

SFG SETTLEMENT AGREEMENT – WCL Section 32
INDEMNITY AND MEDICAL

Special Funds Group
328 State Street
Schenectady, NY 12305-2318

| | | | |
|---|--|--|-----------------------------------|
| CLAIMANT NAME Jane Doe | | CLAIMANT ADDRESS 123 Main Street, Hometown, NY 10000 | |
| WCB CASE NO(s). 12345678 | DATE(s) OF ACCIDENT 10/01/1990 | INSURER CASE NO(s). c-250-311 | INSURER CODE(s) W111111 |
| EMPLOYER(s) New Company, Inc. | | INSURER(s) Insurance Company c/o Super TPA | |

This agreement is prepared and submitted pursuant to Workers' Compensation Law (WCL) Section 32. In accordance with the caption above, parties to the agreement (collectively referred to herein as "Parties") include: the claimant; the insurer(s) and/or self-insured employer(s) and/or third-party administrator(s) (hereinafter "insurer[s]"); the Special Disability Fund (SDF), represented by the Special Funds Group (SFG).

The Parties wish to fully resolve and close the case(s) on a final and conclusive basis in accordance with the following, pending approval of the Workers' Compensation Board (Board or WCB):

1. Case Information

WCB Case No. [enter claimant's WCB Case No. e.g., 12345678], date of accident/occupational disease [enter claimant's date of accident/occupational disease e.g., 10/01/1990], is established as compensable for injuries to the [enter all sites of injuries for this case e.g., back]. The average weekly wage is \$[enter AWW e.g., 600.00]. The claimant has been classified with a permanent partial disability (PPD), and payments are continuing at the rate of \$[enter CCP rate e.g., 200.00] per week (CCP rate). WCL § 15(8) liability was previously established at [enter percentage of 15(8) reimbursement e.g., 100] % reimbursement and the 104/260-week retention period has been satisfied.

[repeat this paragraph for all claims included in the agreement and specify apportionment if applicable]

2. Indemnity Benefits

a. Weekly Payments End

The insurer(s) agrees to continue payments at the CCP Rate up to the date of final approval of this agreement. Throughout this agreement, the "date of final approval of this agreement" is the date of the Notice of Approval if there is a hearing to consider the settlement. If there is a desk decision to consider the settlement, the "date of final approval of this agreement" is the date indicated in the Proposed Decision that the agreement becomes final and conclusive. Thereafter, indemnity payments will permanently cease.

b. Prior Tentative Rates Made Permanent

All prior tentative rates are made permanent. Any periods of time within the claim that have not yet been addressed by the Board are deemed periods of no compensable lost time and no reduced earnings.

c. Overpayment

The insurer(s) agrees to waive any overpayment, if applicable.

3. Medical Benefits

a. Outstanding Medical bills/C-8.1B's

The insurer(s) agrees to withdraw any unresolved C-8.1B objections for causally related treatment provided up to the date of final approval of this agreement. Any C-8.1B objection not previously acted upon for treatment which is not causally related will be found in favor of the insurer(s). The insurer(s) shall pay such outstanding bills in accordance with the New York State Workers' Compensation Fee Schedule, and such bills shall remain subject to the medical dispute arbitration procedure.

b. Payment for Routine Causally-Related Medical Treatment Until Settlement

The insurer(s) will pay for authorized causally related medical treatment up to date of final approval of this agreement. Payment for such treatment shall be at the New York State Workers' Compensation Fee Schedule rates subject to all relevant provisions of the WCL. Any bills submitted for treatment rendered after the date of final approval of this agreement will be deemed resolved in favor of the insurer(s), SDF and SFG.

c. No Payments Made by Private Health Insurer(s) or Governmental Agency

Claimant states that no private health insurer or governmental agency has paid medical bills for treatment related to the case(s). **[Include the following if applicable]** Claimant is currently Medicare enrolled, but states that no bills have been submitted to Medicare for payment of causally related medical expenses, and that neither claimant nor any medical providers have received Medicare benefits as provided under 42 U.S.C. 1395(y)(b) for medical treatment and supplies provided as a result of the injuries of the case(s).

d. Payment for Causally-Related Medical Treatment After Settlement

As of the date of final approval of this agreement, the claimant releases the insurer(s), SFG and SDF from any further liability to pay for medical treatment and supplies causally related to the established injuries of the case(s). Claimant shall be responsible for payment for all such future causally related medical treatment and supplies both for Medicare and non-Medicare items. Claimant authorizes the insurer(s), SDF and SFG to release a copy of this agreement, once approved by the Board, to any healthcare providers or billing entities who might submit bills for post-settlement treatment or supplies.

