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

CHARLES M. ARLINGHAUS
Commissioner
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Assistant Commissioner
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November 20, 2017

His Excellency, Governor Christopher T. Sununu
and The Honorable Council
State House
Concord, NH 03301

REQUESTED ACTION

Authorize the Department of Administrative Services, Risk Management Unit, under RSA 281-A:13, V., to waive a portion of the State's \$37,764.65 lien related a workers' compensation claim for former state employee Dennis Meuse III and to accept \$10,000.00 to satisfy the lien, effective upon Governor and Council approval.

EXPLANATION

Liberty Mutual Insurance, the Third Party Administrator (TPA) for state employee workers' compensation claims at the time of the injury, recommends that a partial lien waiver be granted. The Governor and Executive Council have discretionary authority to grant or deny these requests.

A joint petition for partial waiver of the State's workers' compensation lien has been filed by the State, Liberty Mutual, and Dennis Meuse III. Mr. Meuse was employed as a Licensing Examiner for the Department of Safety when he sustained a work-related injury. On August 26, 2014, he was a passenger in a vehicle while conducting a driving test. The driver of the vehicle struck a curb, causing the right front tire to pop, and the vehicle to go over a curb and into some bushes. Mr. Meuse pursued a workers' compensation claim for a low back injury sustained in the accident. He received workers' compensation benefits that included wage replacement benefits, a permanent impairment award, and medical treatment. Mr. Meuse continued to work on a reduced work schedule until February 17, 2015 when he ceased employment with the State.

As of October 16, 2017, the State has paid benefits through its TPA in the amount of \$37,764.65. Mr. Meuse filed a civil case against the driver of the vehicle and, through his attorney Edward W. Stewart, Jr., opted not to proceed to a jury trial and entered into a settlement agreement to resolve the civil case against the third party for \$30,000.00 plus \$1,500.00 in litigation expenses.

RSA 281-A:13, I, (b) of the Workers' Compensation law requires a reduction in the total lien for the State's pro rata share of plaintiff attorney fees and costs. Based on a \$30,000.00 settlement plus \$1,500 in expenses, the pro rata share in this case would equal \$11,500.00, which leaves \$20,000.00 available to satisfy the workers' compensation lien. Liberty Mutual recommends a compromise that would split the \$30,000 settlement funds equally among the plaintiff attorney, Mr. Meuse, and the State.

The Risk Management Unit recommends approving Liberty Mutual's proposed compromise. By approving this action, the State will waive all but \$10,000 of its lien.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ch Arlinghaus", written in a cursive style.

Charles M. Arlinghaus
Commissioner

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

RISK MANAGEMENT UNIT EVALUATION FORM

In the Matter of: Dennis Meuse III

Petition for Partial Waiver of Workers' Compensation Lien by State of New Hampshire, Liberty Mutual Insurance Company, and Dennis Meuse III.

I. Summary

The Risk Management Unit has reviewed the petition filed by Liberty Mutual and Dennis Meuse III (Meuse) which requests Governor and Council waive a portion of the State's statutory workers' compensation lien on the net proceeds received by Meuse from a lawsuit against an individual alleged to have caused his work-related injury. 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. The petitioner has no right to a hearing or any particular process beyond submitting a written petition and being informed of the action finally taken on that petition. 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.

New Hampshire employers who pay workers' compensation benefits to an 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. 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 State tendered workers' compensation payments totaling \$37,764.65 to, and on behalf of, Dennis Meuse III. In this case, the State's net recoverable lien has a potential value of \$20,000.00 after subtracting the State's statutorily required pro rata share of attorney's fees and cost. The petitioner seeks a waiver of an additional \$10,000.00 of the net recoverable lien.

New Hampshire Workers' Compensation law does not permit employers and employees to settle claims for *future medical expenses* attributable to an accepted work-related injury. However, 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. 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. The State is entitled to holiday for future medical bills equal to Meuse's proposed net settlement amount of \$10,000.00.

II. Background Information Concerning the Petitioner

The petitioner was a licensing examiner for the Department of Safety at the time of the work-related injury. He worked for the State from 2001 to 2015 and was 59 years old at the time of the accident.

III. Standards for Evaluating Lien Waiver Requests and Analysis

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.

Analysis: The Petitioner opted not to proceed to a jury trial in his civil action. A lump sum settlement agreement was reached and the proposed partial lien waiver was a consideration in the agreement.

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

Analysis: The final settlement agreement must be approved by the New Hampshire Department of Labor (DOL). The proposed lien waiver will help obtain DOL's approval of the settlement agreement.

The State is also entitled to a holiday for future medical bills equal to the petitioner's net settlement amount of \$10,000.00.

