

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

EMPLOYEE/CLAIMANT:

John Richmond
10128 Somersby Drive
Riverview, FL 33578-8329

EMPLOYER:

Manatee County
P.O. Box 1000
Bradenton, FL 34206-1000

CARRIER/SERVICING AGENT:

Commercial Risk Management, Inc.
P.O. Box 18366
Tampa, FL 33679-8366

ATTORNEY FOR EMPLOYEE/CLAIMANT:

Michael J. Winer, Esq.
Law Office of Michael J. Winer, P.A.
110 N. 11th Street, 1st Floor
Tampa, FL 33602-4223

ATTORNEY FOR EMPLOYER/CARRIER/
SERVICING AGENT:

Daniel J. DeMay, Esq.
Pallo, Marks, Hernandez, Gechijian & DeMay, P.A.
5602 Marquesas Circle, Suite 104
Sarasota, FL 34233-3343

D/A: February 4, 2016
OJCC CASE NO.: 17-024602 DBB
VENUE: Manatee County
JUDGE: Diane B. Beck

**STIPULATION & RELEASE IN EXCHANGE FOR LUMP SUM SETTLEMENT
UNDER § 440.20(11)(c), (d) & (e), FLA. STAT. (2003)**

THE ABOVE-NAMED PARTIES hereby seek approval of the following agreement made for the specific purpose of discharging the Employer/Carrier/Servicing Agent from any further liability for all past and future benefits under the Florida Workers' Compensation Law in exchange for the payment of a lump sum of money to the Claimant. The parties, therefore, stipulate as follows:

1. **PARTIES:** The parties to this Stipulation & Release are **JOHN RICHMOND** (hereinafter “Employee,” “Claimant,” or “Employee/Claimant”), **MANATEE COUNTY, A Political Subdivision of the State of Florida,** and **MANATEE COUNTY BOARD OF COUNTY COMMISSIONERS** (hereinafter “Employer”), and **COMMERCIAL RISK MANAGEMENT, INC.** (hereinafter “Carrier/Servicing Agent”). The parties are *sui juris*.

2. **DESCRIPTION OF ACCIDENT(S):** On or about Feb. 4, 2016, the Employee contends he was injured by accident as contemplated under § 440.02(1), Fla. Stat. (2003), arising out of and in the course of employment with the Employer in Manatee County, Florida, when he lifted a battery into the back of a van, thereby causing injury to his left shoulder. However, the parties hereby stipulate and agree that it is their express intent that this instant Stipulation & Release shall pertain to and cover any and all industrial accidents, injuries, exposures and occupational diseases that the Claimant sustained while in the employ of the Employer from the beginning of time up to and inclusive of the date that the last party hereto executes this Stipulation & Release, regardless of whether the parties have specifically identified each and every accident, injury, exposure and occupational disease in this instant Stipulation & Release. References in this Stipulation & Release to a specific accident or injury shall mean any and all accidents, injuries, exposures and occupational diseases that the Claimant may have sustained while in the employ of the Employer.

3. **ELECTION OF REMEDY AND RELEASE OF EMPLOYER LIABILITY:** By entering into this settlement agreement, the parties stipulate that the Claimant has elected workers’ compensation, and not tort liability, as the exclusive remedy against the Employer. The parties further stipulate that as additional consideration for the payment of the settlement amount

by the Employer/Carrier/Servicing Agent, the Claimant releases, waives, and settles any and all Employer liability (Coverage B and Coverage 2) causes of action.

4. **AVERAGE WEEKLY WAGE AND COMPENSATION RATE:** At the time of the Feb. 4, 2016 injury specifically identified in paragraph 2, above, the Claimant's average weekly wage was \$876.98, thus making the compensation rate \$584.68 per week.

5. **MAXIMUM MEDICAL IMPROVEMENT:** According to the 2001 amendments to the Workers' Compensation Act, the parties may enter into this Stipulation & Release without the Claimant having reached maximum medical improvement as a condition precedent. Therefore, the parties have not undertaken an effort to determine whether the Claimant has reached MMI. Nonetheless, the Claimant desires to enter into this Stipulation & Release and the Claimant fully understands that his medical condition may not yet be stable and that he may not yet be fully recovered from the effects of his industrial accidents, injuries, exposures or occupational diseases. With that express understanding, the Claimant nevertheless wishes to enter into this Stipulation & Release.

