

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2012-CP-42-03904

71272

Jesus Lugo, Claimant..... Respondent,

v.

Kohler Company, Employer/ Self-InsuredAppellant.

MOTION TO DISMISS APPEAL

Pursuant to Rule 260(c) SCACR, Appellant Kohler Company hereby moves to dismiss the appeal in the above-reverenced matter with prejudice. This matter is currently pending before this Court on appeal from an Order of the Honorable Roger L. Couch, filed December 6, 2013. Claimant/Respondent is represented by Alton L. Martin, Jr., Esquire and Appellant is represented by W. Hugh McAngus, Esquire.


The parties have reached a settlement agreement regarding the issues on appeal and agree that this appeal should be dismissed. The parties further agree that each party will bear its own costs with respect to this appeal. The settlement agreement has been filed with and signed by the Commission, and is attached hereto for the Court's files. Therefore, the undersigned requests that this appeal be dismissed without further delay.

RECEIVED

FEB 18 2014

SC Court of Appeals

This motion conforms with Rule 240 and Rule 267, SCACR.

By: 
W. Hugh McAngus
S.C. Bar No.: 3713
McAngus, Goudelock & Courie LLC
Meridian 10th Floor
1320 Main Street
PO Box 12519
Columbia, SC 29211-2519

Attorneys for Appellant Kohler Company

February 11, 2014

20149.13017

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0626795

JESUS LUGO HERNANDEZ,
 Employee,
 Claimant,
 vs.
 KOHLER COMPANY,
 Employer,
 AND
 BROADSPIRE,
 Carrier,
 Defendants.

SETTLEMENT AGREEMENT
 AND RELEASE
 ORDER APPROVING
 SETTLEMENT

APPROVED

FEB 10 2014

S. C. Workers' Comp. Comm.

Jesus Lugo Hernandez "Claimant" injured his back by accident arising out of and in the course of his employment with Kohler Company "Employer" on or about October 3, 2006 when he lifted a mold. Claimant is no longer employed by Employer.

Claimant's average weekly wage is \$955.57; and the compensation rate is \$616.48.

Claimant has been treated by Drs. Nowatka, Mourtada, Castro, Stressing, and Chittum, among others. Claimant was found to be totally and permanently disabled by the South Carolina Workers' Compensation Commission and entitled to lifetime benefits. Defendants concede he is totally disabled, but contest the Claimant's entitlement to lifetime benefits under the Workers' Compensation Act, and that issue is presently on appeal to the South Carolina Court of Appeals.

Claimant contends that he is in need of additional medical examination and treatment; that he has lost compensable time from work and wages; that he has sustained permanent

disability in excess of any ratings by treating physicians; that he is entitled to lifetime medical care and lifetime benefits; and Defendants dispute the Claimant's allegations.

In consideration of the sum of Two Million and 00/100 Dollars (\$2,000,000.00), the Claimant does hereby release and forever discharge Defendants from any and all claims, demands, actions or causes of action under the South Carolina Workers' Compensation Act, on account of any and all injuries, disability, disfigurement, specific loss, death, operations, medical, hospital or like expense, continuances, recurrences, aggravations, changes of condition, ailments, illnesses, and diseases or other damages, consequences or results, past, present or future in any way connected with, or arising from the alleged injury sustained by Claimant on or about October 3, 2006, and does hereby acknowledge that Defendants have fully, finally and completely paid and discharged all of their obligations, liabilities and responsibilities under the South Carolina Workers' Compensation Act, and that the sum set forth above is being paid to, and received by, Claimant in full and final satisfaction of all claims whatsoever as a result of the alleged accident described above and that Defendants shall not be liable for any additional payments whatsoever.

In addition to the above, Defendants agree to (a) provide Claimant with a Sleep Number bed, previously agreed to and ordered; (b) reimburse Claimant for repairs to his floor based on documented receipts and proof of payment in the amount of \$1,200.00; (c) make repairs to the scooter provided to Claimant, to correct a vibration during its operation; (d) to continue payments of weekly compensation to Claimant, and payments to Claimant's wife, Maria del Carmen Sanchez Zuniga, for home healthcare as agreed to in the Consent Order of September 3, 2013 until approval of this agreement by the South Carolina Workers' Compensation Commission.

Claimant expressly understands and agrees that this settlement resolves any and all claims against Defendants for sanctions and/or penalties, past, present and future. Claimant understands and agrees that he will withdraw and hereby dismisses with prejudice any pending motions for sanctions or penalties, and any and all motions to revoke Kohler's self-insured status in this case. Claimant and his attorneys, present and future, agree that they will not participate in any hearings or proceedings against Defendants for sanctions or penalties, now or in the future, or for the revocation of Kohler's self-insured status, now or in the future, nor participate in or offer any evidence in any other hearings or proceedings for sanctions, penalties or revocation of Kohler's self-insured status in any other matters based on the facts and circumstances of this case, or any other case, nor will the Claimant or his current or future attorneys testify in such matters now or in the future.

