

ASSENTED as to both form and substance:

Attorney for Employee

Attorney for Employer

ENTERED as an Order of this Court this day of , 20 .

ENTERED:

PER ORDER:

Judge

Administrator

I hereby certify that a copy was mailed to _____, Esquire,
and _____, Esquire on _____



ALGER LAW L.L.C.

Melody A. Alger
Christopher R. Alger

Attorneys admitted in RI & MA

Of Counsel

Gary R. Alger
Amy A. Parker

October 6, 2014

VIA FAX (401) 421-5590

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James E. Kelleher, Esq.
Revens, Revens & St. Pierre
946 Centerville Road
Warwick, RI 02886

**Re: Stephanie Kaiser v. Anthony Williams
COURT-ANNEXED ARBITRATION**

Dear Fellow Counsel:

Please be advised that I have rescheduled the hearing in this matter for **November 7, 2014 at 10:00 a.m.** at these offices.

Sincerely yours,

Melody A. Alger

MAA:jlm