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.

Analysis: The petitioner worked for the State for fourteen years.

4. Whether the petitioner cooperated fully with the State in managing the work-related injury and settling his workers' compensation claim.

Analysis: The petitioner was cooperative during the workers' compensation process and agreed to perform light duty when still employed by the State.

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.

Analysis: Absent a partial waiver of the State's lien, the petitioner will not receive any proceeds from the third party settlement agreement.

IV. Conclusion

We recommend the Governor and Council agree to the requested lien waiver. The recovery of \$10,000.00, and the additional holiday for future medical bills in the amount of \$10,000.00 presents a fair resolution under the circumstances.

THE STATE OF NEW HAMPSHIRE
GOVERNOR AND EXECUTIVE COUNCIL

Re: Petition of State of New Hampshire, Liberty Mutual Insurance Company, and
Dennis Meuse III

Dennis Meuse III

v.

New Hampshire Department of Safety

JOINT PETITION FOR PARTIAL WAIVER
OF WORKERS' COMPENSATION LIEN

The State of New Hampshire, Department of Safety ("State"), Liberty Mutual Insurance Company ("Liberty Mutual"), the administrator of the State's workers' compensation claims, and Dennis Meuse III (Meuse) hereby jointly petition for approval of a partial waiver of a workers' compensation lien per RSA 281-A:13, V, under the following terms and conditions, and in support of this petition state as follows:

1. Meuse was employed by the State as a Licensing Examiner at the time of the accident. On August 26, 2014, Meuse was a passenger in a motor vehicle while conducting a driving test. The operator of the motor vehicle struck a curb causing the right front tire to pop, and then the motor vehicle went up on the curb and into some bushes. Meuse sustained injuries which were determined to have occurred while in the course of his employment and a workers' compensation case was initiated. Meuse suffered a low back strain and received treatment under the workers' compensation claim. Meuse continued to work on a reduced work schedule up until February 17, 2015.

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2. The State, through its workers' compensation administrator, Liberty Mutual, has paid wage replacement benefits, a permanent impairment award, and medical benefits in the amount of \$37,764.65.

3. Meuse was found to have a 10% whole person impairment under his workers' compensation claim as a result of this accident.

4. Meuse filed a civil case against the owner of the third party vehicle. Meuse opted not to proceed to a jury trial and entered into a settlement agreement to resolve the civil case in the amount of \$30,000.00 plus \$1,500 in litigation expenses.

5. Reducing the State's lien by the prorated share of attorney's fees and costs it is obligated to pay under RSA 281-A:13, I (b), the State is entitled to recover \$20,000.00 of the settlement proceeds.

6. The parties jointly bring this petition to waive a portion of the State's lien and, in the interests of justice, accept \$10,000.00 in full satisfaction of the lien.

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

8. The petitioners submit that a reduction of the lien in exchange for a settlement of the workers' compensation case as described is fair and reasonable. The State will also be entitled to a holiday on future medical treatment up to \$10,000.00, representing the amount of Meuse's net recovery in the civil settlement.

9. For the foregoing reasons, the petitioners jointly request that the Governor and Council approve the lien waiver as set forth herein.

Respectfully Submitted,
The State of New Hampshire
Dept. of Administrative Services

Dated: 11/20/17

By: Catherine A. Keane
Catherine Keane
Manager of Risk and Benefits
25 Capitol Street
Concord, NH 03301
(603) 271-2059

Liberty Mutual Insurance

Dated: 11/16/2017

By: Kristine Merrill
Kristine Merrill
Liberty Mutual Insurance
20 Riverside Road
Loss Recovery Unit
Weston, MA 02493
(781) 216-1623

Dennis Meuse III,
By His Attorneys,

Dated: 11/16/17

By: Edward W. Stewart
Edward W. Stewart, Jr.
80 Merrimack Street
Manchester, NH 03101
(603) 669-8080

Appendix A
Workers' Compensation Lien Calculation

Employee: Dennis Meuse III
Employer: State of New Hampshire
Agency: Department of Safety
WC823-A51014 DOI: 8/26/2014

Without Lien Reduction

3 rd Party Settlement	<u>\$31,500.00</u>
Attorney Fees & Costs	\$11,500
State WC Lien	\$37,764.65 (\$20,000 remainder)
Net To Employee	\$0.00

With Statutorily Required Lien Reduction and Requested Partial Lien Waiver

3 rd Party Settlement	<u>\$31,500.00</u>
Attorney Fees & Costs	\$11,500.00
State WC Lien after all Reductions	\$10,000.00
Net To Employee	\$10,000.00