This prohibition does not prevent Claimant from testifying as a fact witness in the case of Jose Jiminez v. Kohler Company, to the extent that his testimony goes to the merits and compensability of the case only and to the extent that he has any direct non-hearsay evidence to offer. That testimony or transcription thereof cannot be used in any other matters pending against Kohler, now or in the future, including but not limited to motions for sanctions, penalties or revocation of Kohler's self-insured status.

Defendants have paid or have agreed to pay authorized medical expenses through February 5, 2014 incurred as a result of the alleged accident described above, in such amounts as may be approved by the South Carolina Workers' Compensation Commission.

The parties have reasonably and adequately considered the interests of Medicare in reaching this compromise settlement agreement pursuant to 42 CFR §411.46 and §411.47, the Medicare intermediary manual, the Medicare carriers manual, and under the terms of the

memorandum to All Associate Regional Administrators from Parashar B. Patel of the Centers for Medicare and Medicaid Services (CMS) dated July 23, 2001, and the subsequent related memoranda issued up to the date of this compromise settlement agreement, including, but not limited to, the Gerald Walters memorandum dated December 30, 2005, upon which the parties to this agreement expressly rely. Claimant is not a U.S. citizen or legal resident alien. As such, he is not entitled to any Social Security or Medicare benefits. Therefore, Claimant is *not* currently receiving or determined to be eligible to receive Medicare benefits and has *not* applied for Social Security Disability benefits at this time. Claimant is not a Class I beneficiary as he is not 65 years old or older, has not been on Social Security Disability for 24 months or longer, and is not in end-stage renal disease.

Therefore, it is the understanding of the parties, based on the foregoing paragraphs, that it is not recommended nor required by Centers for Medicare and Medicaid Services (CMS) that this compromise settlement agreement be approved and/or reviewed by CMS in order to preserve Claimant's eligibility for Medicare coverage, as Claimant is not currently eligible for Medicare and not currently eligible for Social Security Disability benefits. In that regard, the parties have reasonably considered the interest of Medicare in reviewing all medical records related to this matter and have in good faith determined that no allocation is needed and, therefore, propose that no monetary amount of the total settlement be allocated to pay for the anticipated future "qualified" Medicare-covered medical expenses Claimant will incur for treatment of the work injury. None of the parties in this matter, by entering into this compromise settlement agreement, is attempting to shift to the Federal Government or Medicare the responsibility for paying for medical treatment for these alleged work-related injuries and medical conditions.

The Claimant, who was born on December 25, 1974, and is presently 39 years of age and

who, as provided in the mortality tables set forth in S.C. Code Ann. § 19-1-150, has a life expectancy of 39.27 years which is 2,042.04 weeks, hereby requests this Commission to approve the allocation of the aforementioned proposed settlement sum which is compensation for permanent impairment that will affect the Claimant for life, as follows: \$558,583.99 as attorney's fees and \$16,416.01 for costs in prosecuting this action and \$1,425,000.00 in compromise settlement of disputed future disability benefits at the rate of \$697.83 per week for a period of 2,042.04 weeks, pursuant to S.C. Code Ann. § 42-9-10, as interpreted in Utica-Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955). See also Sciarotta v. Bowen, 837 F.2d 135 (3d Cir. 1988); S.C. Code Ann. § 19-1-150; POMS 11501.235(c). (\$1,425,000.00 divided by 2,042.04 weeks equals \$697.83 per week).

In accordance with Sec. 1614(a)(3)(A), Claimant is unable to engage in any substantial gainful activity by reason of a medically determinable physical or mental impairment which has lasted or can be expected to last for a continuous period of not less than twelve months. Per Sec. 1614(a)(3)(B), Claimant's physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work.

A Special Needs Trust is attached hereto as Exhibit A and incorporated herein verbatim and is an integral part of this Settlement Agreement and Release Order. The Special Needs Trust pursuant to 42 U.S.C. §1396p(d)(4)(A) for the benefit of Jesus Lugo Hernandez, an Incapacitated Person is hereby created, approved, and incorporated herein by reference. The Special Needs

Trust may be used for the purchase of a home for his benefits, entertainment, vacations, and other qualifying benefits appropriate under the terms of the trust. The parties shall submit the attached Special Needs Trust for approval by the Department of Health and Human Services immediately following execution and filing of this Order.

