



BANKER LOPEZ GASSLER

Mark E. Hungate
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October 30, 2018

VIA E-MAIL

Brian O. Sutter, Esquire
All Injuries Law Firm, P.A.
2340 Tamiami Trail
Port Charlotte, FL 33952

Re:	Employee	:	James E. Williamson
	Employer	:	City of Venice
	OJCC Case No.	:	18-011226DBB
	Date/Acc.	:	12/14/2015
	Carrier No.	:	28220002
	Our File No.	:	022164

Dear Mr. Sutter:

This will confirm the parties' 10/29/18 e-mail agreement to settle any and all workers' compensation claims/accidents/injuries Claimant may possess under Chapter 440 arising out of his employment with City of Venice for a total of \$24,500.00 inclusive of attorney's fees, costs and any child support all contingent upon City Council approval. Enclosed please find the following documents necessary to conclude the case:

- 1) WC Settlement Agreement Pursuant to F.S. 440.20(11)(c)(d) and (e), 2009;
- 2) Motion for Approval of Fee/Arrearage Allocation with proposed Order;
- 3) Attorney Fee Data Sheet for your completion per the new DOAH rules;
- 4) Child Support Affidavit;
- 5) Medicare Advantage Affidavit.

BANKER LOPEZ GASSLER P.A.

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Re: Williamson v. City of Venice
October 30, 2018
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Please fill in your attorney's fee amount in the blanks on p. 4 of the Settlement Agreement, p. 1 of the Motion and the proposed Order. Please fill in your costs in the blank on p. 5 of the Settlement Agreement, p. 1 of the Motion and the proposed Order. Please fill in Claimant's net settlement on p. 5 of the Settlement Agreement, p. 1 of the Motion and the proposed Order.

Payment of all settlement/compromise proceeds is contingent upon City Council approval, resolution of any child support arrearage issues, you and Claimant signing the settlement documents and obtaining all necessary JCC approvals. If these documents are satisfactory, you and your client need to sign wherever your signatures are called for. Claimant's signatures must be notarized. Please return the entire settlement package to me. Upon receipt of the signed documents and City Council approval, I will submit the Motion and Order Approving Fees/Arrearage Allocation to the Office of Judge of Compensation Claims for consideration and entry of an Order(s).

The check(s) will be sent to you within 14 days of the Judge of Compensation Claims mailing of the Order approving the fee/arrearage allocation. Please call me if you would like to discuss any of the above. Thanks.

Yours truly,



Mark E. Hungate

MEH/mm
Enclosures

cc: Ms. M. Luiz – CRM
Mr. A. Bullock - COV

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

James E. Williamson,

Employee/Claimant,

vs.

OJCC Case No. 18-011226DBB

City of Venice,

Accident Date: 12/14/2015

Employer,

and

Commercial Risk Management, Inc.,

Carrier/Servicing Agent.

SETTLEMENT AGREEMENT PURSUANT TO F.S. 440.20(11)(c,d and e) 2009

The parties to this Settlement Agreement, to wit: **James E. Williamson** (date of birth: 11/16/1955) (hereinafter collectively referred to as the "Claimant") and **City of Venice/Commercial Risk Management, Inc.** (hereafter collectively referred to as the "E/SA") hereby agree as follows:

WHEREAS, Claimant was an employee of **City of Venice** on or around 12/14/2015.

WHEREAS, Claimant sustained injuries arising out of his employment with the Employer and filed workers' compensation claims and is otherwise claiming workers' compensation benefits against the E/SA as the result of accidents which occurred on or about the above dates and said claims are subject to the jurisdictional provisions of Chapter 440, the Florida Workers' Compensation Act, or are otherwise covered by Chapter 440.

WHEREAS, the parties wish to compromise and settle all claims Claimant may have against the E/SA as a result of or arising out of any and all work-related or allegedly work-

related accidents/injuries/claims/conditions, including but not limited to any referenced herein that, he sustained or allegedly sustained from his date of hire to the present during his employment with this Employer;

WHEREAS, the E/SA provided some medical and indemnity benefits to or on Claimant's behalf.

