



# State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF THE COMMISSIONER  
25 Capitol Street – Room 120  
Concord, New Hampshire 03301

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Commissioner  
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April 9, 2014

Her Excellency, Governor Margaret Wood Hassan  
and The Honorable Council  
State House  
Concord, NH 03301

## **REQUESTED ACTION**

Authorize the Department of Administrative Services, Risk Management Unit, pursuant to RSA 281-A: 13 (V) the State's Workers' Compensation lien, partially waive the lien on Walter Shyska's workers' compensation claim in the amount of \$74074.81 effective upon Governor and Council approval.

## **EXPLANATION**

Liberty Mutual Insurance Company, serving as the State's Third Party Administrator of the State Employees' Workers' Compensation Program at the time of injury, recommends that a partial lien waiver be granted. The Governor and Executive Council have discretionary authority to grant or deny these requests.

A petition for partial waiver of the State's workers' compensation lien has been filed by Liberty Mutual, Walter Shyska's estate and the State of New Hampshire. Walter Shyska was a former Utility Analyst who had worked for the Public Utilities Commission from 1999 until 2009. On February 28, 2008, Mr. Shyska traveled to Illinois to attend a conference on behalf of the state. While there Mr. Shyska slipped and fell on ice exiting a restaurant sustaining a traumatic brain injury and was later diagnosed with a seizure disorder. Mr. Shyska's head injuries were determined to have occurred while in the course of his employment and as a result a workers' compensation case was initiated. Mr. Shyska voluntarily retired from employment with the Public Utilities Commission. Mr. Shyska was diagnosed with cancer subsequent to this work related injury and passed away in May 2012.

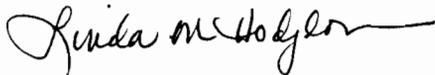
The State, through its workers compensation administrator, Liberty Mutual, paid wage replacement and medical benefits totaling \$164,722.81. No further payments are due off of this case. In addition to his workers' compensation claim, Mr. Shyska's estate filed a civil case against the restaurant owner where the injury occurred and the town in which the restaurant is located. Counsel, on

behalf of Mr. Shyska's estate, entered into a settlement agreement relevant to the civil case in the amount of \$107,500.00 contingent upon the lien waiver approval.

The State of NH Workers' Compensation statute RSA 281-A:13, I(b) and NH Labor Rule 511.03(c), requires a reduction in the total lien for the State's pro rata share of plaintiff attorney fees and costs. The pro rata share in this case equals \$53,023.00. With the reduction of attorney fees and costs from the outstanding workers' compensation lien of \$164,722.81, the total net recoverable lien is \$111,699.81. Mr. Shyska's estate has agreed to a lump sum settlement in the third party action pending lien waiver approval. Based on the estate's settlement agreement, upon Governor and Council approval, the State and Liberty Mutual will receive 35% of the \$107,500.0 settlement, which totals \$37,625.00 towards the outstanding workers' compensation lien.

The State of New Hampshire, Department of Administrative Services, Risk Management Unit, support Liberty Mutual's recommendation of a lien waiver. By approving this action, the State will waive the recoverable lien amount of \$74,074.81 and accept \$37,625.00 in full satisfaction of the workers' compensation lien. Failure to accept the lien waiver request will negate the settlement agreement and result in additional litigation, expenses and indefinite resolution.

Respectfully submitted,



Linda M. Hodgdon  
Commissioner

Concurred,



Amy Ignatius  
Chairman PUC

THE STATE OF NEW HAMPSHIRE  
GOVERNOR AND EXECUTIVE COUNCIL

Re: Petition of State of New Hampshire and Liberty Mutual Insurance Company

Walter Shyska

v.