Claimant and his attorney represent that Claimant has been fully advised of his rights under the South Carolina Workers' Compensation Act and that they are of the opinion that the proposed settlement is reasonable and fair, and request that the South Carolina Workers' Compensation Commission approve this settlement as set forth in this Settlement Agreement and Release. Claimant's attorney represents that he has reviewed the settlement and has explained the terms fully to Claimant and Claimant voluntarily and without coercion agreed to the terms.

Claimant hereby relinquishes and releases each and every claim which he or anyone on his behalf now has, or may hereafter have, so that he shall not have any other or future claim or demand of any kind or nature as a result of the alleged accident described above.

In addition, Claimant's wife, Maria del Carmen Sanchez Zuniga, agrees that upon approval of this settlement, her right and entitlement to any payments from Defendants ceases and she and the Claimant are not entitled to any further payments from Defendants for any reason upon approval hereof, now or in the future, and releases Kohler from any and all claims that they may have for any payments under the Workers' Compensation Act, or otherwise.

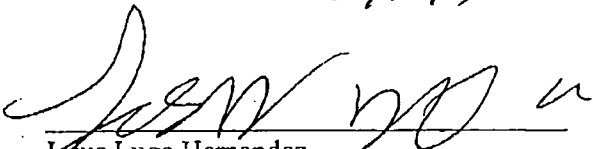
IT IS ORDERED that the Settlement Agreement and Release, including Exhibit A attached hereto, be approved and made the Order and Award of the South Carolina Workers' Compensation Commission.

IT IS SO ORDERED.

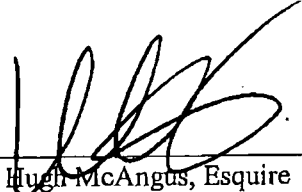
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


BY: 
2/10/04

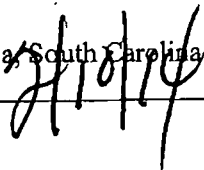
WE CONSENT:


Jesus Lugo Hernandez
Claimant

Maria del Carmen Sanchez Zuniga
Maria del Carmen Sanchez Zuniga
Claimant's Spouse


W. Hugh McAngus, Esquire
Attorney for Defendants


Alton L. Martin, Jr., Esquire
Attorney for Claimant

Columbia, South Carolina
Date: 

I certify this to be a true and correct copy.

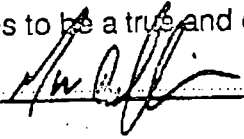


Exhibit A

SPECIAL NEEDS TRUST FOR THE BENEFIT OF JESUS LUGO HERNANDEZ

This Declaration of Trust (hereinafter referred to as the "Trust") is made as part of the Settlement Agreement and Release Order Approving Settlement to which it is incorporated.

ARTICLE I BENEFICIARY

This Trust is established for the benefit of Jesus Lugo Hernandez (hereinafter referred to as "Beneficiary"). Jesus Lugo Hernandez is a disabled person as defined in the Social Security Act Sec. 1614(a)(3) (42 U.S.C. 1382c(a)(3)). This Trust is created pursuant to 42 U.S.C. Section 1396p(d)(4)(A). Pursuant to 42 U.S.C. 1396p(d)(4)(A), this Trust shall contain the assets of an individual under age 65 who is disabled and is established for the benefit of such individual by a court, and provides that the state shall receive all amounts remaining in the Trust upon the death of such individual up to an amount equal to the total medical assistance (Medicaid/Public Aid) paid on behalf of the individual under the state plan operated under and in accordance with the applicable federal medical assistance programs (Medicaid Statutes and Regulations). This Trust is intended to provide for the benefit of Jesus Lugo Hernandez, and only incidentally to provide for remaindermen in the event of the death of Jesus Lugo Hernandez. This Trust is intended to help assure that Jesus Lugo Hernandez will be able to achieve his maximum potential, to live as independently as the circumstances of his situation permit, and to experience life to the greatest extent possible in as optimum a manner as possible.

ARTICLE II IRREVOCABILITY

This Trust shall be irrevocable. If ever necessary in the Trustee's opinion, due to judicial decisions or interpretations or the changes in any laws or rules, to conform the Trust provisions to operate and to fully comply with the expressly stated intentions, purposes, and goals in establishing this Trust, the Trustee of this Trust may amend and/or reform this instrument so that it conforms with any regulations that are approved by any governing body or agency relating to 42 U.S.C. 1396p or related statutes, including state statutes that are consistent with the provisions and purposes of the Revenue Reconciliation Act of 1993 and amendments to such Act. Such amendment or reformation shall be made only after submission to and approval by the South Carolina Department of Health and Human Services or its successor.

ARTICLE III TRUSTEE

María del Carmen Sanchez Zuniga shall serve as Trustee of this Trust and is referred to herein as the "Trustee". The trust property described in Schedule A, attached hereto and incorporated herein by reference is irrevocably assigned and conveyed to the Trustee.