NOW THEREFORE, the parties agree as follows:

1) Claimant, for himself and on behalf of each and all of his respective present, former, and future successors, heirs, executors, administrators, guarantors, attorneys, representatives, insurers and assigns (all of whom are also hereinafter collectively referred to as the "Claimant"), for and in consideration of the lump sum of \$24,500.00 (Twenty-Four Thousand and Five Hundred Dollars and No Cents), ("the Lump Sum"), and other good and valuable considerations, to be paid to Claimant upon approval by the Judge of Compensation Claims of attorney fees and child support allocation provided for herein, does hereby release, acquit, and forever discharge the City of Venice and Commercial Risk Management, Inc., (the "E/SA") any affiliated and subsidiary corporations, divisions and associations, and each and all of their past, present, former and future officers, directors, trustees, nominees, attorneys, agents, employees, consultants, insurers, brokers, administrators, managers, predecessors, representatives, any of the City's past, present and future elected or appointed officials/representatives, employees, agents and attorneys and any and all of their assigns (all of whom are also hereafter collectively referred to as the E/SA) of and from any and all claims, demands, actions, causes of action, controversies, costs, expenses, damages, judgments, losses and liabilities of whatever kind or nature, whether known or unknown, which against them, or any of them, Claimant now has, had, may have had, or can, shall or may have for or by reason of

any matter, cause or thing whatsoever to and including the date hereof, which were or might have or could have been asserted in connection with, arising out of, of in any way relating to any injuries resulting from or claimed to be the result of any and all work-related accidents/injuries/conditions while employed with this Employer, including but not limited to any referred to herein, including any and all claims for or rights to past, present and future benefits arising under Chapter 440, the Florida Workers' Compensation Act, including any claims for attorney's fees.

The settlement amount referred to herein shall be allocated as follows:

a)	Past and Future Compensation Benefits	\$10,000.00
b)	Past Medical Benefits	\$ 1,500.00
c)	Future Medical Benefits	\$10,000.00
d)	Rehab TTD	<u>\$ 3,000.00</u>
Total:		\$24,500.00

As additional consideration for this settlement, the parties agree this settlement is contingent upon City of Venice City Council approval.

2) It is the intent of the undersigned Claimant that this is a complete, full, comprehensive and final settlement of any and all liability of the parties released herein arising from or relating to any and all injuries arising out of any work-related or allegedly work-related accidents/injuries at this Employer including any and all liability of the E/SA for any act performed or omitted by, or on behalf of the parties released herein prior to the date this Settlement Agreement is signed by Claimant relating to any and all injuries arising out of any work-related or allegedly work-related accidents including but not limited to those referenced herein arising out of his employment at this Employer. The Claimant agrees that this settlement

shall constitute an election of remedies by the Claimant with respect to the E/SA herein regarding all work accidents or alleged work accidents. Claimant further warrants that any industrial accident sustained while in the employment of **City of Venice** and the injuries sustained as a result thereof, was/were not the result of any willful or wanton misconduct, unprovoked physical aggression, gross negligence on the part of any officer, attorney, director, employee, supervisor, or other agent or representative of the E/SA, deliberate intent to injure the Claimant, deliberate concealment or misrepresentation of danger or conduct virtually certain to result in injury or death to Claimant and that the Claimant has no entitlement to any cause of action under any exception to the workers' compensation immunity as defined in F.S. 440.11 regarding any of her accidents.

3) The undersigned Claimant hereby expressly warrants, represents and covenants to the parties released herein that Claimant is presently the legal owner and hold of the claims or causes of action released hereby, and that he has not heretofore expressly or impliedly assigned, transferred, pledged or otherwise disposed of any such rights, claims, demands, or causes of action being described herein and released hereby. The undersigned Claimant also represents to the E/SA that he is (1) mentally competent to handle his financial affairs, (2) has not been told by any physician that he needs a guardian to handle his financial affairs (3) he was not under the influence of any medications or intoxicating substances when he agreed to this settlement and/or when he signed the settlement documents and (4) has read this entire document and all settlement documents he has signed or has had all settlement documents read to him before he signed them.

