

WUKELA LAW FIRM

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July 14, 2014

Honorable Daniel Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais Street
Columbia SC 29201

Re: Geneva Watson vs. Xtra Mile Driver Training, Inc.
and Hartford Underwriters Insurance Co.
Appellate Case No. 2010-174006

Dear Mr. Shearouse:

With regard to the above, and pursuant to your request, I enclose herein a copy of the approved Final Lump Sum Agreement and Release which has been consented to by all parties. Please note that the Agreement has been filed with the South Carolina Workers' Compensation Commission.

With kind regards, I am

Yours truly,

WUKELA LAW FIRM

STEPHEN J. WUKELA

SJW:jpb

cc: Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Mr. Grant Duffield, Interim Judicial Director
SC Workers' Compensation Commission

Ms. Kathryn Fiehrer Walton
Attorney at Law

RECEIVED

JUL 15 2014

S.C. SUPREME COURT

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JUL 15 2014

S.C. SUPREME COURT

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Geneva E. Watson,)
)
Employee/Claimant,)
)
-vs-)
)
XTRA Mile Driver Training, Inc.,)
)
Employer, and)
)
Hartford Underwriters Insurance Co.,)
)
Carrier,)
)
Defendants.)
_____)

W.C.C. FILE NO. 0715014

**FINAL LUMP SUM
AGREEMENT AND RELEASE**

RECEIVED
SETTLEMENT

JUN 25 2014

Division of Claims
SC Workers Comp. Comm.

The Claimant, Geneva E. Watson, while in the employ of XTRA Mile Driver Training, Inc., sustained bodily injuries including an injury to her back, legs and psyche in an accident arising out of and in the course of her employment on or about September 18, 2007, in the County of Lee, State of South Carolina.

At the time of the accident aforementioned, the Claimant and the Employer were subject to the Workers' Compensation Law of South Carolina (hereinafter called "Act") and the Carrier was the Employer's insurer under said Act.

Following said accident, the Defendants paid temporary disability compensation for 129 weeks in the amount of Forty-One Thousand Seven Hundred Seventy-Four and 07/100 (\$41,774.07) Dollars.

In addition to temporary disability benefits, the Defendants paid for or on behalf of the Claimant, medical costs or expenses in the amount of Twenty-Nine Thousand Seven Hundred Sixty and 88/100 (\$29,760.88) Dollars.

Disputes exist between the parties as to the Claimant's entitlement to further medical care, further payments of temporary disability, and the extent of any causally related permanent disability.

A hearing was held before Commissioner Derrick L. Williams on December 17, 2009. Commissioner Williams issued his Order which was served on both parties on February 17, 2010. Commissioner Williams Ordered that the Defendants are responsible for the causally related medical care and treatment for which they authorized and which was incurred on or before August 12, 2009; that the Defendants are responsible for future medical treatment under Dodge as is necessary to lessen the Claimant's causally related disability from the September 18, 2007 accident; that the Defendants' Stop Payment Application is granted and that the Defendants are entitled to stop payment of temporary disability compensation effective August 12, 2009, the date of maximum medical improvement per Dr. Chokshi; that the Defendants have no liability for any further temporary disability compensation; and that the Defendants shall pay a lump sum payment to the Claimant pursuant to Regulations 67-1605(A) and 67-1605(E) representing compensation for 50% permanent loss of use to the back pursuant to §42-9-30(21) with the Defendants being entitled to take credit for all temporary disability compensation paid to the Claimant for the period after August 12, 2009. The Defendants paid the permanency award in accordance with the Single Commissioner's Decision and Order.

The Defendants did not appeal the Order; however, the Claimant did timely appeal the Order. The Full Commission affirmed the Single Commissioner's Decision by Order dated September 10, 2010. Thereafter, the Claimant appealed to the Court of Appeals and the Full Commission's Order was affirmed by majority on August 1, 2012.

The Claimant then filed a Petition for Rehearing which was denied by the Court of Appeals on September 20, 2012. The Claimant filed a Petition for Writ of Certiorari with the South Carolina Supreme Court on October 17, 2012. Prior to the Claimant's Petition being ruled upon by the South Carolina Supreme Court and in view of the aforementioned disputes, the parties hereto now advise that an agreement has been reached to settle this matter in its entirety, subject to the approval of the South Carolina Workers' Compensation Commission.