**ARTICLE IV
ADDITIONS TO TRUST**

Any person may make additions to the principal of this Trust with the consent of the Trustee if it is determined that such contribution is in the best interests of Jesus Lugo Hernandez.

**ARTICLE V
TRUST PROPERTY**

The trust estate shall be held, administered and distributed as follows:

1. The Trustee may make distributions of so much or even all of the income and principal of the Trust to or for the benefit of Beneficiary subject to the limitations below, or may refrain from making distributions of income and principal to or for the benefit of Beneficiary during his lifetime. Any income from this Trust which is not distributed shall be added to principal.

2. The Trustee shall take into consideration the special needs of Beneficiary. As used in this Trust, "special needs" refers to the requisites for maintaining the health, safety and welfare of Beneficiary when, in the discretion of the Trustee, such requisites are not available from a public agency, office or department of the state where he resides or from the federal government. "Special needs" may include, but not be limited to the following:

- a. The purchase of an appropriate house or apartment for the Beneficiary to use as his residence and, if appropriate, the residence of his family or a life estate interest in such property.
- b. The construction or removal of any structures or improvements to an existing structure that will improve the residence for Beneficiary, whether or not such residence is owned by Beneficiary. Such construction or removal may provide accessible bath and kitchen facilities, access and egress from Beneficiary's room, widened doorways, or other architectural adaptations necessary to make the dwelling safe and barrier-free or to enhance the residence to provide therapeutic treatment such as a hydrotherapy pool.
- c. Medical expenses to provide Beneficiary with the full range of medical goods, services, therapies, treatments, surgeries, as well as medicines, food supplements, hearing aids, corrective lenses and other health aids if such goods and services are not provided to Beneficiary by any public benefits program or other governmental agency or Beneficiary is not eligible to receive such goods and services from any public benefits program or other governmental agency. Medical expenses shall include the purchase of health and dental insurance. Therapeutic services may include physical therapy, hydrotherapy, occupational therapy, psychological counseling, and speech therapy. Further, services may include ongoing support such as professional care management, personal attendant care, and visiting nurse services.

- d. Rehabilitative aids and equipment to assist with mobility, activities or daily living and access to and from residential and public buildings, including, without limitation, all forms of splint, braces, and other devices, gait trainers, mobile standers, advancement chairs, one or more ambulation chairs for each of school and home, a van with wheelchair lift and tie downs, specially adapted car seats, and the replacement of such items as may be needed from time to time.
- e. Educational and recreational equipment such as computers (both hardware and software), musical instruments, and sports equipment that will promote Beneficiary's health and well being.
- f. Travel and lodging expenses and other related transportation costs to assist Beneficiary with the procurement of any goods or services to improve or enhance Beneficiary's health, maintenance or education.
- g. A prepaid burial plan or similar burial arrangements.

3. At any time when it is determined by the Trustee to be in Beneficiary's best interest to qualify for Supplemental Security Income, Medicaid or similar benefits under the then existing Rules and Regulations relating to the respective programs and except for this Trust, his expenses would be paid by the state or federal government or a private agency, the Trustee must limit payments made from this Trust to or for the benefit of Beneficiary to such amounts from the principal or income, as the Trustee, in his or her sole discretion, shall determine to be appropriate for the satisfaction of Beneficiary's special needs and the Trustee shall not make payments from the Trust to or for Beneficiary's benefit which would disqualify him for such benefits. In his or her sole discretion, the Trustee may make payments which may reduce or eliminate benefits from one or more programs or the Trustee may determine that it is in the best interest of Beneficiary to qualify for some programs, but not for others.

4. Any distributions made to Beneficiary which would otherwise disqualify him for benefits identified by the Trustee may be treated as a loan to Beneficiary, and the Trustee must furnish the South Carolina Department of Health and Human Services with documentation of the source of the payback funds and an amortization schedule (schedule of the monthly payments of principal and interest) that is at a reasonable rate of interest and is actuarially sound (paid back over the life expectancy of the Beneficiary), without any type of self-cancelling provision.

5. The Trustee shall have the authority to expend trust income and/or principal on resources which are "excluded resources", including but not limited to a residence or an interest in a residence, a vehicle, and a prepaid burial plan, for purposes of government benefits qualification, regardless of whether such investments meet the Trustee's normal standard for investments. The Trustee may hold these items in the name of the Trust or may put title in the name of Beneficiary.

6. The Trustee may, in his or her discretion, pay reasonable costs incurred in the creation and administration of this Trust and any administrative costs associated with any conservatorship or guardianship or other protective order which may be advisable for Beneficiary, from the trust estate.