4) The Claimant is represented by Brian O. Sutter, Esq., in connection with this matter who is entitled to a fee to be paid by the Claimant for legal services rendered. The

Claimant shall pay \$_____ and Claimant's attorney agrees that said fee is a reasonable fee for such services, resolves all claims for attorney's fees that Claimant's attorney may have against the E/SA, and is within the guidelines for determination of a reasonable fee as set forth in F.S. 440.34(1). Claimant will also reimburse his attorney \$_____ in costs incurred in prosecution of Claimant's claims. Notwithstanding the provisions of F.S. 440.34, the Claimant and not the E/SA is responsible for the payment of Claimant's own attorney's fees and costs.

Claimant agrees that there are no other claims or liens for fees filed by any other attorney and if a claim or lien is or has been made, the Claimant agrees to resolve said claim or lien, and the Claimant agrees to hold the E/SA harmless if a claim for fees arises.

Upon payment of the consideration called for by this Settlement Agreement, Claimant and his attorney agree that the E/SA is discharged from any liability for fees for legal services rendered on his behalf by any attorney. The attorneys' fees and costs shall be paid from these settlement proceeds thereby making the net settlement to Claimant \$_____.

5) It is not the purpose of this Settlement Agreement to shift the responsibility of medical care in this matter to the Medicare program. Instead, this settlement is intended to resolve a disputed claim between the Claimant and the E/SA.

The Centers for Medicare and Medicaid Services have stated in memoranda circulated to its regional offices that only those workers' compensation settlements wherein the Claimant is already a Medicare beneficiary and the settlement is more than \$25,000.00 or has a "reasonable expectation" of Medicare enrollment within thirty (30) months of the settlement date and the anticipated total settlement amount is greater than \$250,000.00 over the life of the Claimant must protect Medicare's interests in the workers' compensation settlement. The parties have

considered Medicare's interests in conjunction with this settlement. In reaching this settlement, the parties relied upon Claimant's representation that he is not and has never been a Medicare recipient and has never applied for or received any benefits under Medicare such that it appears no conditional medical payments have been made by Medicare to any provider regarding work injury related medical treatment. No additional surgery has been recommended by any previously authorized doctor. This is not a complete enumeration of the factors the parties considered and should be considered illustrative. As a result of the totality of circumstances, the parties agree that this settlement does not meet the current CMS thresholds for use of a Medicare set aside allocation and this settlement does not require review and/or approval by/from CMS to protect Medicare's interests. This determination by the parties has been made solely in reliance upon said memoranda and the representations made by CMS set forth therein. Nevertheless, out of an abundance of caution, the parties have voluntarily allocated \$10,000.00 towards future medical treatment. These funds will be paid directly to the Claimant and are intended to be used for medical purposes related to his work accidents.

While it is impossible to accurately predict the need for future medical treatment, this decision was based upon a good faith determination of the parties in order to resolve a questionable claim. The parties have attempted to resolve this matter in compliance with both state and federal law and it is believed that the settlement terms adequately consider Medicare's interests and do not reflect any attempt to shift responsibility of treatment to Medicare pursuant to 42 U.S.C. Sec. 1395y(b).

6) In reaching this agreement the parties have, pursuant to F.S. 440.20(11)(d), considered the issue of child support arrearages. Claimant has no arrearage in any county. Child support arrearage information from the appropriate agencies is attached and incorporated herein.