4. Final Reimbursement for Mileage, Transportation and Prescriptions

Claimant's final application for mileage, transportation, and prescription reimbursement must be submitted to the insurer(s) prior to the date of final approval of this agreement. Any reimbursement request not submitted to insurer(s) by the date of final approval of this agreement will be deemed resolved in favor of insurer(s), SDF and SFG as part of this agreement.

5. No Other Workers' Compensation Claims Pending

Claimant has not suffered any other injuries for which a workers' compensation claim(s) has not been filed.

6. Outstanding Judgments, Liens or Support Collection Orders [choose the appropriate paragraph]

No outstanding judgments, liens, or support collection orders are pending against claimant as of the effective date of this agreement.

[OR]

The claimant has an outstanding child support lien. The claimant understands that any child support in arrears at the time that this agreement becomes final will be paid directly from the net settlement amount set forth in this agreement. No other outstanding judgments, liens or support collection orders are pending against claimant as of the effective date of this agreement.

7. Claimant's Waiver of Rights

Except for the payment directed pursuant to this agreement, the claimant waives all further rights under the WCL against the insurer(s), SFG, and SDF in connection with the case(s) including, but not limited to, any further medical and indemnity benefits for periods past, present, or future and for any injuries sustained, directly, indirectly or consequentially from the accident(s) (or occupational disease[s]) of the case(s).

8. Settlement

a. Settlement Amount [choose the appropriate paragraph]

[If one WCB Case No. e.g., 12345678] The claimant will receive a one-time final payment in the amount of \$[enter amount of total payment e.g., 75,000.00] (Gross Settlement Amount). Of this Gross Settlement Amount, \$[enter amount of indemnity e.g., 50,000.00] is allocated to future indemnity and \$[enter amount of medical e.g., 25,000.00] is allocated to potential future causally-related medical treatment. The indemnity allocation is premised on the insurer(s) and SFG's reliance upon the claimant's continued entitlement to weekly benefits in the amount of \$[enter CCP rate e.g., 200.00]. The insurer(s) and SFG have entered into this agreement as a result of their reliance upon the claimant's representations that the claimant has not returned to work or earned any income which would require an adjustment to the CCP rate. If the claimant becomes employed or receives an increase in earnings that would require an adjustment of the CCP rate prior to the date upon which this agreement is finally approved, the claimant will immediately advise the claimant's legal representative, the insurer(s), and SFG.

[OR]

[If more than one WCB Case No.] The claimant will receive a one-time final payment in the amount of \$[*enter amount of total payment*] (Gross Settlement Amount) which will be paid as follows: in WCB Case No. [enter WCB Case No.], \$[*enter amount of total payment that will be made by insurer*] will be paid by [enter name of insurer] [repeat as needed]. Of this Gross Settlement Amount, \$[*enter amount of indemnity*] is allocated to future indemnity and \$[*enter amount of medical*] is allocated to potential future causally-related medical treatment. The indemnity allocation is premised on the insurer(s) and SFG's reliance upon the claimant's continued entitlement to weekly benefits in the amount of \$[*enter CCP rate*]. The insurer(s) and SFG have entered into this agreement as a result of their reliance upon the claimant's representations that the claimant has not returned to work or earned any income which would require an adjustment to the CCP rate. If the claimant becomes employed or receives an increase in earnings that would require an adjustment of the CCP rate prior to the date upon which this agreement is finally approved, the claimant will immediately advise the claimant's legal representative, the insurer(s), and SFG.

b. Legal Fee

The sum of \$[*enter amount of legal fee e.g., 7,500.00*], subject to approval by the Board, is the fee agreed upon between the claimant and the claimant's legal representative as compensation for effectuating this settlement and shall constitute a lien upon the settlement amount. Said fee will be deducted from the indemnity portion of the Gross Settlement Amount and remitted by [enter the party paying the fee e.g., Insurance Company c/o Super TPA] to [enter name of legal representative here e.g., Chosen Law Office, LLP]. Claimant's legal representative shall waive any previously awarded uncollected fees.

c. Net Recovery

If this agreement is approved without modification, the net settlement to the claimant will be \$[*enter gross settlement amount excluding legal fee e.g., 67,500.00*], less any outstanding child support obligations.

d. Compliance with Federal Regulations

This agreement is not intended to shift the responsibility for payment of causally related medical expenses to Medicare. Pursuant to 42 CFR § 411.46(d)(2), Medicare will not pay for services related to a work-related injury until the funds included in a settlement for future medical expenses have been properly exhausted for such expenses.