7. Unless sooner terminated by exhaustion of corpus, this Trust shall terminate upon Jesus Lugo Hernandez's death and thereupon, the Trustee shall pay taxes due from the Trust to state and federal governments, if any, because of the death of the Beneficiary and reasonable fees for administration of the Trust associated with its termination as consistent with federal and state law, thereafter in accordance with 42 U.S.C. 1396p(d)(4)(A), any amount remaining in the trust at Beneficiary's death (up to the amount expended by the State of South Carolina, or any other state, for medical assistance) shall be paid to the appropriate state agencies, as reimbursement to the State of South Carolina or such other state or states as has (or have) provided benefits to Beneficiary during his lifetime. After payment of any such reimbursements required by federal or state statute, the Trustee shall pay any final bills, debts, expenses, fees, funeral-related items, attorney's fees, and accountants' fees. Any remaining balance may then be distributed to or in trust for such appointee or appointees named by Jesus Lugo Hernandez, excluding his estate or his creditors, in such manner and in such proportions as he may appoint by making specific reference to this power of appointment in his last will and testament, or in default of the exercise of this power of appointment, to Maria del Carmen Sanchez Zuniga, if living, and if not, in equal shares per stirpes to Nadia Lugo Sanchez, Austin Lugo Sanchez, Jesus Lugo Sanchez and Maximilian Lugo Sanchez, or if none, to Beneficiary's heirs at law. The Trustee may withhold distributions pending receipt of a release from the appropriate State Medicaid Agency(ies). The amount to be repaid under this paragraph to the State for medical assistance shall be determined by agreement between the appropriate State Medicaid Agency(ies) and the Trustee. In the event that an agreement has not been reached between the appropriate State Medicaid Agency(ies) and the Trustee within one year of the death of Beneficiary, the Trustee shall pay to the appropriate Clerk of Court an amount equal to the claim of the State for reimbursement for medical care provided to Beneficiary and may then pay any final bills, debts, expenses, fees, funeral-related items, attorney's fees and accountant's fees. The Trustee shall distribute the remaining balance of the trust estate to or in trust for such appointee or appointees named by Jesus Lugo Hernandez, excluding his estate or his creditors, in such manner and in such proportions as he may appoint by making specific reference to this power of appointment in his last will and testament, or in default of the exercise of this power of appointment, to Maria del Carmen Sanchez Zuniga, if living, and if not, in equal shares per stirpes to Nadia Lugo Sanchez, Austin Lugo Sanchez, Jesus Lugo Sanchez and Maximilian Lugo Sanchez, or if none, to Beneficiary's heirs at law. The appropriate court shall determine the validity of the claim of the appropriate State Medicaid Agency(ies) and shall direct payment to the appropriate State Medicaid Agency(ies) of this amount, and then the remaining balance shall be used to pay any final bills, debts, expenses, fees, funeral-related items, attorney's fees and accountant's fees with any remaining balance distributed to or in trust for such appointee or appointees named by Jesus Lugo Hernandez, excluding his estate or his creditors, in such manner and in such proportions as he may appoint by making specific reference to this power of appointment in his last will and testament, or in default of the exercise of this power of appointment, to Maria del Carmen Sanchez Zuniga, if living, and if not, in equal shares per stirpes to Nadia Lugo Sanchez, Austin Lugo Sanchez, Jesus Lugo Sanchez and Maximilian Lugo Sanchez, or if none, to Beneficiary's heirs at law.

**ARTICLE VI
SPENDTHRIFT TRUST**

1. This is a spendthrift trust. Beneficiary's access to the trust is restricted. No part of the income, accumulated income or principal of this Trust shall be subject to transfer, assignment, sale, pledge or anticipation in any manner by Beneficiary or any remainderman, nor are the interests of Beneficiary or any remainderman to be seized in any manner or held liable for the debts, contracts, obligations or engagements of any kind whatsoever of Beneficiary or any remainderman.

2. For purposes of determining Beneficiary's eligibility for benefits, no part of the principal or income of the trust estate shall be considered available to him and:

- a. In the event the Trustee is requested by any department or agency to release principal or income of the Trust to or on behalf of Beneficiary to pay for equipment, medication or services otherwise provided by other governmental or private agencies, or in the event the Trustee is requested by any department or agency administering such benefits to petition the Court or any other administrative agency for the payment out of trust principal or income for this purpose, the Trustee may deny such request.
- b. The Trustee is authorized to contest and defend, including appeals, at the expense of the trust estate, any proceeding in any court of competent jurisdiction by any organization or governmental agency seeking to reduce or eliminate Beneficiary's eligibility for government financial and other assistance, or seeking payment or reimbursement for benefits extended to or for the benefit of Beneficiary or any other proceeding for the same or any similar purpose. The Trustee shall have discretion with regard to the defense of any such claim, including the management of all litigation which may result. The Trustee shall also be authorized, in its complete discretion, to settle, in whole or in part, or otherwise compromise any such claim or litigation.

