



State of New Hampshire
DEPARTMENT OF ADMINISTRATIVE SERVICES
OFFICE OF THE COMMISSIONER
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Concord, New Hampshire 03301

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May 18, 2015

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., to partially waive \$8,000 of its overall lien in the amount of \$63,860.13 related to Jeffrey Bird's workers' compensation claim 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, Jeffrey Bird and the State of New Hampshire. Jeffrey Bird was employed by the State as a State Trooper at the time of the accident and remains employed as a Trooper. On June 6, 2011 while on duty, Mr. Bird was involved in a motor vehicle collision on Route 3A in Bristol, NH. A third party vehicle crossed over the center line of the roadway and collided head on with Mr. Bird. Mr. Bird sustained injuries which were determined to have occurred while in the course of his employment and a workers' compensation case was initiated. Mr. Bird suffered a soft tissue neck injury and received treatment under the workers' compensation claim. Mr. Bird was also out of work from the accident date until he returned on July 25, 2011.

The State, through its workers compensation administrator, Liberty Mutual, has paid benefits as of May 14, 2015 in the total amount of \$63,860.13. In addition to his workers' compensation claim, Mr. Bird filed a civil case against the owner of the third party vehicle, Fred Fuller Oil Company (Fuller). Counsel, on behalf of Mr. Bird, entered into a settlement agreement relevant to the civil case against Fuller in the amount of \$80,000.00.

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. The pro rata share in this case equals \$20,626.82. With the reduction of attorney fees and costs from the outstanding workers' compensation lien of \$63,860.13, the total net recoverable lien is \$43,233.31. In addition, Liberty Mutual recommends an additional reduction in the amount of \$8,000.00 in exchange for Mr. Bird agreeing to seek the approval from the Department of Labor for the waiver of any remaining entitlement he may have to workers' compensation indemnity benefits for the June 6, 2011 accident.

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 \$43,233.31 and accept \$35,233.31, a reduction is \$8,000.00, in full satisfaction of the workers' compensation lien.

Respectfully submitted,



Vicki V. Quiram
Commissioner

THE STATE OF NEW HAMPSHIRE
GOVERNOR AND EXECUTIVE COUNCIL

**Re: Petition of State of New Hampshire, Liberty Mutual Insurance Company, and
Jeffrey Bird**

Jeffrey Bird

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 Jeffrey Bird ("Bird") hereby jointly petition for approval of a partial waiver of a workers' compensation lien under RSA 281-A:13, V, under the following terms and conditions, and in support of this petition state at follows:

1. Bird, while on patrol in the course of his employment as a New Hampshire State Police Trooper in Bristol, New Hampshire was involved in a head on collision with an oil delivery truck on June 6, 2011. Bird suffered a herniated cervical disc as a result of this accident.

2. The State, through its workers' compensation administrator, Liberty Mutual, has paid a permanent impairment award and indemnity and medical benefits of \$63,860.13. Mr. Bird was able to return to work.

3. Bird suffered a 14% whole person impairment as a result of this accident.

4. Bird filed a third party lawsuit against the driver of the oil truck who caused the accident and the driver's employer, Fuller Oil and Propane Company. Bird has recovered a total of \$80,000 in that lawsuit.

5. Reducing the State's lien by the prorated share of attorneys' fees and costs it is obligated to pay, the State is entitled to recover \$43,233.31.

6. The parties jointly petition for reduction of the lien by \$8,000 for a recovery of \$35,233.31. In return for this lien reduction, Bird, contingent upon approval of the New Hampshire Department of Labor, agrees to settle any remaining entitlement he may have to workers' compensation benefits for the June 6, 2011 accident with the sole exception of causally related medical treatment bills.

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.

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

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

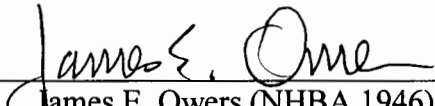
Dated: 5/15/15

By: Catherine A. Keane

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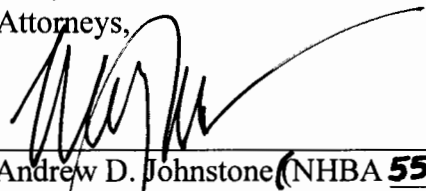
Liberty Mutual Insurance Company
By Its Attorneys
Sulloway & Hollis

Date: 1/20/2015

By: 
James E. Owers (NHBA 1946)
9 Capitol Street
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Jeffrey Bird,
By His Attorneys,

Dated: January 16, 2015

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

RISK MANAGEMENT UNIT EVALUATION FORM

In the Matter of: Jeffrey Bird

Petition for Waiver of Workers' Compensation Lien in the Amount of \$8,000.00.

I. The Nature of the Request.

The Risk Management Unit has reviewed the petition filed by Liberty Mutual Insurance Company and Jeffrey Bird which requests Governor and Council to waive a portion of the State's statutory workers' compensation lien on the net proceeds received by Jeffrey Bird from a lawsuit against persons 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 to 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, provides 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 \$63,860.13 to, and on behalf of, Jeffrey Bird. In this case, the State's lien has a potential value of \$43,233.61 after subtracting the State's statutorily required pro rata share of attorney's fees and costs in amount of \$20,626.82 from the value of the total benefits paid and the petitioner seeks a waiver of an additional \$8,000.00.

The Workers' Compensation law does not permit employers and employees to settle claims for *future medical expenses* attributable to an accepted work-related injury. Exposure exists for claims for future medical expenses. 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. *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. The State is entitled to holiday for future medical bills equal to Jeffrey Bird's net settlement amount of \$18,922.53.

II. Background Information Concerning the Petitioner.

The present petition is requesting a partial waiver of the State's right to 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 in Mr. Bird's civil case and the proposed partial lien waiver was a consideration in the agreement.

B) The petitioner is a current state employee.

C) The petitioner has agreed to seek approval from the Department of Labor to waive the right to any future indemnity benefits under his workers' compensation claim of June 6, 2011.

D) The State is entitled to holiday for future medical bills equal to the petitioner's net settlement amount of \$18,922.53.

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. Governor and Council may make its decision for any reason except, of course, for a reason which would itself be unlawful.

Appendix A
Workers' Compensation Lien Calculation

Employee: Jeffrey Bird
Employer: State of New Hampshire
Agency: Department of Safety
WC823-A19162 DOI: 6/6/2011

Without Lien Reduction

3 rd Party Settlement	\$80,000.00
Attorney Fees & Costs	(\$25,844.16)
State WC Lien	(\$63,860.13)
Net To Employee	-\$9,704.29

With Statutorily Required Lien Reduction and Requested Partial Lien Waiver

3 rd Party Settlement	\$80,000.00
Attorney Fees & Costs	(\$25,844.16)
State WC Lien after all Reductions	(\$35,233.31)
Net To Employee	\$18,922.53