[Delete if inapplicable] Claimant has reviewed the anticipated costs of projected future Medicare covered treatment and prescriptions with a legal representative and believes that the potential future medical allocation set forth in this agreement is an accurate reflection of the cost of anticipated future Medicare covered treatment and prescriptions.

e. Determination and Administration of Medicare Set Aside (MSA) [choose the appropriate paragraph and delete inapplicable sections]

Per the approval of the Centers for Medicare and Medicaid Services ("CMS") on [enter date of CMS approval letter e.g., 8/15/2020], the sum of \$[enter approved MSA amount e.g., 25,000.00] is deemed allocated for items of future medical expenses that Medicare may otherwise have to pay as a result of this agreement.

Attached as Exhibit A is the approval letter from CMS. After the Board approves this agreement, the insurer will file a copy of the agreement with:

WCMSA Proposal/Final Settlement
P.O. Box 138899
Oklahoma City, OK 73113-8899
[Or other entity or address as designated by CMS]

Claimant will comply with all Medicare obligations with regards to the MSA, including the requirements of Exhibit A attached hereto. Claimant will place the MSA funds in a separate interest-bearing account and will use said funds solely for the payment of future medical expenses related to the injuries of the case(s) that would otherwise be reimbursable by Medicare. Claimant is self-administering the MSA and will submit an annual accounting and will complete and sign annual self-attestation letters promulgated by CMS affirming that payment from the MSA account were made properly.

Claimant will forward the annual accounting and the self-attestation letters to:

NGHP
PO Box 138832
Oklahoma City, OK 73113
[Or other entity or address as designated by CMS]

[OR]

Pursuant to the May 11, 2011 memorandum by Centers for Medicare and Medicaid Services ("CMS"), the case(s) does not meet the threshold criteria for CMS review inasmuch as claimant is not currently a Medicare beneficiary; or the claimant is currently a Medicare beneficiary but the total settlement amount is not greater than \$25,000; or the claimant has no reasonable expectation of Medicare enrollment within 30 months of the settlement date and the anticipated total settlement amount for future medical expenses and disability/lost wages over the life or duration of the settlement agreement is not expected to be greater than \$250,000.

Pursuant to 42 CFR 411.46, the Medicare Intermediary Manual, and the Medicare Carriers Manual, any rights or interest Medicare may have in the subject settlement have been adequately considered and protected. Based on factors including the claimant's medical records, age, life expectancy, future cost projections, and historical treatment trends **[select one of the following paragraphs]:**

\$[enter amount allocated to medical expenses] included in the total settlement amount reasonably compensates the claimant for all future medical expenses causally related to the case(s) that would otherwise be payable by Medicare. This amount must be expended for future Medicare-covered medical expenses causally related to the case(s) before any such claims are submitted to Medicare.

[OR]

[If the allocation for medical expenses is \$0, use this paragraph] No amount of the settlement need be set-aside because the claimant's medical providers have concluded, to a reasonable degree of medical certainty, that the claimant will no longer require any Medicare-covered treatments related to the case(s).

f. Social Security Administration (SSA) Offset *[Delete if inapplicable]*

Claimant's date of birth is *[enter claimant's date of birth e.g., 6/11/1959]*, and the claimant's life expectancy is *[enter the claimant's life expectancy in years e.g., 18.2]* years, or *[enter claimant's life expectancy in months e.g., 218.4]* months (United States Life Tables, 2022. NVSR Volume 74, Number 2).

The claimant requests that the net settlement proceeds be apportioned by the SSA as follows:

The settlement shall represent payment of the net indemnity award of \$*[enter indemnity settlement amount excluding legal fee e.g., 42,500.00]* at the monthly rate of \$*[enter indemnity settlement amount excluding legal fee divided by claimant's life expectancy in months e.g., 194.60]* for the remainder of the claimant's expected lifetime.