**ARTICLE VII
DUTY MONITOR**

This Trustee shall monitor the effect of distributions from the Trust on the eligibility of Beneficiary for government benefits. The Trust shall investigate and determine whether (a) any governmental or private assistance programs exist for which he may be eligible, and (b) whether the distribution by the Trustee would reduce or eliminate any benefits to which he may be eligible or may be receiving from government or private assistance programs. The Trustee is authorized to employ, at the expense of the Trust, attorneys, accountants, financial advisors, or other professionals to assist in making determinations required by this Article VII.

**ARTICLE VIII
POWERS OF TRUSTEE**

The Trustee is authorized in its absolute discretion with respect to any property, real or personal, at any time held under any provision of this Trust, in addition to any other rights, powers, authority and privileges granted by any other provision of this Trust or by statute or general rule of law:

1. To retain any property or undivided interests in property placed in the trust initially, including residential property and shares of my Trustee's own stock, regardless of any lack of diversification, risk or nonproductivity, as long as it deems advisable, and to exchange any such security or property for other securities or properties and to retain such items received in exchange, although such property represents a large percentage of the total property of the Trust Estate or even the entirety thereof.

2. To invest and reinvest all or part of the trust estate in property including undivided interests in property and interests in property limited by a term (such as a life estate), wherever located, including bonds, debentures, notes, stocks of corporations, interests in real estate or any interest in real estate whether or not productive at the time of investment, interests in trust, investment trusts, whether of the open and/or closed fund types.

3. To sell or dispose of or grant options to purchase property, real or personal, constituting a part of the trust estate, for cash or upon credit, to exchange property of the trust estate for other property, at such times and upon such terms and conditions as the Trustee may reasonably deem best.

4. To hold securities or other property in the Trustee's own name as trustee, in the Trustee's own name, in the name of a nominee or in bearer form.

5. To sell or exercise stock subscription or conversion rights.

6. To refrain from voting or to vote shares of stock owned by the trust estate at shareholders' meetings in person or by special, limited, or general proxy and in general to exercise all the rights, powers and privileges of an owner in respect to any securities constituting a part of the trust estate; and to make and terminate S corporation elections for both federal and state tax law purposes.

7. To participate in any plan of reorganization or consolidation or merger involving any company or companies whose stock or other securities shall be part of the trust estate; and to deposit the stock or other securities under any plan of reorganization with any protective committee and to delegate to the committee discretionary power with relation thereto, to pay a proportionate part of the expenses of the committee and any assessments levied under any plan, to accept and retain new securities received by the Trustee pursuant to any plan, to exercise all conversion, subscription, voting and other rights, of whatever nature pertaining to the property, and to pay any amount or amounts of money as the Trustee may reasonably deem advisable in connection therewith.

8. To enter for any purpose into a lease as lessor or lessee with or without an option to purchase or renew for a term.

9. To make ordinary or extraordinary repairs or alterations in buildings or other structures to demolish any improvements, to raze existing or erect new party walls or buildings.

10. To collect, receive, and receipt for rents, issues, profits, and income of the trust estate.

11. To insure the assets of the trust estate against damage or loss and to insure the health and property of any Beneficiary.

12. To employ and compensate agents, accountants, attorneys-in-fact, attorneys-at-law, brokers, investment advisers, tax specialists, realtors, and other assistants and advisors deemed by the Trustee needful for the proper administration of the trust estate.

13. To petition any court of competent jurisdiction to reform this instrument in such manner as will most nearly comply with the purposes of this Trust in the event that the intent of this Trust may be defeated or seriously impaired and/or in the event that the existence of this Trust should disqualify Beneficiary for benefits he otherwise would receive.

14. To permit Beneficiary and any care giver or family members living with Beneficiary to occupy rent free any residence constituting a part of the assets of the Trust and the Trustee may, in their discretion, pay any proportion of real property taxes on any residence in which Beneficiary resides (whether owned by the Trust or by Beneficiary or by the person having care and custody of Beneficiary), in addition to paying the expenses of maintaining the residence where Beneficiary resides and hazard premiums on said residence. In addition, the Trustee may pay the costs of modifying the place where Beneficiary resides without acquiring an equity interest in the residence.