New Hampshire Public Utilities Commission

PETITION FOR WAIVER/REDUCTION  
OF WORKERS' COMPENSATION LIEN

The State of New Hampshire, Public Utilities Commission ("State"), Liberty Mutual Insurance Company ("Liberty Mutual") and Walter Shyska (Shyska) hereby jointly petition for a partial waiver of a workers' compensation lien under the following terms and conditions, and in support of this petition state as follows:

1. Walter Shyska was a former Utility Analyst who had worked for the Public Utilities Commission since 1999. On February 28, 2008, Shyska had traveled to Illinois to attend a conference on behalf of the state and while there sustained an injury while exiting a restaurant where he slipped and fell on ice, the injuries sustained were determined to have occurred while in the course of his employment and as a result a worker's compensation case was initiated. Shyska suffered a traumatic brain injury as a result and was later diagnosed with a seizure disorder which was determined to be related to this injury. Shyska voluntarily retired from employment with the Public Utilities Commission. Mr. Shyska was diagnosed with cancer subsequent to this work related injury and sadly he passed away in May 2012.

2. The State, through its workers' compensation administrator, Liberty Mutual, has paid benefits which, as of January 2, 2013, total \$164,722.81. No further payments are due off of this case. In addition to his workers' compensation claim, Mr. Shyska had filed a civil case against the restaurant owner where the injury took place and the town in which the incident happened. Counsel on behalf of Mr. Shyska's estate is in the process of settling that claim in the amount of \$107,500.00.

3. The State and Liberty Mutual wish to resolve Shyska's workers' compensation case. The parties have agreed that the State and Liberty Mutual will receive 35% of the \$107,500.00 settlement, which totals \$37,625.00 towards an outstanding worker's compensation lien. According to the State of NH worker's compensation statute there is a requirement to reduce the total lien for a pro rata share of plaintiff attorney's fees and costs, with these reductions the total net recoverable lien is \$111,699.81

4. RSA 281-A:13, V, provides that the Governor and Council "may, in their discretion, waive all or part of the lien."

5. For the foregoing reasons, the petitioners jointly request that the Governor and Council approve the lien waiver/reduction of \$74,074.81

Respectfully Submitted,

The State of New Hampshire  
By

Date: 3/13/14

By: Amy Ignati

Liberty Mutual Insurance Company  
By : Kim A. Porter

Date: 2-25-14

By: Kim Porter

The Estate of Walter Shyska  
By their Attorneys,

Dated: 2-17-14

By: 

Michael A. Knobloch  
Goldberg, Weisman & Cairo  
1 E. Wacker Drive, 38<sup>th</sup> & 39<sup>th</sup> Floor  
Chicago, IL 60601

**[FORM FOR RISK MANAGEMENT MEMORANDUM TO ACCOMPANY  
RSA 281-A:13, V LIEN WAIVER REQUESTS]**

OFFICE OF RISK MANAGEMENT EVALUATION FORM

In the Matter of: Walter Shyska  
Petition For Waiver Of Workers' Compensation Lien  
In The Amount Of \$74,074.81.

I. The Nature of The Request.

The Risk Management Unit has reviewed the joint petition filed by the State of New Hampshire Public Utilities Commission, Liberty Mutual Insurance Company and Walter Shyska's estate which requests Governor and Council to waive a portion of the State's statutory workers' compensation lien on the net proceeds from a law suit against persons alleged to have caused his work-related injury. NH RSA 281-A:13, V authorizes Governor and Council to make such waivers.

The decision to waive a workers' compensation lien is reserved to the discretion of the Governor and Council. NH RSA 281-A:13, V. The petitioner has no right to a hearing or to any particular process beyond submitting a written petition and being informed of the action finally taken on that petition. NH RSA 281-A:13. Nor is any state agency a necessary "party" to this matter. The Risk Management Unit has prepared this document solely to assist Governor and Council in making its independent evaluation of the petition.

Mr. Shyska slipped and fell on ice exiting a restaurant sustaining a traumatic brain injury and was later diagnosed with a seizure disorder. The State tendered workers' compensation payments totaling \$164,722.81 to, and on behalf of, Walter Shyska. In this case, the State's lien has a potential value of \$111,699.81 after subtracting the State's pro rata share of attorney's fees and costs from the value of the total benefits paid and the petitioner seeks a waiver of \$74,074.81. By approving this action, the State will waive the recoverable lien amount of \$74,074.81 and accept \$37,625.00 in full satisfaction of the workers' compensation lien. NH RSA 281-A:13, V.