The insurer(s), SDF and SFG take no position with respect to the requested Social Security allocation or to the policies and procedures of the SSA.

9. Reimbursement of Insurer(s) by Special Funds Group

[If more than one WCB Case No., enter: In WCB Case No. e.g., 12345678], SFG will reimburse the insurer pursuant to WCL § 15(8) for medical and indemnity payments beyond the statutory retention period up to the date of final approval of this agreement. SFG will also reimburse the insurer in the amount of \$*[enter amount of reimbursement e.g., 75,000.00]* in accordance with the established percentage of SDF liability under WCL § 15(8) and/or as previously agreed to by SFG and the insurer after the insurer has made its payment in accordance with the terms of this agreement. Said reimbursements remain subject to the insurer's compliance with all applicable Board policies and procedures pertaining to reimbursement under WCL § 15(8) including, but not limited to WCL § 15(8)(h)(2)(B) and Subject No. 046-1063R.

[Repeat for each WCB Case No. and insurer]

To be reimbursed, submit one stand-alone C-251 form to SpecialFunds@wcb.ny.gov with the last indemnity reimbursement request on the first line with all required fields completed.

On the second line, complete all the required fields. For the "begin date" and the "end date," input the date of the notice of approval if there was a settlement hearing and if there was a desk decision, input the date indicated in the proposed decision. In the "other" column, input the indemnity settlement reimbursement amount (with the attorney fee if applicable) and in the "comments" column, input IND32 without any spacing.

On the third line, complete all the required fields. For the "begin date" and the "end date," input the date of the notice of approval if there was a settlement hearing and if there was a desk decision, input the date indicated in the proposed decision. In the "other" column, input the medical settlement reimbursement amount and in the "comments" column, input MED32 without any spacing.

10. Third-Party Action

No third-party action is pending or contemplated as a result of the injuries of the case(s). In the event third-party claims are pursued, the insurer(s), SDF and SFG have preserved and would be entitled to liens pursuant to WCL § 29 for all payments made prior and pursuant to this agreement against any recoveries that may be derived from such claims. The claimant waives any right to petition the Board or any other court of competent jurisdiction for any additional monies representing the insurer's equitable share of the claimant's litigation expenses relating to the third-party action as otherwise permitted pursuant to *Matter of Kelly v State Insurance Fund*, 60 NY2d 131 (1983); *Matter of Burns v Varriale*, 9 NY3d 207 (2007); *Matter of Bissell v Town of Amherst*, 18 NY3d 697 (2012), as applicable to the case(s).

11. Outstanding Application for Review

Upon the filing of the Notice of Final Approval of this agreement or final Proposed Decision approving this agreement by the Board, any pending Applications for Board Review, Appeals, or requests for desk decisions filed in the case(s) by any Party in interest hereto are withdrawn.

12. Agreement Not Subject to Appeal Upon Board Approval

This agreement, once approved by the Board, is final and binding on all Parties and is not subject to review by the Board or any court under any provision of law including, but not limited to, Sections 23 or 123 of the WCL.

13. No Right to Reopen Unless All Parties Agree

Once the Board approves this agreement, there will be no reopening of the case(s) for any reason, absent a written agreement by the Parties and approval by the Board.

The undersigned Parties hereby consent to be subject to the above terms and conditions and acknowledge receipt of a copy of this agreement. Any individual signing on behalf of a Party has full authority to bind said Party to this agreement.

CLAIMANT – PLEASE PRINT

CLAIMANT – SIGNATURE

DATE

ATTORNEY – PLEASE PRINT

ATTORNEY - SIGNATURE

DATE

SFG -

BY:

SPECIAL FUNDS GROUP – PLEASE PRINT

SFG– SIGNATURE

DATE

INSURER OR SELF-INSURED EMPLOYER – PLEASE PRINT

INSURER OR SELF-INSURED EMPLOYER – SIGNATURE

DATE

INSURER OR SELF-INSURED EMPLOYER – PLEASE PRINT

INSURER OR SELF-INSURED EMPLOYER – SIGNATURE

DATE

CLAIMANT'S NAME: Jane Doe
WCB CASE NO(S): 12345678

Sample