6. **SETTLEMENT AMOUNT AND DISCHARGE FROM LIABILITY FOR PAST AND FUTURE COMPENSATION AND MEDICAL BENEFITS:** In consideration for the Claimant's release of the Employer/Carrier/Servicing Agent, the Employer/Carrier/Servicing Agent will pay and the Claimant agrees to accept the sum of **\$130,000** in full and final satisfaction of the obligation or liability to pay all benefits of whatever kind or classification available under the Florida Workers' Compensation Law including, but not limited to, future medical benefits, monetary compensation as contemplated under § 440.15, Fla. Stat., impairment benefits, death benefits,

attorney's fees, past medical benefits,¹ and rehabilitation temporary total disability benefits under § 440.491, Fla. Stat., on account of all alleged accidents, injuries, exposures and occupational diseases referenced herein. The net settlement, after deduction of attorney's fees in the amount of \$26,000 and costs of \$500, is \$103,500, which shall be allocated as follows:

(a) Past and future compensation benefits:	\$ 41,100
(b) Past medical expenses:	-0-
(c) Future medical expenses:	62,400
(d) Rehabilitation expenses:	-0-
(e) Other:	-0-
NET TO CLAIMANT:	\$ 103,500

Notwithstanding this Release of the Employer/Carrier/Servicing Agent, the Claimant understands that he retains the right to apply for training and education provided by the State of Florida.

Upon the date the Judge of Compensation Claims enters an Order approving the attorney's fees and child support allocation herein, the Employer/Carrier/Servicing Agent will be forever released and discharged from the obligation or liability to pay any and all benefits of whatever kind

¹ This Stipulation & Release does not affect the Employer/Carrier/Servicing Agent's obligations to pay for past medical benefits that have been authorized by the Employer/Carrier/Servicing Agent. The parties agree that the Employer/Carrier/Servicing Agent will continue to provide to the Claimant palliative, non-invasive (*i.e.*, non-surgical) authorized medical benefits until such time as the Judge of Compensation Claims enters an Order on the parties' Joint Motion for Approval of Attorney's Fees and Allocation of Child Support Arrearage, as more fully described within paragraph 15 of this Stipulation & Release.

or classification payable under the Florida Workers' Compensation Law, both past and future, which may result from the claim herein.

Notwithstanding anything contained within this Paragraph 6 to the contrary, the Employer/Carrier/Servicing Agent will continue to pay to the Claimant temporary partial disability benefits until such time as the Judge of Compensation Claims enters an order on the parties' Joint Motion for Approval of Attorney's Fees and Allocation of Child Support Arrearage, as more fully described within paragraph 15 of this Stipulation & Release, or until Jan. 11, 2018, whichever occurs first.

7. **ATTORNEY'S FEES PAYABLE BY CLAIMANT AND WAIVER:** The Claimant has been represented by MICHAEL J. WINER, ESQUIRE, LAW OFFICE OF MICHAEL J. WINER, P.A., in connection with this matter, who is entitled to a fee for legal services rendered. The parties to this Stipulation & Release agree that the fee to be paid by the Claimant to his attorney will consist of two parts (Fee A and Fee B). Fee A is a fee that is calculated according to the guidelines as contained within § 440.34(1), Fla. Stat. The parties agree that Fee A equals \$13,750, is a reasonable fee for such services and has been calculated according to those guidelines. Fee B has been negotiated exclusively by and between the Claimant and his attorney according to a separate retainer agreement between those individuals. The Employer/Carrier/Servicing Agent are not parties to that separate agreement and take no position with respect to the reasonableness of same. The Claimant and his attorney agree that Fee B equals \$12,250.

The total fee payable by the Claimant to his attorney, consisting of Fee A and Fee B, will equal \$26,000.

Notwithstanding the provisions of § 440.34(3)(a)-(d), Fla. Stat., the Claimant alone and not the Employer/Carrier/Servicing Agent is responsible for the payment of his own attorney's fees and costs because this settlement was made under § 440.20(11)(c), (d) & (e). The fees shall be paid from the settlement proceeds, thereby making the net settlement amount \$104,000, less costs in the amount of \$500.

The Claimant further affirms that he has not been represented by any other attorneys in connection with this workers' compensation matter. However, the Claimant stipulates that he alone, and not the Employer/Carrier/Servicing Agent, shall be responsible for the satisfaction of any attorney fee liens which have been maintained or asserted by any and all attorneys and law firms who or which may have represented the Claimant in connection with this workers' compensation matter. The Claimant further agrees that he shall release, hold harmless and indemnify the Employer/Carrier/Servicing Agent with regard to any and all liens for attorneys' fees and costs in this matter. The Employer/Carrier/Servicing Agent owe no attorney's fees or costs to the Claimant's attorneys.