7) Claimant and the E/SA acknowledge that whereas F.S. 440.20(11)(c), as amended 2009, provides that payment of the Lump Sum be made within 14 days after the date the Judge of Compensation Claims mails the Order approving the attorney's fees in this matter, F.S. 440.20(11)(d), as amended 2009, also requires that the office of the Judge of Compensation Claims consider whether the settlement provides for the appropriate recovery of child support arrearages. It is the intent of the parties that the E/SA shall not be required to disburse the settlement proceeds: until the Settlement Agreement is executed by Claimant and Claimant's attorney; until Venice City Council approves this settlement; if Claimant dies before all court approvals as to attorney's fees and child support allocations are signed and until all court approvals as to attorney's fees and child support allocations are obtained. Therefore, the parties and their counsel agree that the statutory 14 day period will begin to run from the date Claimant/Claimant counsel sign the settlement documents, the date Venice City Council approves this settlement and the date of the mailing of the Court order(s) approving the fee and/or allocation for the recovery of child support arrearage, whichever shall occur last, however, the parties agree that earlier payment shall satisfy the applicable statutory period and the Claimant's attorney agrees to hold the settlement proceeds in escrow until all conditions are met. If these conditions are not met, Claimant's attorney will immediately return to the E/SA those funds being held in escrow.

8) The parties agree that this Settlement Agreement is valid and enforceable. If the Settlement Agreement is ever found to be unenforceable for whatever reason, the Claimant agrees that the E/SA shall be entitled to full reimbursement of the Lump Sum paid to the Claimant and to the extent full reimbursement is not made, the E/SA is entitled to a credit for any money paid to the Claimant in connection with the settlement against benefits owed or found to

be due, past or future without limitation on the type of benefit to which this offset would apply, nor as to the amount of offset to be taken as to any benefits. The E/SA shall have a dollar for dollar offset for the money paid under this Settlement Agreement for any benefits owed or found to be due, past or future. If this Settlement Agreement is ever found to be unenforceable, the parties agree that they retain all rights and defenses available under the Florida Workers' Compensation Act and as to any claims covered by this Settlement Agreement.

9) Claimant agrees that upon payment of the consideration referred to herein, all claims, Petitions for workers' compensation benefits and actions for any injuries arising out of Chapter 440, the Florida Workers' Compensation Act, due to the accident referenced herein against the E/SA are voluntarily dismissed with prejudice and Claimant shall file voluntary dismissals in all courts where claims or actions are pending.

10) By signing this Settlement Agreement, Claimant acknowledges that he has read the agreement, has had its terms fully explained to him by his attorney, has been fully informed and understands:

- a. the Settlement's effect on any rights the Claimant may have;
- b. his rights regarding all the claims settled;
- c. he is giving up these rights;

and is entering into this Settlement Agreement voluntarily and without any undue influence, pressure or coercion whatsoever. Further, by signing this Settlement Agreement, Claimant's attorney agrees that he has explained the Settlement Agreement to Claimant and that Claimant indicated he understands his rights and the effect of this settlement on those rights.

Executed in _____ County, _____ this ____ day of _____, 2018.

James E. Williamson Date
Claimant

Brian O. Sutter, Esquire Date
Claimant's Attorney

Mark E. Hungate, Esquire Date
E/SA's Attorney

COUNTY OF _____
STATE OF FLORIDA

BEFORE ME, the undersigned authority, personally appeared James Williamson, who, after being duly cautioned and sworn or affirms (circle the appropriate term), deposes and says he has read the above Settlement Agreement and that he has set his hand and seal thereto for the purpose therein expressed.

The foregoing instrument was acknowledged before me this ____ day of November, 2018 by _____;

Who is personally known to me or

Who produced the following identification _____ and

Who did take an oath or affirmed

Who did not take an oath or affirmed.

Signature of Notary

Print Name of Notary (Notary Seal)

My Commission Expires:

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

James Williamson,

Employee/Claimant,

vs.

OJCC Case No. 18-011226DBB

City of Venice,

Accident Date: 12/14/2015

Employer,

and

Commercial Risk Management, Inc.,

Carrier/Servicing Agent.