Under the proposed settlement, the Defendants have agreed to pay, and the Claimant has agreed to accept, the sum of Twenty Thousand and 00/100 (\$20,000.00) Dollars in full settlement and satisfaction of every liability under the Act and otherwise growing out of or in any way connected with any injury and/or accident occurring on or about September 18, 2007; as well as any other injury and/or accident at any other time prior to the date of this agreement.

As an integral part of this settlement agreement, it is expressly understood and agreed that the Defendants have paid all medical expenses for which they are liable and that the Claimant is responsible for any and all other medical expenses of whatsoever nature and the Defendants shall have no liability therefor.

Also as an integral part of this settlement, the parties acknowledge that the Claimant has been approved for Social Security disability benefits and is Medicare eligible. It is not the intention of the Claimant or the Defendants in this case to shift the responsibility for paying future causally related medical expenses to the Federal Government. The parties have considered and protected Medicare's interests in this case. A Medicare set-aside allocation was prepared by PMSI and submitted to the Centers for Medicare & Medicaid Services ("CMS"). CMS determined that the

allocation of \$8,654.00 towards future medical care and treatment related to the September 18, 2007 injury adequately considers Medicare's interests. The Claimant agrees to fully cooperate with the Defendants regarding any and all requests for information or documentation needed to comply with the Medicare Secondary Payer Act, including but not limited to the Claimant's Social Security and/or Medicare number. The Claimant specifically agrees to provide such documentation and/or information timely and to execute any and all documents necessary for Medicare Secondary Payer Act compliance.—Pursuant to 42 CFR §411.46 and §411.47, the Medicare intermediary manual, and the Medicare carriers manual, the parties to this settlement believe that any rights or interests Medicare may have in the within settlement have been adequately considered and protected by allocating a specific amount of the settlement proceeds for a payment of the Medicare-covered medical expenses that Claimant may incur in the future for treatment of her work injury. The Claimant has chosen to personally administer the Workers' Compensation Medicare Set-Aside Arrangement account which is to be established as part of this settlement agreement. The Claimant therefore hereby agrees to comply with the WCMSA account requirements as outlined in Title 42 of the Code of Federal Regulations 411.46 and the Defendants have no liability in this regard.

The Claimant hereby asserts that she has been fully advised of all her rights under the South Carolina Workers' Compensation Act, and is of the opinion that the proposed settlement is reasonable and fair and in this opinion, the Claimant's attorney concurs. The Claimant hereby asserts that she recognizes that her consent to this settlement is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act and otherwise, growing out of, or in any way connected with, any injury

and/or accident occurring on or about September 18, 2007 or at any other time prior to the date of this agreement.

NOW, THEREFORE, in consideration of the payment to the Claimant of the sum of Twenty Thousand and 00/100 (\$20,000.00) Dollars, and in further consideration of the mutual covenants, stipulations, and releases herein contained, the Claimant hereby releases and discharges XTRA Mile Driver Training, Inc., Hartford Underwriters Insurance Co. and St. Paul Travelers, and binds Claimant's heirs, executors, administrators, dependents, next of kin, privies, and assigns under the Act and otherwise and agrees to release, discharge, defend, and indemnify XTRA Mile Driver Training, Inc., Hartford Underwriters Insurance Co., St. Paul Travelers and their respective agents, servants, insurers, physicians, privies, and their successors, from any and all debts, claims, demands, causes of action, rights of action, and liabilities whatsoever of any injury and/or accident on or about September 18, 2007 or at any other time prior to this agreement and including, but not limited to, any right which the Claimant might otherwise have to demand benefits for disability, disfigurement, bodily impairment, medical treatment, medicine or drugs, prosthetic devices, lost time or death, under the Act or otherwise and specifically including any right which Claimant might otherwise have to demand further benefits by way of compensation or medical care under the Act because of a change in condition hereafter (which is expressly waived, released and renounced) whether or not arising out of, or directly or indirectly in any way conceivably attributable to any injury and/or accident occurring on or about September 18, 2007 or at any other time prior to the date of this agreement and each and every consequent thereof, whether known or unknown.