8. **WAIVER OF RIGHT TO HAVE CASE HEARD BY JUDGE OF COMPENSATION CLAIMS AND RIGHT TO BRING PETITION FOR MODIFICATION:**

The Claimant understands that he does hereby relinquish the right to have any unresolved conflicts or disputes involving the right to monetary compensation benefits, impairment benefits, death benefits, attorney's fees, past medical benefits,² future medical benefits and rehabilitation benefits heard and decided by a Judge of Compensation Claims. The Judge will only retain the authority to hear and decide any issues involving disputes regarding this agreement.

² Except those past medical benefits that are described within footnote 1, *supra*.

This agreement shall not be subject to modification under § 440.28, Fla. Stat., or under any other statutory or case law authority. In the event this Stipulation & Release is later set aside, overturned, or reopened for any reason, then the Employer/Carrier/Servicing Agent reserve the right to assert any and all defenses available to them, and are entitled to an offset of the benefits provided according to this Stipulation against any past or future monetary compensation or medical benefits or any category deemed to be due or to be paid for any past or future time period, without the limitations imposed by § 440.15(12), Fla. Stat. (2007). In the event that any part of this Stipulation & Release is ruled unconstitutional or contrary to statute or public policy, then only that part of the Stipulation & Release shall be stricken or severed from the Stipulation & Release without affecting the remaining portions of the Stipulation & Release.

9. **CLAIMANT RESPONSIBLE FOR HEALTH INSURANCE CLAIMS**

& LIENS: The Claimant agrees that he is and will remain responsible for any claims for reimbursement and liens imposed by any group health insurance carriers and/or administrators. The Claimant further agrees to release, hold harmless and indemnify the Employer/Carrier/Servicing Agent with respect to any such claims and liens.

10. **ADDITIONAL CONTINGENCIES WITH REGARD TO LIENS:**

In addition to contingencies as contained elsewhere within this Stipulation & Release, the parties agree that this Stipulation & Release also is contingent upon the parties' verification to their mutual satisfaction that there exist no liens for conditional payments by Medicare, Medicaid or the Veterans Administration. Should any such liens be identified by either party prior to the date on which the Judge of Compensation Claims enters an Order on the parties' Joint Motion for Approval of Attorney's Fees and Allocation of Child Support Arrearage, as more fully described within paragraph

15 of this Stipulation & Release, then either the Claimant or the Employer/Carrier/Servicing Agent may satisfy the lien(s) or elect to void this Stipulation & Release by giving the other party 10 days' notice of the existence of the lien and its election to either satisfy the lien(s) or void the settlement.

11. **PRESENT WORTH AND POSSIBLE OFFSET FOR SOCIAL SECURITY DISABILITY BENEFITS CONSIDERED:** In reaching this agreement, the parties have considered the present value of all future payments of indemnity benefits, impairment benefits, medical benefits and death benefits potentially payable to the Claimant under the Florida Workers' Compensation Act on account of the accidents, injuries, exposures or occupational diseases referenced herein. The Claimant was born on Sept. 19, 1954 and his life expectancy is 19.5 years or 1,014 weeks. When the lump sum payment herein is prorated on a weekly basis over the Claimant's life expectancy, the lump sum is equal to payment of future benefits at a rate of \$128.21 per week. This periodic repayment schedule results in a substantial loss to the Claimant on a consistent basis. Taking that into consideration, the parties hereby agree that those weekly payments are the same as if the lump sum would have been paid to the Claimant at a rate of \$128.21 per week over his expected lifetime. The same is true for the lump-sum payment of future medical benefits which, when reduced to present value, the parties agree is equal to \$62,400. The lump-sum consideration given for the settlement of future medical benefits is the same as if the lump sum would have been paid to the Claimant at a rate of \$61.54 per week over his expected lifetime. The Employer/Carrier/Servicing Agent's right to offset workers' compensation indemnity and medical benefits due under Florida Workers' Compensation Act against benefits payable on account of total disability under Chapter 42, *United States Code*, including benefits payable under Medicare, also is included in these calculations and has been considered by the parties in reaching this agreement.

The Claimant acknowledges that he has not relied on any representations, advice or counsel of the Employer or Servicing Agent, their attorneys, agents or adjusters regarding the Claimant's entitlement to Social Security, Medicare or Medicaid benefits or the impact the terms of this Stipulation & Release may have on such benefits. The Claimant further acknowledges that any decision regarding entitlement to Social Security, Medicare or Medicaid benefits, including the amount and duration of payments and offset or reimbursement for prior payments, is exclusively within the jurisdiction of the Social Security Administration, the United States Government, and the United States federal courts and is determined by federal law. As such, the United States Government is not bound by any terms of this Stipulation & Release. The Claimant has been apprised of his right to seek assistance from legal counsel of his choosing or directly from the Social Security Administration or other governmental agencies regarding the impact this Stipulation & Release may have on the Claimant's present or future entitlement to Social Security or other governmental benefits. Notwithstanding the foregoing, the Claimant desires to enter into the terms of this Stipulation & Release.