15. To employ attorneys, accountants and financial advisers and consultants at the expense of the trust estate to represent Beneficiary in connection with any and all matters involving or in any way related to Beneficiary or any property in which Beneficiary has or may have an interest or responsibility; any and all legal, equitable, judicial or administrative hearings, actions, suits, proceedings, attachments or distresses involving Beneficiary in any way, including but not limited to claims by Beneficiary arising out of property damages or personal injuries suffered by Beneficiary, actions in any court and otherwise engage in litigation involving Beneficiary.

16. In general, to exercise all powers in the management of the trust estate, upon such terms and conditions as the Trustee may deem best, and to do all acts which the Trustee reasonably deems necessary or proper to carry out the purposes of this Trust.

All such rights, powers, privileges, immunities and authorities granted to the Trustee shall be exercised in such reasonable manner as may be fair and equitable under the circumstances, without order of or report of any kind to any court whatsoever.

**ARTICLE IX
COMPENSATION OF TRUSTEE**

Any corporate Trustee shall receive an amount of compensation agreed upon by the corporation and the prior Trustee. Any individual Trustee shall be entitled to reasonable compensation. No termination fee shall be charged against the Trust.

**ARTICLE X
RESIGNATION AND REPLACEMENT
OF TRUSTEE**

The Trustee shall have the right to resign at any time by delivering to Beneficiary, or his Agent, or his legal guardian, if any, written notice of its intent to resign. Such resignation shall become effective upon acceptance of the trusteeship by the named successor Trustee, if any. If Maria del Carmen Sanchez Zuniga should resign or for any reason should cease or fail to serve hereunder, then the successor or substitute Trustee shall be a bank or trust company nominated by Beneficiary, or his Agent, or his legal guardian, or, if none is named, an individual or bank or trust company named by the Probate Court, whereupon the successor trustee shall succeed to and possess all the rights, powers and duties conferred upon the original Trustee. At any time, upon notice to the Trustee, Beneficiary, or his Agent, or legal guardian may remove the corporate Trustee and replace it with another corporate Trustee authorized to transact Trust business in South Carolina. Such replacement shall become effective upon acceptance of the trusteeship by the successor corporate Trustee whereupon the successor Trustee shall succeed to and possess all the rights, powers and duties conferred upon the original Trustee.

Notwithstanding any provision of this agreement to the contrary, under no circumstances may Beneficiary serve as Trustee at any time.

**ARTICLE XI
RESTRICTIONS ON POWERS OF TRUSTEE**

Notwithstanding any provision of this instrument to the contrary, no individual shall participate in the exercise of any discretion with respect to the selection of a successor fiduciary or the distribution of income or principal which would relieve the individual fiduciary of its legal obligation of support, nor shall any such individual have, possess or exercise any power to appoint the income or principal of the Trust to such individual personally or to such individual's estate, or such individual's creditors or the creditors of the individual's estate.

**ARTICLE XII
TAXES**

This Trust is established with the funds of Beneficiary and should be considered to be a Grantor Trust for tax purposes. Funds from this Trust may be held or accumulated for future distribution to Beneficiary as set forth in IRC §677. The Trustee shall pay any income tax liability of the Beneficiary which results from income received by the Trust but properly reported on the income tax return of the Beneficiary, such amount to be specified in writing and delivered by the Beneficiary's accountant or tax preparer to the Trustee. The Trustee shall solely and conclusively rely on this amount. The funds used to pay any such income tax liability shall be paid directly to the appropriate tax authority and shall not be available to the Beneficiary. The Beneficiary shall not have any right to or interest in any such funds paid by the Trustee. Any such funds are not a resource of the Beneficiary and should not be treated as a distribution of income for purposes of Medicaid qualification.

**ARTICLE XIII
APPLICABLE LAW**

The Trust shall be construed, regulated and governed by and in accordance with the laws of the State of South Carolina. Provided, however, in the event that the situs of this Trust or any portion of the Trust is moved because the Beneficiary is then living in another jurisdiction, then that Trust shall be construed, regulated and governed by and in accordance with the laws of that place. The Trustee is specifically authorized to change the situs of the Trust if the Beneficiary relocates to another jurisdiction and the Trustee determines that such action would be in the best interest of the Beneficiary.

**ARTICLE XIV
METHOD OF MAKING PAYMENTS**

Payments may be made by the Trustee in such of the following ways as the Trustee deems best: (1) directly to the Beneficiary; (2) to the legally appointed guardian of the Beneficiary; (3) to some relative or friend for the benefit of the Beneficiary; (4) by the Trustee using such amounts directly for the Beneficiary.

**ARTICLE XV
EFFECT OF TRUST ON GOVERNMENT BENEFITS**

It is intended that this Trust not disqualify Jesus Lugo Hernandez for Medicaid. The Trust shall be interpreted in a manner that is in accord with this intention. Any power otherwise granted to the Trustee which is inconsistent with this intention shall be void and of no effect.