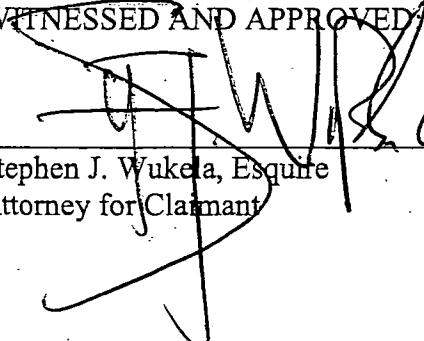
WHEREAS, the Claimant hereby requests this Commission approve the allocation of the aforementioned proposed settlement sum as follows: Three Thousand Seven

Hundred Eighty-Two and 00/100 (\$3,782.00) Dollars toward the payment of attorney's fees and Three Thousand One Hundred Fifty-Four and 00/100 (\$3,154.00) Dollars toward the payment of costs and Four Thousand Four Hundred Ten and 00/100 (\$4,410.00) Dollars in compromise settlement of disputed past and future disability compensation benefits at the rate of Three and 60/100 (\$3.60) Dollars per week commencing July 1, 2014, for a period of One Thousand two hundred twenty-five (1,225) weeks thereafter, which is the Claimant's life expectancy pursuant to §19-1-50 of the Code of Laws of South Carolina, 1976, As Amended, James v. Anne's Inc., 2010 S.C.-Lexis 340. (S.C. Oct. 25, 2010), and by the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988); Eight Thousand Six Hundred Fifty-Four and 00/100 (\$8,654.00) Dollars in a Medicare Set-Aside for treatment of her low back injury associated with the accident at the rate of Seven and 06/100 (\$7.06) Dollars per week commencing July 1, 2014, for a period of one thousand two hundred twenty-five (1,225) weeks.

This Agreement shall be subject to filing with the Commission and it is stipulated and agreed between the parties that, upon such filing, this Agreement shall not be subject to review, modification, or amendment by the Commission or the Courts of this State. Each party prays that filing of this Agreement with the Commission as being her or its best interest.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be
executed as of _____, 2010.

WITNESSED AND APPROVED



Stephen J. Wukela, Esquire
Attorney for Claimant

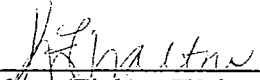
6/18/14 Geneva E. Watson June 18-14

Geneva E. Watson
Claimant

XTRA Mile Driver Training, Inc.,
Hartford Underwriters Insurance Co. and
St. Paul Travelers
Defendants

Wanda Stepp

Witness as to Employer and Carrier



Kathryn Fiehrer Walton, Esquire
Attorney for the Employer and Carrier

FEE SUBJECT TO FORM 61

TERMS AND CONDITIONS FOR BENEFICIARY ADMINISTERED
MEDICARE SET-ASIDE ACCOUNT

Medicare Beneficiary: Geneva Watson
HIC #: **** 8925A
Injury: lumbar spine
Employer: XTRM Mile Drive Training, Inc.

Federal regulations provide that the liability for work-related injury lifetime medical expenses should not be shifted to Medicare from the responsible party. Accordingly, a portion of a Medicare beneficiary's workers' compensation settlement must be set aside to pay for the beneficiary's future work-related injury or illness medical expenses. 42 C.F.R. § 411.46. Federal regulations also provide that Medicare will not pay for any medical expenses for the work-related injury or illness, after a workers' compensation settlement is received, until the amount of the lump sum settlement allocated to future medical expenses is exhausted. *Id.*

Consequently, in order to comply with the applicable federal regulations and to reasonably recognize Medicare's interests, the claimant will use \$ 8,1654.00 from his/her workers' compensation settlement award to fund a Medicare Set-Aside Account. After adhering to the following terms and conditions in administering the Set-Aside Account, then, when the set-aside funds are depleted and a satisfactory final accounting has been provided to the Centers for Medicare & Medicaid Services, (CMS), Medicare will pay for any Medicare covered medical treatment received as a result of the injury sustained at work. However, failure to adhere to any of the following terms and conditions, CMS may regard such a default as a failure to reasonably recognize Medicare's interests and may deny Medicare coverage for all medical treatments due to his/her work-related injuries. The terms and conditions are as follows.