This settlement agreement represents a compromise of both undisputed and controverted entitlement to future workers' compensation medical care at the expense of the Employer and/or Servicing Agent pursuant to §§ 440.13 and 440.134, Fla. Stat. Considerable attention has been given to the Claimant's entitlement to Social Security Disability Benefits pursuant to 42 U.S.C. § 423 and receipt of Medicare benefits under 42 U.S.C. § 1395, as well as the Healthcare Financing Administration's entitlement to subrogation and intervention rights pursuant to 42 C.S.R. subpart C, to recover any overpayment made by Medicare. It is not the purpose of this settlement agreement to shift to Medicare the responsibility for payment of medical expenses for the treatment of work-

related conditions. Instead, this settlement agreement is intended to provide the Claimant a lump sum that will foreclose the Employer/Carrier/Servicing Agent's responsibility for future payments of all work-related medical and indemnity benefits.

The Claimant accepts full responsibility for reimbursing Medicare, Medicaid, the Veterans Administration and any other payors for any and all conditional or provisional payments that any or all entities have made or may make on the Claimant's behalf for services and/or other expenses causally related to the alleged industrial accident. The Claimant further agrees to indemnify, release and hold harmless the Employer/Carrier/Servicing Agent and their attorneys with regard to reimbursement to said entities for any and all conditional or provisional payments made by or to be made by any or all of those entities on the Claimant's behalf for services and/or other expenses causally related to the alleged industrial accident.

The Claimant alone is responsible for funding a Workers' Compensation Medicare Set-Aside Arrangement, if same is required by the Centers for Medicare & Medicaid Services (CMS). The Claimant further agrees to indemnify, release and hold harmless the Employer/Carrier/Servicing Agent and their attorneys in the event the Claimant fails or refuses to fund and properly administer a Medicare Set-Aside allocation, in the event same is required by the CMS.

The Claimant also certifies that he is not receiving Social Security benefits of any type whatsoever, is not receiving Medicare benefits, does not reasonably anticipate receipt of Social Security or Medicare benefits within the next 30 months, and does not presently have an application(s) for these benefits pending with any state or federal agency.

Further, the Claimant acknowledges that his attorney has made no representation whatsoever that the Claimant will ever receive Social Security Disability, Medicaid and/or Medicare Benefits.

The Claimant further acknowledges that there may be some type of Social Security Disability, Medicaid and/or Medicare offset with respect to any sum of medical or indemnity benefits that the Claimant is receiving.

The Claimant further acknowledges that if Chapter 440, Florida Statutes, as amended effective Oct. 1, 2003, is found to be unconstitutional, his benefits could be greater than the benefits available to him at the time of this instant settlement. Knowing this, the Claimant nevertheless chooses to settle his case as set forth herein in this instant Stipulation & Release.

12. **WAIVER OF PENALTIES AND INTEREST**: The Claimant does hereby waive any right he may have to any and all penalties or interest on account of the alleged accidents, injuries, exposures or occupational diseases referenced herein.

13. **ALL KNOWN ACCIDENTS, INJURIES, AND OCCUPATIONAL DISEASES REVEALED AND ALL PENDING CLAIMS WITHDRAWN**: The Claimant represents and affirms that all accidents, injuries, exposures and occupational diseases known to have occurred to or been sustained by him while in the employ of the Employer herein have been revealed. All known claims or pending claims pertaining to any and all such accidents, injuries, exposures and occupational diseases are voluntarily withdrawn with prejudice and all notices of denial pertaining thereto are hereby voluntarily withdrawn.

14. **EMPLOYER GIVEN FORMAL NOTICE OF PROPOSED LUMP-SUM SETTLEMENT**: The parties represent that the terms and conditions of this settlement have been disclosed to the Employer as is required under § 440.20(11)(b), Fla. Stat. (2003). A copy of the letter giving the Employer notice of the terms and conditions of this settlement is attached.

15. **STIPULATION NOT SUBJECT TO APPROVAL OF JUDGE OF COMPENSATION CLAIMS:** The parties clearly understand that this Stipulation & Release will neither be submitted to nor considered by a Judge of Compensation Claims. However, the parties will seek the Judge of Compensation Claims' approval of a Joint Motion for Approval of Attorney's Fees and Allocation of Child Support Arrearage, which Joint Motion the parties agree will be filed by counsel for the Employer/Carrier/Servicing Agent after this Stipulation & Release has been executed by all parties, subject also to the Claimant's execution of additional documents as may be required by the Employer/Carrier/Servicing Agent. The Claimant understands that motions for attorneys' fees have been routinely disapproved by Judges in the past and that he should not undertake financially binding actions until formal approval is obtained.