**ARTICLE XVI
REPORTS**

Periodic reports (at least annually) shall be generated by the Trustee and made available to Beneficiary or the person having the care and custody of Beneficiary showing all of the

receipts, disbursements and distributions during the period and assets. The failure to deliver a written objection to such account to the Trustee within sixty (60) days after such account shall have been mailed by registered or certified mail to such person at his or her last known address as shown on the records of the Trustee, shall, as to all matters and transactions stated therein or shown thereby, be final and binding on all persons who are then or may thereafter become interested in and entitled to share in either the income or principal of the Trust. The records of the Trustee with respect to this Trust shall be open at all reasonable times for the inspection of the Beneficiary or his Agent or his legal guardian.

ARTICLE XVII BOND

No Trustee is required to furnish any bond for the faithful performance of the Trustee's duties, unless required by a court of competent jurisdiction and only if the court finds that a bond is needed to protect the interests of the Beneficiary. No surety will be required on any bond required by any law or rule of court, unless the court specifies that a surety is necessary.

ARTICLE XVIII INVALIDITY OF ANY PROVISION

Should any provision of this Trust become invalid or unenforceable, the remaining provisions shall be and continue to be fully effective.

This Declaration of Trust is made at the time of execution of the Settlement Agreement and Release Order Approving Settlement which this Trust is incorporated into verbatim and an integral part of. *M.C.S.Z*

ACCEPTANCE BY TRUSTEE

The undersigned hereby accepts the trust imposed by the foregoing Special Needs Trust for the Benefit of Jesus Lugo Hernandez and agrees to serve as Trustee upon the terms and conditions set forth in the trust agreement.

IN WITNESS WHEREOF, the Trustee has hereunto set her hand and seal on this 7th day of February, 2014.

WITNESSES:

TRUSTEE:

[Signature]
[Signature]

Maria del Carmen Sanchez Zuniga
Maria del Carmen Sanchez Zuniga

STATE OF SOUTH CAROLINA)
COUNTY OF Greenville)

PROBATE

PERSONALLY appeared before me the undersigned witness, who made oath and stated that (s)he saw Maria del Carmen Sanchez Zuniga, Trustee, sign, seal, and as her act and deed deliver the within Trust Agreement; and that (s)he with the other witness whose name is subscribed above, witnessed the execution thereof.

Alton L. Martin, Jr.
Witness

SWORN to and subscribed before me this 7 day of February, 2014.

[Signature]
Notary Public for South Carolina
My Commission Expires: 01/04/2023

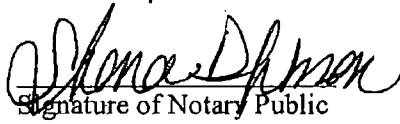
STATE OF SOUTH CAROLINA)

COUNTY OF Greenville)

ACKNOWLEDGEMENT

I, Shona G. Johnson, a Notary Public, within and for the State and County aforesaid do hereby certify that the foregoing instrument of writing was this day produced to me in the above State and County and was executed and acknowledged by Maria del Carmen Sanchez Zuniga, as Trustee, to be the free and voluntary act and deed of the Trustee.

WITNESS my signature this the 7 day of February 2014.

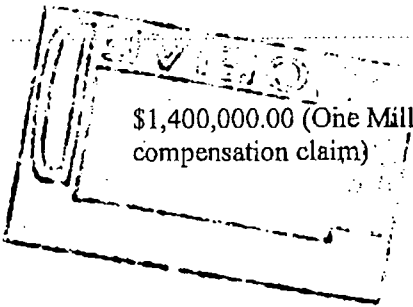

Signature of Notary Public

Shona G. Johnson
Typed Name of Notary Public

Notary Public for: South Carolina

My commission expires: 01/04/2023

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SCHEDULE A

\$1,400,000.00 (One Million Four Hundred Thousand Dollars settlement proceeds of a workers' compensation claim)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2012-CP-42-03904

Jesus Lugo, Claimant..... Respondent,

v.

Kohler Company, Employer/ Self-InsuredAppellant.

PROOF OF SERVICE

I certify that I have served the **Motion to Dismiss Appeal** on Jesus Lugo, by depositing a copy of it in the United States Mail, postage prepaid, on February 11, 2014, addressed to his attorney of record:

Alton L. Martin, Jr., Esq.
MARTIN & MARTIN, PA
Post Office Box 8220
Greenville, South Carolina 29604



Fern Potter
Paralegal to W. Hugh McAngus
McANGUS GOUDELOCK & COURIE LLC
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Meridian 10th Floor
1320 Main Street
PO Box 12519
Columbia, SC 29211-2519

Attorneys for Appellant Kohler Company

RECEIVED

FEB 18 2014

SC Court of Appeals