New Hampshire employers who pay workers' compensation benefits to a injured employee are entitled to a lien on proceeds received by the employee in a claim or civil action against a third party responsible for the injury. NH RSA 281-A:13. The statute, and Department of Labor regulations, provide a method for calculating a net lien amount which reflects the expenses incurred by the employee in pursuing the third party litigation. The employee only pays the "net lien amount" arrived at after performing these calculations.

The Workers' Compensation Act does not permit employers and employees to settle claims for *future medical expenses* attributable to an accepted work-related injury. Exposure to claims for future medical expenses is irrelevant as Mr. Shyska passed away May 31, 2012 from cancer.

To the extent the employees' net recovery exceeds the employer's net lien for benefits paid *as of the present date*, this excess recovery is available to offset any *future* compensation or medical expenses paid to the petitioner. *Bilodeau v. Oliver Stores, Inc.*, 116 N.H. 83 (1976). If the petitioner receives no future compensation or incurs no future medical expenses attributable to his work-related injury, he will enjoy free use of the money.

## II. Background Information Concerning The Petitioner.

Walter Shyska was employed as a Utility Analyst at the 21 South Fruit Street, Suite 10, Concord, N.H. 03301-2429 office of the Public Utilities Commission between November 01, 1999 and . He suffered a work-related injury on February 27, 2008 which was diagnosed as a traumatic brain injury as a result of a slip and fall and was later diagnosed with a seizure disorder determine to be related to this injury. Walter Shyska retired from his job at Public Utilities Commission on November 1, 2009.

The State, through its workers compensation administrator, Liberty Mutual, paid wage replacement and medical benefits totaling \$164,722.81 to, and on behalf of, Walter Shyska.

Walter Shyska filed a personal injury action against Village of Manteno and Foreplay Bar & Grill. On December 13, 2012, the plaintiff's estate agreed to settle his case for \$107,500.00 contingent upon G&C approval of the lien waiver petition.

From the petitioner's gross settlement of \$107,500.00, the State's pro rata share of the attorney fees and costs totals \$53,023.16. Based upon these expense figures, the State's workers' compensation lien is reduced from a gross amount of \$ 164.722.81 to a net amount of \$111,699.81. (The calculations required to calculate an employer's net lien are set forth in Appendix "A" to this memorandum.)

The present petition is requesting a waiver of the State's right to a portion of the present lien.

## III. Standards For Evaluating Lien Waiver Requests.

In addition to the absolute amount of money involved, the factors which are ordinarily relevant to resolving lien waiver requests are:

1. Whether the waiver is necessary to settle the third party action.
2. Whether the waiver is necessary to settle or will result in the settlement of the underlying workers' compensation claim.

3. Whether the petitioner is currently employed by the State or whether there are special circumstances concerning his employment with the State or the cause of her injury which might warrant a special reward.
4. Whether the petitioner cooperated fully with the State in managing the work-related injury and settling his workers' compensation claim.
5. Whether the petitioner has special medical or economic needs which warrant a waiver in order to avoid additional expense to the State or to local government, or to avoid an unconscionable deprivation to the petitioner.

#### IV. Application of Standards To Facts Of The Present Case.

In evaluating the present petition in light of the relevant factors listed above, Governor and Council should be aware that:

- A) A lump sum settlement agreement was reached, pending lien waiver approval, in the petitioner's civil case.
- B) The petitioner is not a current state employee.
- C) There will be no future medical expenses.
- D) Petitioner retired from employment November 1, 2009 and has since passed away leaving a widow.
- E) The petitioner did cooperate fully with the reasonable case management requests made of him during the management of his workers' compensation claim.
- F) Public assistance is not relevant to this file.
- G) The petition has provided a complete and accurate picture of the nature and extent of the petitioner's financial and medical condition.
- H) Waiver of the entire amount requested is not required. Governor and Council may waive only part of the amount.

#### V. Conclusion

The information provided above is sufficient to permit Governor and Council to act upon the present lien waiver request. Ultimately, however, the action taken on the request is entirely discretionary.

