

RESOLUTION NO. 09-223

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, APPROVING THE ATTACHED WORKERS COMPENSATION SETTLEMENT AGREEMENT WITH GERALD SMITH, JR.; PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA, AS FOLLOWS:

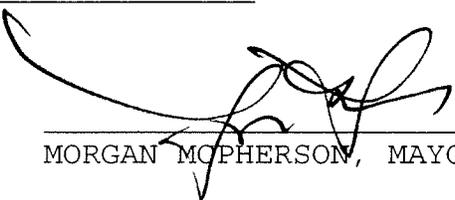
Section 1: That the attached Settlement Agreement between the City and Gerald Smith, Jr. is hereby approved and the City manager is authorized to execute any necessary documents to effectuate its purpose.

Section 2: That this Resolution shall go into effect immediately upon its passage and adoption and authentication by the signature of the presiding officer and the Clerk of the Commission.

Passed and adopted by the City Commission at a meeting held this 1st day of September, 2009.

Authenticated by the presiding officer and Clerk of the Commission on September 2, 2009.

Filed with the Clerk September 2, 2009.


MORGAN MOPHERSON, MAYOR

ATTEST:


CHERYL SMITH, CITY CLERK

EXECUTIVE SUMMARY

RECOMMENDATION:

The parties attended a mediation conference on June 18, 2009 and agreed to settle Gerald Smith, Jr., worker's compensation claims for a total settlement in the amount of \$195,000 including attorney's fees and costs. The claimant remains eligible for any vested retirement benefits. However, he agrees to execute a separate general release waiving any and all employment related claims.

Of the \$195,000 settlement amount \$100,000 will be used to purchase an indemnity annuity, \$64,107.19 will go towards purchase of a medical annuity which includes \$13,806.40 in up front cash. The claimant will receive an additional amount of \$10,642.81 in up front cash for a total of \$24,449.21 in cash and the attorney's fee is \$20,250.

The claimant, Gerald Smith, Jr., is a 54 year old male born on September 8, 1954. He first obtained employment with the City of Key West on October 26, 1983 and he has several different dates of accident, all of which are being settled.

The claimant initially had a compensable claim for hypertension dated December 11, 2002 and that is an open claim. The claimant also had accident dates of November 9, 2007 for reported cardiac problems; December 25, 2007 when he was hospitalized for a stroke and April 17, 2008 for another alleged mini-stroke. The December 25, 2007 claim was initially accepted as compensable but was later denied along with the April 17, 2008 claim on the basis that the claimant's heart disease was not due to employment was a firefighter and was instead due to a combination of pre-existing underlying problems including obesity, hyperlipidemia, as well as diabetes. The claimant subsequently retired in April 2008 due to the inability to continue working with the City of Key West.

As mentioned above the claimant filed a claim for presumption benefits under Section 112.18, Florida Statutes, commonly known as the Heart and Lung Bill. In particular, regards to the November 25, 2007 and April 17, 2008 injury dates the claimant appeared to have met at least three of the four tests required to establish application of the presumption. He was a certified firefighter. He passed his pre-employment physical and he did have disability when he was hospitalized for the November 25, 2007 incident. There was an issue as to whether or not the claimant actually had heart disease as the claimant had been diagnosed with a paroxysmal atrial fibrillation, as a result of obesity, hypertension, and hyperlipidemia, which was later bolstered by the diagnosis of diabetes. Our IME physician Dr. Leonard Pianko felt these conditions and in particular, the claimant's obesity, contributed to his development of the condition and ultimate stroke. However, presumption claims are always difficult to defend and part of Dr. Pianko's basis for the claimant's condition was his underlying hypertension condition which is in itself, a condition covered by the presumption and already created exposure for the city. The claimant was seen while in the hospital for his stroke by Dr. Bruce Boros, and Dr. Boros has opined that the claimant does indeed have cardiovascular disease. Therefore, at best, if we were able to actually obtain a favorable opinion under testimony from Dr. Pianko, we would most likely be requesting an expert medical advisor from the court in order to render an ultimate opinion on causation. ✓

