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State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES
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January 4, 2021

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

REQUESTED ACTION

Authorize the Department of Administrative Services, Division of Risk and Benefits, under RSA 281-A:13, V., to waive a portion of the State's $159,083.40 gross lien related to a workers' compensation claim for former state employee James Steinmetz and to accept $20,000.00 to satisfy the lien, effective upon Governor and Council approval.

EXPLANATION

On October 15, 2016, Mr. Steinmetz was on duty as a N.H. State Trooper for the Department of Safety when he was injured in a motor vehicle accident. In November 2017, the State settled Mr. Steinmetz' workers' compensation claim. The State, working through its workers' compensation third-party administrator (TPA), Cross Insurance, paid workers' compensation benefits related to Mr. Steinmetz' injuries in the total amount of $159,083.40. Per RSA 281-A:13, the State is entitled to a lien on proceeds the injured employee receives as a result of a claim or civil action against a third party responsible for the injury up to the $159,083.40. Only the Governor and Executive Council has the authority to grant a full or partial waiver of the lien.

Mr. Steinmetz obtained legal counsel to pursue civil action against the driver who caused his injuries. Through mediation, his counsel in the civil proceeding has tentatively agreed to a $60K settlement contingent upon the Governor and Council approval of the lien waiver. Since the State currently has a lien that exceeds the potential compensation resulting from the third-party lawsuit, Mr. Steinmetz' counsel is advising his client not to pursue the settlement unless the State agrees to waive a portion of the lien.

The attached petition explains the tentatively agreed upon three-way even split of the $60k settlement: $20k paid to Mr. Steinmetz' legal counsel to satisfy the State's statutory obligation to pay legal fees and costs of approximately 1/3 the total settlement, $20k paid to Mr. Steinmetz as compensation for his injuries, and $20k paid to the State as payment in full on the lien. If the State does not agree to the lien waiver, there will be no further compensation to the State to offset some of the $159k workers' compensation expense. Based on the foregoing, DAS recommends that a partial lien waiver be granted by the Governor and Executive Council.

Respectfully submitted,

Joseph Bouchard Asst. Comm.

for Charles M. Arlinghaus
Commissioner

THE STATE OF NEW HAMPSHIRE
GOVERNOR AND EXECUTIVE COUNCIL

Petition of State of New Hampshire, Cross Insurance TPA, Inc, and James Steinmetz

James Steinmetz

v.

New Hampshire Department of Safety

JOINT PETITION FOR PARTIAL WAIVER
OF WORKERS' COMPENSATION LIEN

The State of New Hampshire, Department of Safety ("State"), Cross Insurance Company TPA, Inc. ("Cross"), the State's workers' compensation claims administrator, and James Steinmetz (Steinmetz) 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:

1. Steinmetz was employed by the State and on duty as a State Trooper on October 15, 2016 when he was involved in a motor vehicle accident while trying to avoid another driver (third-party) who was driving the wrong way on Interstate 93. Steinmetz's cruiser struck the guardrail, injuring his right knee and neck. Steinmetz received workers' compensation benefits for his injuries including, right knee, neck, and post-traumatic stress disorder.

2. The State, through Cross, has paid wage replacement benefits and medical benefits in the amount of $159,083.40.

3. Steinmetz filed a civil case against the owner of the third-party vehicle. Steinmetz entered into a conditional settlement agreement with the third-party's automobile insurance to resolve the civil case in the amount of $60,000.00.

4. Reducing the State's lien to $20,000 will provide for an even three-way split of the $60,000 settlement, which includes the $20,000 prorated share of Steinmetz's attorney fees and costs that the State is obligated to pay under RSA 281-A:13, I (b).

5. The parties jointly request this petition to waive a portion of the State's lien and, in the interests of justice, accept $20,000.00 in full satisfaction of the lien.

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

7. The petitioners submit that a reduction of the lien in exchange for a settlement of the third-party case as described is fair and reasonable. The State will also be entitled to a holiday, without reduction for fees or costs, on future medical treatment up to $20,000, representing the amount of Steinmetz's net recovery in the civil settlement.

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

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

Dated: 12/8/2020

By: _____
Joyce Pitman
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Cross Insurance TPA, Inc.

Dated: 12/08/2020

By: _____
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James Steinmetz,
By His Attorneys,
Douglas, Leonard & Garvey, PC

Dated: 11/30/2020

By: _____
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