1. Initial Set-Aside Account Funding - The Medicare Set-Aside Account shall initially be funded with \$ 8,1654.00 from the proceeds of the \$ 20,000.00 settlement award received in your workers' compensation lawsuit. This account shall be a separate account from your personal savings or checking account.
2. Set-Aside Account Interest Income - The Medicare Set-Aside funds shall be placed in an interest bearing account that is insured by the Federal Deposit Insurance Corporation. A copy of the documents establishing the Medicare Set-Aside Account shall be sent to CMS within 30 days of the workers' compensation settlement award being disbursed.
3. Distribution of the Set-Aside Account Funds - The funds in the Medicare Set-Aside Account shall be used solely for legitimate medical expenses incurred for those medical needs related to or resulting from your work-related injury, which would otherwise be reimbursable or paid for by Medicare. Funds in the Medicare Set-Aside Account shall not be used to pay for medical

services not covered by Medicare. A copy of the booklet, "Medicare & You," can be obtained from your local Social Security office for a list of services not covered by Medicare. If there are any questions concerning what Medicare covers, please call 1-800-MEDICARE.

4. Set-Aside Account Interest Income - All interest earned on the Medicare Set-Aside Account will be allowed to accrue in the account and will be used solely for medical expenses, that would otherwise be covered by Medicare.
5. Reimbursement to Medicare - In the event CMS determines that Medicare has paid benefits prior to the depletion of funds in the Medicare Set-Aside Account that should have been paid from the set-aside account, CMS, or its designated fiscal intermediary or carrier, shall have the right to seek and receive reimbursement of any such conditional payments or overpayments from the Medicare Set-Aside Account to the extent that there are funds remaining in the account at that time.
6. Accounting Records - The claimant shall maintain accurate records of the distributions and expenditures from the Medicare Set-Aside Account. Your records should indicate the date of service, the diagnosis, the service received, who received payment and the date of the payment. You shall also retain a receipt or other evidence of each and every payment made from the Medicare Set-Aside Account.
7. Annual & Final Accountings - The claimant will submit an annual accounting to CMS' Medicare contractor for each calendar year no later than March 1 of the following year. You shall notify CMS' Medicare contractor once the Set-Aside Account is depleted and shall submit a final accounting within 60 days of the funds being depleted. The annual and final accounting will include the information set forth in paragraph six and a copy of the receipt or other evidence of every payment made from the Medicare Set-Aside Account.
8. Delivery of Notices & Accountings - Upon approval of the WCMSA allocation, CMS will issue instructions entitled, Administering Your Workers' Compensation Medicare Set-aside Arrangement (WCMSA), along with a self-attestation letter. Annual self-attestation should continue through depletion of the account. It is important that the administrator understands and complies with these instructions. The self-attestation letter must be signed and forwarded to CMS' Medicare contractor (listed on the approval letter from CMS) no later than 30 days after the end of each year (beginning with one year from establishment of the WCMSA account).
9. Distributions Following Death of Beneficiary - In the event that the claimant dies before the funds in the Medicare Set-Aside Account are depleted, the account will continue to exist for 180 days from the date of death to enable any outstanding bills for work-related injury medical expenses that would otherwise be covered by Medicare to be paid. After the 180 days has elapsed, any funds remaining in the Medicare Set-Aside Account shall be paid to the claimant's estate or subject to the State Law.

10. Misappropriated Set-Aside Account Funds - If, after the Medicare Set-Aside Account is depleted, the final accounting reveals that funds in the account were used to pay for items other than legitimate medical expenses for medical needs related to or resulting from the work-related injury, which would otherwise be covered by Medicare, CMS will withhold Medicare coverage for work-related injury medical expenses in an amount equal to the misappropriated funds.

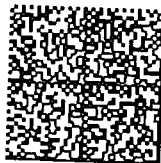
I, Geneva Watson, have read and understood the above-listed terms and conditions. I agree to abide by these terms and conditions in order to protect my ability to obtain Medicare coverage for my work-related injury medical expenses once the Medicare Set-Aside Account is depleted. I understand that if I fail to abide by the above-listed terms and conditions, I may not be eligible for Medicare coverage for my work-related injury medical expenses.

Geneva Watson
Claimant

June 18-14
Date

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P.O. Box 13057
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PITNEY BOWES

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JUL 14 2014

MAILED FROM ZIP CODE 29505

Honorable Daniel Shearouse
Clerk, South Carolina Supreme Court
1231 Gervais Street
Columbia SC 29201

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