The claimant was at the maximum compensation rates due to his high average weekly wage for the 2007 and 2008 claims and the present value using a 6% discount factor is approximately \$450,600 with a value of supplemental benefits being \$35,400. Therefore, the total present value is approximately \$486,000. A guideline fee on this amount is approximately \$41,000, and there would

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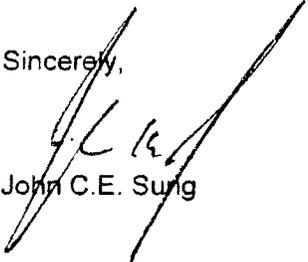
be no Grice offset since the claimant is receiving regular retirement benefits and there is also not a social security disability offset since the claimant's ACE earnings are very high.

With regard to future medical expenses, a Medicare Set-Aside Allocation was performed by Seltzer & Associates strictly for the 2002 hypertension claim which opined that \$101,942.76 would be required to sufficiently cover Medicare's interest and provide for the claimant's medical expenses. It should be noted that all other claims with Mr. Smith are being settled essentially on a controverted or denied basis.

Generally, claims are settled contingent upon approval for the Center of Medicaid Services (CMS) of the Medicare Set-Aside Allocation (MSA). However, in this case the claimant has specifically agreed to bear the amount of any amount that CMS may opine is due in order to sufficiently cover Medicare's interest over the proposed MSA amount. In essence, this means that the case can be immediately presented to the Judge of Compensation Claims for approval if the commission were to approve this request and the annuities are appropriately funded. In this case the annuities will pay specified benefits at timed certain intervals pursuant to the annuity proposals as attached.

If the Commission were not to approve this settlement the claim would move forward with litigation of compensability, specifically of the November 25, 2007 and April 17, 2008 stroke events and if the judge were to find the same ultimately compensable we would be looking at the value of permanent total disability benefits as well as future medical exposure. Therefore, I would recommend that the commission approve this settlement which represents a good opportunity to eliminate this exposure.

Sincerely,



John C.E. Sung

JCES/bas

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
MIAMI DISTRICT OFFICE

GERALD WILSON SMITH, JR
Claimant

OJCC Case No.: 08-028525AMK
D/A: 12/11/02; 9/2/04; 11/9/07; 12/25/07 &
4/17/08

vs.

CITY OF KEY WEST
Employer

GALLAGHER BASSETT SERVICES, INC.
Carrier/Service Agent

MEDIATION SETTLEMENT AGREEMENT

Pursuant to the Court's Order, a Mediation Conference was conducted on June 18, 2009 before ROSANNE J. SHORE.

The parties have resolved the issues presented and stipulate and agree to the following matters and/or issues:

All dates of accident are being resolved settling all past, present and future medicine and indemnity benefits as follows:

Claimant to receive \$10642.⁰¹ cash upfront and additional monies to fund the MSA, as attached as Appendix "A", and additional monies to fund Appendix "B", as attached.

E/c will pay Attorney's fees of \$20250-

Claimant will be responsible for any amounts required ^{incl the MSA submitted if required} by CMS for CMS approval of MSA amount. 1/10/09

This Agreement includes Claimant's

General Release of all claims.

This Agreement is contingent on
Key West Commission approval.

Total settlement amount, inclusive
of cash upfront, annuities, and fees
is \$195,000 - inclusive.

This is a binding and enforceable settlement on all parties to this agreement subject to the terms of this agreement.

The parties agree to promptly prepare and submit to the Court all documentation required of this Settlement, if any, and to perform all agreed acts.

The foregoing Mediation Settlement Agreement has been stipulated to and agreed to by the undersigned on behalf of themselves or their principals, in the presence of the Mediator and themselves on June 10, 2009.