**Appendix A**  
**Workers' Compensation Lien Matter**

Employee: Walter Shyska  
Employer: State of New Hampshire  
Agency: Public Utilities Commission  
WC823-A03789 DOI: 2/27/2008

**Without Lien Reduction**

3 <sup>rd</sup> Party Settle	\$107,500.00
Attorney Fees	(\$53,023.16)
State WC Lien	(\$111,699.65)
Net To Employee	(\$46,393.28)

**With Lien Reduction**

3 <sup>rd</sup> Party Settle	\$107,500.00
Attorney Fees	(\$53,023.16)
State WC Lien	(\$37,625.00)
Net To Employee	\$16,851.84

## Walter Anthony Shyska

### Obituary



DOVER — Walter Anthony Shyska Jr., 65, born June 1, 1946, passed away on May 31, 2012. He often referred to himself as the First Baby Boomer, since WWII ended exactly 9 months earlier on Sept. 1, 1945.

Walter lived his early years in Nashua, attending Palm St., Temple St. and Ledge St. schools. He attended Nashua High, Class of 1964, joined the U.S. Army in 1965 for three years, being assigned to NATO in the Netherlands, where he married Getrudis Lemmens in 1968. They were married for 25 years and divorced in 1993.

Walter later married Mary Cavanaugh Ulinski of Dover in 2007 with whom he had been with since 1998.

Walter was the son of Walter A. Shyska Sr., who died in 1979 and his mother, Claire Ruby Bjorkman Shyska, who passed away in 2000. Walter had one brother, Robert, who died in 1970. He is survived by his stepson, Seth Ulinski of New York City, his stepdaughter and her husband, Britt Ulinski Schuman and Kirt Schuman; one sister, Janet Roy of Jacksonville, Fla., and her daughter, Michelle Roy of Bennington. He was also predeceased by his favorite person, his grandfather, Michael Shyska, who died in 1978 at the age of 91. Grandpa Mike helped raise Walter in his early years.

While attending UNH in 1972, Walter helped run the McGovern for President campaign in the N.H. Primary, the result of which propelled Senator McGovern to become the Democratic presidential candidate.

After graduation, Walter became employed by Gas Service Inc., in Nashua, which later merged with Manchester Gas and Concord Gas to become EnergyNorth. Walter was employed at EnergyNorth for 21 years, where he was responsible for customer billing and was promoted to Vice President for Customer Relations. His most significant accomplishment was the installation of a remote meter reading system for its 75,000 customers. This system was the largest investment ever made by EnergyNorth at the time.

In 1999, after EnergyNorth underwent mergers, Walter became employed by the N.H. Public Utilities Commission in the area of consumer assistance and was responsible for helping put in place a moratorium on shutoffs of electric customers during the winter.

Walter served as treasurer for the Rochester Runners Club of which he was a member for many years. An avid runner, he ran the Mt. Washington Road Race three times and the Boston Marathon three times. One of his favorite running activities was playing Santa Claus during the Rochester Runners Christmas Caroling Run with the Eagles from St. Charles Children's Home. Most recently he ran Boston in 2011 with a number earned through the Rochester Runner's. As a patient of multiple myeloma, a cancer of the blood, he also ran that race to raise funds for the Multiple Myeloma Research Foundation.

He was a longtime Patriots fan and enjoyed going to UNH football games.

Walter loved his adopted cats, Jerry and Iris.

In lieu of flowers, memorial donations may be made to the Cochecho Valley Humane Society or Wentworth Hospice both in Dover.

Visiting hours will be Sunday, June 3 from 2 p.m. to 4 p.m. and 7 p.m. to 9 p.m. at Tasker Funeral Home in Dover.

Funeral services will be on Monday, June 4 at 10 a.m. also at Tasker Funeral Home in Dover. The family will host a luncheon at St. John United Methodist Church in Dover from 11 a.m. to 12:30 p.m.

Burial will follow at 2 p.m. at Woodlawn Cemetery in Nashua.

Please go to [www.taskerfh.com](http://www.taskerfh.com) to sign the on-line guest book.

Visit [www.fosters.com/obits](http://www.fosters.com/obits) to sign an online guest book.

### Guest Book

29 entries

"Mary, Walter was my boss for 19 years at the gas company...."

- Patricia Snyder-Goulet

*The Guest Book is expired.*

**Restore the Guest Book**