**MOTION FOR APPROVAL OF ATTORNEY'S FEE AND ALLOCATION OF
CHILD SUPPORT ARREARAGE FOR SETTLEMENTS UNDER
SECTION 440.20(11)(C), (D) & (E), FLORIDA STATUTES (2009)**

1. The parties have reached a settlement agreement arising out of the above-captioned alleged industrial accident(s).
2. Pursuant to the contract of representation, the Employee/Claimant has agreed to pay his attorney a fee for services rendered in obtaining this settlement.
3. The total amount of the settlement is \$24,500.00. The Employee/Claimant agrees to pay and his attorney agrees to accept as a settlement attorney fee the sum of \$_____. The Employee's net settlement after this attorney fee and case costs of \$_____ will be \$_____. The settlement attorney fee is 25% of the settlement.
4. The Employee/Claimant understands that he may request a hearing to determine a reasonable fee to be paid under the circumstances of this case. The Employee/Claimant waives his right to a hearing on this issue.
5. A Workers' Compensation Child Support Report dated 8/8/18 from the OJCC reflects no child support arrearage in the records of the FL Department of Revenue and the Clerk of the Circuit and County Courts for Sarasota County where Claimant resided on the date of accident and at the time the settlement documents are filed.

According to the attached information, there is an outstanding child support arrearage of \$0.00.

WHEREFORE, the Employee/Claimant and his undersigned counsel request entry of an Order approving the attorney's fee to be paid from the settlement proceeds and the child support arrearage allocation under this settlement.

Dated this ____ day of _____, 2018.

JAMES E. WILLIAMSON
Employee/Claimant

BRIAN O. SUTTER, ESQ.
Employee/Claimant Counsel of Record

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been mailed on this ____ day of _____, 2018 to counsel of record and the parties at the above address if unrepresented.

MARK E. HUNGATE, ESQ.
Certifying Attorney

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

James Williamson,

Employee/Claimant,

vs.

City of Venice,

Employer,

and

Commercial Risk Management, Inc.,

Carrier/Servicing Agent.

OJCC Case No. 18-011226DBB

Accident Date: 12/14/2015

ORDER UNDER SUBSECTIONS 440.20(11) (c), (d), & (e), Florida Statutes (2009)

Pursuant to Subsections 440.20(11) (c), (d), & (e), Florida Statutes (2009), the parties have reached a settlement agreement. After reviewing the documentation filed with the undersigned, the Judge of Compensation Claims finds that:

1. The amount of attorney's fee of \$_____, as evidenced in the attached contract of representation, Attorney Fee Data Sheet, supporting documentation, and the content of F. S. 440.34, meets the requirements of the Workers' Compensation Law based upon the lump sum settlement of \$24,500.00. Costs will not exceed \$_____.

2. According to the attached information from the Florida Department of Revenue; and the Sarasota County Clerk's Office (where the Claimant resided at the time of the accident and at the time of filing the settlement), there is \$0.00 due in outstanding child support arrearage. Total net to the Employee/Claimant, after the attorney's fees, costs, and child support, will be \$_____.

3. Payment pursuant to this Order must be made within 14 days after the date the Judge of Compensation Claims mails and/or electronically files the order approving the attorney's fees, costs and child support arrearages (if any) unless any separate time frames for payment have been agreed to by the parties in the settlement documents.

4. The attorney's fee shall not be subject to modification.

It is, **ORDERED** and **ADJUDGED** that the attorney's fee, costs, and child support arrearage allocation, if any, paid under the settlement agreement are approved.

DONE AND SERVED this ____th day of November 2018, in Sarasota, Sarasota County, Florida.

Hon. Diane B. Beck
Judge of Compensation Claims

Brian O. Sutter, Esquire, bsutter@earthlink.net; jennifer.miles@allinjurieslawfirm.com
Mark E. Hungate, Esquire, mhungate@bankerlopez.com; mmeisner@bankerlopez.com

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

James Williamson,

Employee/Claimant,

vs.

OJCC Case No. 18-011226DBB

City of Venice,

Accident Date: 12/14/2015

Employer,

and

Commercial Risk Management, Inc.,

Carrier/Servicing Agent.