A.W. Scott
Claimant

[Signature]
Attorney for Claimant

[Signature] ROSANNE J. SHORE
Employer/Carrier/Service Agent

[Signature]
Attorney for Employer/Carrier/
Service Agent

Respectfully Submitted,

RJ Shore
ROSANNE J. SHORE
MEDIATOR

INTERPRETER

Ringler Associates
 3254 16th St. N.
 St. Petersburg, Florida 33704
 (727)822-3346

APPENDIX A

Settlement Proposal for: Gerald Smith

Owner State: Delaware (0.00% tax)
 Rate Series: RB090528
 Rates Effective: 05/28/2009
 Assigned: Yes

MSA 25 Years Only If Living

Quote Date: 06/17/2009
 Purchase Date: 07/20/2009
 Expiration Date: 06/24/2009
 Reinsurance: No

For: Gerald Smith

Benefit Description	Male, Date of Birth: 09/08/1954 Age: 55		
	Guaranteed Benefit	Expected Benefit	Cost
• MSA Seed - Cash Up Front to Claimant - \$13,806.40	\$13,806.40	\$13,806.40	\$13,806.40
• MSA Annual Amount 4 years - Temporary Life Annuity - \$6,093.20 paid if living, payable annually, beginning on 07/20/2010 for a maximum of 4 year(s).	\$0.00	\$24,372.80	\$23,344.21
• MSA decreased annual payment for next 21 yrs only if living - Temporary Life Annuity - \$3,036.36 paid if living, payable annually, beginning on 07/20/2014 for a maximum of 21 year(s)	\$0.00	\$63,763.56	\$26,206.58
Subtotal For: Gerald Smith	\$13,806.40	\$101,942.76	\$63,357.19

SUMMARY INFORMATION

	Guaranteed Benefit	Expected Benefit	Cost	IRR
Total Cash Up Front				
ANNUITY COST	\$13,806	\$13,806	\$13,806.40	N/A
Assignment Fee			\$49,550.79	
TOTAL ANNUITY COST W/ FEES			\$750.00	
Case IRR 5.78%	50	\$88,136	\$50,300.79	5.78%
TOTAL ANNUITY W/ CASH & FEES	\$13,806	\$101,943	\$64,107.19	

The life expectancy used for this quote assumes an average life expectancy for all persons of the age illustrated. The life expectancy is based on standard actuarial assumptions.

Quote ID: Gerald Smith
 Prepared by: Bill Mathews

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Ringler Associates
 MetLife Version 2.00

Ringler Associates
 3254 16th St. N.
 St. Petersburg, Florida 33704
 (727)822-3346

APPENDIX B

Settlement Proposal for: Gerald Smith Indemnity

Owner State : Delaware (0.00% tax)
 Rate Series: RB090528
 Rates Effective: 05/28/2009
 Assigned: Yes

10 Years Certain Only

Quote Date: 06/17/2009
 Purchase Date: 07/20/2009
 Expiration Date: 06/24/2009
 Reinsurance: No

For: Gerald Smith

Male, Date of Birth: 09/08/1954 Age: 55

<u>Benefit Description</u>	<u>Guaranteed Benefit</u>	<u>Expected Benefit</u>	<u>Cost</u>
Period Certain Annuity - \$972.26 payable monthly, guaranteed for 10 year(s), beginning on 09/15/2009, with the last guaranteed payment on 08/15/2019.	\$116,671.20	\$116,671.20	\$100,000.00
Subtotal For: Gerald Smith	\$116,671.20	\$116,671.20	\$100,000.00

SUMMARY INFORMATION

	<u>Guaranteed Benefit</u>	<u>Expected Benefit</u>	<u>Cost</u>	<u>IRR</u>
ANNUITY COST				
Assignment Fee			\$100,000.00	
TOTAL ANNUITY COST W/ FEES	\$116,671	\$116,671	\$:	2.98%
Case IRR 2.98%				

The life expectancy used for this quote assumes an average life expectancy for all persons of the age illustrated. The life expectancy is based on standard actuarial assumptions.

Quote ID: Gerald Smith Indemnity
 Prepared by: Bill Mathews

Jun 18, 2009
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Ringler Associates
 MetLife Version 2.00



Seltzer Associates

PROPOSED MEDICARE SET-ASIDE ALLOCATION REPORT

Date: 2-26-09

IDENTIFYING INFORMATION:

Claimant: Gerald Smith
Address: 1736 Johnson Street
Key West, FL 33040
Phone Number: 305-296-8748

Life Expectancy: 27 years
Age: 54

Plaintiff Attorney:
Address:

Date of Injury: 12-11-02
Date of Birth: 9-8-54

Phone Number:

Social Security

Insured/Employer: City of Key West
Address: 525 Angela Street
Key West, FL 33040
Phone Number: 305

Case Type: Workers Compensation
Carrier: Gallagher Bassett
Contact Person: Maria Isaza
Address: P.O. Box 279310
Miramar, FL 33027
Phone Number: 800-473-9009

Defense Attorney: George Helm, Esq.
Address: P.O. Box 958464
Lake Mary, FL 32795

State of Jurisdiction: Florida
Medicare Region: Region 4 - Atlanta
Settlement Type: Not settled at this
time

Phone Number: 321-832-1700

Life Expectancy Information:

Date of Birth: 9-8-54
Actual Age: 54
Life Expectancy: 27 years per
Source: Life Table #1 for total population: United States 2004 Center for Disease
Control and Prevention, U.S. Department of Health and Human Services,
National Center for Health Statistics, National Vital Statistics 2004, report
12-28-07.

REC'D MAR 23 2009

PROPOSED MEDICARE SET ASIDE
FEBRUARY 26, 2009
PAGE 2 OF 6

RE: GERALD SMITH
DOI: 12/11/02

Funding Recommendations if Structured Payment Plan Utilized:

Seed Money for Medical Expenses \$1,630.00	Seed money for Pharmaceuticals: \$12,176.40
Seed includes: office visits, annual diagnostics and 2 years of actual payments.	Seed includes: all covered drugs and 2 years of actual payments.
Total Seed Money for Medical and Pharmaceuticals:	\$13,806.40

Years Annual Payments: 25

Total Payments for all covered Medical and Pharmaceuticals: \$101,942.76

Annual Medical Payment Amount: \$ 815.00	Annual Pharmaceutical Payment for 4 Years Amount: \$6,088.20
	Annual Pharmaceutical payment for 21 Years, when he is eligible for Medicare and has Part D annual deduction of \$3,866.84 Amount \$2221.36
Total Annual Payment for Medical and Pharmaceuticals first 4 Years after seed money:	\$6093.20
	X 4 Years \$24,372.80
Total Annual Payment for Medical and Pharmaceutical from age 62 X 21 Years	\$3,036.36
	X 21 Years \$63,763.56
Total of all Annual payments:	\$88,136.36

REC'D MAR 23 2009

Itemized Projected Future Costs

Based on the Florida Worker's Compensation Health Care Provided Reimbursement Manual
 2008 and the Redbook

Medical Costs:

Annual cardiac evaluation	CPT code 99215	annual \$143.00	X27 = \$3861.00
Annual diagnostics			
chest x-ray	CPT code 71010+tc	annual \$52.00	X27=\$1404.00
echocardiogram	CPT code 93307+tc	annual \$464.00	X27=\$12,528.00
ekg	CPT code 93000	annual \$28.00	X27=\$756.00
CMP	CPT code 80053+tc	annual \$50.00	X27=\$1350.00
Electrolyte Panel	CPT code 80051+tc	annual \$26.00	X27=\$702.00
PT	CPT code 85610+tc	annual \$10.00	X27=\$270.00
PTT	CPT code 85730+tc	annual \$18.00	X27=\$486.00
C-Reactive protein	CPT code 86140+tc	annual \$24.00	X27=\$648.00

Medications:

Norvasc 5mg QD	one pill per day	Annual \$762.85	X27 \$20,596.95
Propafenone 150mg tid	three pills per day	Annual \$1,795.80	X27=\$48,486.60
Diovan HCT 320mg QD	one pill per day	Annual \$1,251.95	X27=\$33,802.65
Zanax 0.25mg QD	one pill per day	Annual \$481.80	X27=\$13,008.60
Simvastatin 40mg qhs	one pill per day	Annual \$1795.80	X27=\$48,486.60
Potassium chloride 20 meq QD	one pill per day		
NOT COVERED BY MEDICARE			
		Annual \$182.50	0
MVI with minerals QD	one pill per day		
NOT COVERED BY MEDICARE			
		Annual \$36.50	0