ATTORNEY FEE DATA SHEET – WASHOUT SETTLEMENT

1. Total amount paid to obtain settlement (including all fees and costs, but exclusive of any fees being reported on form AFDS-WOA in this case): \$
2. Value of benefits previously paid to or on behalf of claimant, due to attorney's efforts, for which no attorney fee has been paid to date: \$
3. Total amount of claimant's outstanding child support obligation, if any: \$
4. Amount of settlement proposed to be allocated to child support: \$
5. Amount of settlement proceeds allocated to attorney's fees (exclusive of any fees reported on form AFDS-WOA in this case): \$
6. Sum of all other attorneys' fees previously paid in this case: \$
7. Amount of costs to be paid from settlement proceeds: \$
8. Relationship of proposed fee to statutory percentage formula (select one):
 - 8(a). Attorney fee is pursuant to statutory percentage formula. ☐
 - 8(b). Statutory formula results in unreasonably low hourly rate (Accidents prior to 10-1-03, Davis v. Keeto, 463 So.2d 368 (1st DCA 1985). ☐
 - Enter hours here:
 - 8(c). Medical Only Claim (Accidents after 9-30-03)(S.440.34(7)F.S.). ☐
 - Enter hours here:
 - 8(d). Other basis, or statutory formula does not apply. ☐
 - 8(e). If "other basis" is checked, enter explanation (500 characters max.):

9. Check here if an attorney fee requiring submission of form AFDS-WOA is being sought in this case. ☐

By submitting this document, the attorney attests each entry is accurate and consistent with applicable instructions, to the best of his or her knowledge, information, and belief.

Counsel's Name: Brian O. Sutter, Esq.
Florida Bar Number: _____

Attorney's Signature

Date

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

James Williamson,

Employee/Claimant,

vs.

OJCC Case No. 18-011226DBB

City of Venice,

Accident Date: 12/14/2015

Employer,

and

Commercial Risk Management, Inc.,

Carrier/Servicing Agent.

CHILD SUPPORT AFFIDAVIT

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared JAMES E. WILLIAMSON, who, after being duly sworn, deposes and says:

1. My name is **James E. Williamson** and I am the Claimant in the Division of Workers' Compensation claim/Petition, specifically OJCC case number 18-011226DBB in which City of Venice is the Employer and Commercial Risk Management, Inc. is the Servicing Agent concerning the 12/14/15 work-related accident.
2. On the above dates of accident, I was a resident of Sarasota County, Florida.
3. I am currently a resident of Sarasota County.

4. I have no known child support arrearage and all existing child support obligations have been disclosed.

FURTHER AFFIANT SAYETH NAUGHT.

JAMES E. WILLIAMSON, Affiant

STATE OF FLORIDA

COUNTY OF _____

BEFORE ME, the undersigned authority, authorized to administer oaths and take acknowledgments personally appeared James E. Williamson who is personally known to me or who has presented _____ as identification on this _____ day of _____, 2018, incorporated in the foregoing Affidavit is true and correct and that he has read the Affidavit or had the Affidavit read to him.

NOTARY PUBLIC
State of Florida

Printed Name of Notary Public
My Commission Expires: _____

Medicare Advantage (Part C & D) Affidavit

Date of Accident: 12/14/2015

OJCC Case No.: 18-011226DBB

James E. Williamson, being of full age, on his oath, deposes and says (circle the correct answer):

1. I am a Medicare beneficiary, as that status is defined under Section 1862(b) of the Social Security Act.
2. _____ At no time on or after the occurrence of my injury claim to present was I ever enrolled in, or received benefits from a Medicare Advantage Plan (Part C) or Drug Prescription Plan (Part D).
_____ I was enrolled in a Medicare Advantage Plan (Part C) or a Drug Prescription Plan (Part D) from _____ to _____.

Carrier Name: _____

Policy Number: _____

3. _____ I have only been enrolled and received benefits for items and services, since the occurrence of my injury to present under Part A (Hospital benefits) and Part B (Medical) from traditional fee for service programs administered by the Centers for Medicare & Medicaid Services.

James E. Williamson

Sworn to and subscribed

Before me this _____ day of _____, 2018

Notary Public