Medicare Part D
Deductions

Deductible	Formula Category	Annual Deductions in case with annual RX drug cost of @2400.00
25% Copay	Deduct 100% of first \$250.00 co-pay	\$250.00
100% Copay	Deduct 25% of annual drug cost between \$250.00 and \$2400.00. (Maximum deduction \$533.75)	\$533.75
5% Copay	Deduct 100% of annual drug cost between \$2400.00 and \$5451.25 (maximum deduction \$3051.25)	\$3051.25
Total annual deduction	Deduct 5% of annual drug cost over \$5451.25 (no maximum)	\$31.84
	Add deductions in coverage to obtain total annual deduction	\$3,866.84

PROPOSED MEDICARE SET ASIDE
FEBRUARY 26, 2009
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RE: GERALD SMITH
DOI: 12/11/02

Introduction: This file was referred by Maria Isaza at Gallagher Bassett for the purpose of completing a Medicare Set-Aside allocation cost projection. A review of the provided medical documentation including medical history has been completed. The projections are based on reasonable medical guidelines, physicians reports, a review of medical records, previous documentation, depositions and my professional experience in managing similar injuries to those sustained by Mr. Gerald Smith.

Vocational History:

Mr. Smith was a firefighter with the City of Key West for 19 years. He is now retired.

Social Security and Medicare Entitlement Assessment:

Medicare COBC Reporting and Conditional Inquiry: Medicare has advised that if money is disbursed without protecting Medicare's interests, any party involved in the case could be held liable for refunding the amount owed to Medicare including beneficiary, provider, physician, attorney, state agency, or insurer.

Medical Record/Document Review:

ICD-9 Code: Diagnosis Description

427.31 atrial fibrillation

272.00 cholesterolemia

401.9 hypertension

Pre-existing or Co-Morbid Conditions Unrelated to this Claim:

278.01 morbid obesity

250.00 non insulin dependent diabetes mellitus

780.50 sleep apnea

Description of Initial Injury and Treatment:

The initial injury is the development of hypertension, accompanied by arrhythmia. He is under care by Dr. Boros, with annual exams and diagnostics.

Current Medical Status, Prognosis and future Treatment Recommendations:

He remains under the care of Dr. Boros. He will continue with annual exams and diagnostics. Subsequent to the care under this injury, Mr. Smith had a stroke on 12-25-07. The additional medical care and projected expenses are addressed in another WCMSA filed under that date of injury. He uses a c-pap machine for pre-existing sleep apnea.

Administration of Medicare Set-Aside Allocation:

Professional Administration - If a professional administrator is being utilized to administer the Medicare Set-Aside account funds in this case, the fee for the professional administration services cannot be paid from the Medicare Set-Aside account.

REC'D MAR 23 2009

PROPOSED MEDICARE SET ASIDE
FEBRUARY 26, 2009
PAGE 6 OF 6

RE: GERALD SMITH
DOI: 12/11/02

Additional Recommendation:

The projections contained in the proposed medicare Set-Aside allocation are based on the good faith professional judgement of Seltzer Associates, its employees or agents based on the information available to Seltzer Associates at the time the report was completed.

The proposed Medicare Set-Aside allocation, including the amount and frequency of any proposed periodic payments, is subject to change and should not be considered to be final until reviewed by CMS. Only CMS can determine if Medicare's interests have been adequately considered in this or any settlement.

After CMS approves the Medicare Set-Aside arrangement, CMS instructs that they must be provided with a copy of the final settlement agreement that has been signed by the beneficiary, the beneficiary's attorney, the carrier and approved by the appropriate agency such as the workers compensation agency or judge if required by state law.

Summary:

Mr. Smith will continue under the cardiac care of Dr. Boros. He will have annual exams, diagnostics and daily medication.