The parties agree that the Claimant must be living at the time of the Judge's entry of an Order that approves the parties' Joint Motion for Approval of Attorney's Fees and Allocation of Child Support Arrearage; otherwise, this Stipulation & Release and all prior agreements pertaining to the same will be deemed to be void *ab initio*.

16. **CLAIMANT HAS RECEIVED ADVICE AND COUNSEL:** The Claimant hereby represents and acknowledges that he has had ample opportunity to consult with and has been fully advised by his attorney of the binding nature and import, expressed and implied, of the contents of this Stipulation & Release and that he has freely and voluntarily executed this Stipulation & Release without compulsion whatsoever. The Claimant represents that nothing has been promised to him, other than the lump sum described herein above, in exchange for this Stipulation & Release of the Employer/Carrier/Servicing Agent. The Claimant has had an opportunity to fully review this

Stipulation & Release and has had the opportunity to discuss all aspects of its legal significance with his attorney. The Claimant fully and completely understands the legal significance of this agreement.

17. **ENTIRE AGREEMENT:** This Stipulation & Release contains the entire agreement between the parties and all previous negotiations leading to execution of this Stipulation & Release. In the event of a conflict between the terms or provisions of this Stipulation & Release and the terms or provisions of any prior agreement(s), the terms and provisions of this Stipulation & Release shall control and supersede the terms and provisions of the prior agreement(s).

18. **APPROVAL REQUIRED BY OFFICE OF MANATEE COUNTY ATTORNEY:** The parties agree and understand that this Stipulation & Release is contingent upon its approval by the Office of the Manatee County Attorney. If the Manatee County Attorney or his designee fails or refuses to approve and execute this Stipulation & Release, then this Stipulation & Release and any prior agreement pertaining to same shall be deemed to be null and void *ab initio*.

19. **BOARD APPROVAL REQUIRED:** The parties agree and understand that this agreement is contingent upon approval of its terms by the Manatee County Board of County Commissioners. If the Board fails or refuses to approve the terms of the agreement, then this Stipulation & Release and any prior agreement pertaining to same shall be deemed to be null and void *ab initio*.

20. **OBLIGATION UNDER FLORIDA PUBLIC RECORDS LAWS:** Upon execution of this Stipulation & Release, the Claimant warrants, represents, understands and agrees that any information contained within will be subject to disclosure by the parties herein and subject to further disclosure by others, under the Florida Public Records Laws and the Constitution of the State of Florida, and is not protected by any privacy laws or regulations.

21. **PAYMENT DUE**: The Employer/Carrier/Service Agent shall issue the aforementioned lump sum payment to the Claimant in care of his attorney no later than 15 days after the Office of the Judges of Compensation Claims electronically mails to the parties a signed and conformed Order Under § 440.20(11)(c), (d) & (e), Fla. Stat. (2003). Payment shall be deemed complete upon mailing via the United States Postal Service or its substantial equivalent, or via hand delivery, or via electronic banking deposit, at the election of the Employer/Carrier/Service Agent.

22. **COUNTERPARTS**: This Agreement may be executed in counterparts and all so executed shall constitute an agreement binding on all the parties hereto, notwithstanding that all the parties hereto are not signatories to the original or to the same counterpart.

* * * * *

Dated: 11/20/17

Dated: 11/29/17

Law Office of Michael J. Winer, P.A.
110 N. 11th Street, 1st Floor
Tampa, FL 33602-4223
(813) 224-0000

**Michael
Winer**

Digitally signed by Michael Winer
DN: cn=Michael Winer, o=Law
Office of Michael Winer,
email=mike@mikewinerlaw.com,
c=US
Date: 2017.11.17 10:15:03 -05'00'


By: **John Richmond**
Employee/Claimant

By: **Michael J. Winer, Esq.**
Fla. Bar No. 070483
Attorneys for Employee/Claimant


Dated: _____

Dated: November 4, 2017

Manatee County Attorney's Office
P.O. Box 1000
Bradenton, FL 34206-1000
(941) 745-3750

Pallo, Marks, Hernandez,
Gechijian & DeMay, P.A.
5602 Marquesas Circle, Suite 104
Sarasota, FL 34233-3343
(941) 328-6200

By: **Mitchell O. Palmer, Esq.**
County Attorney
(or his designee)
Fla. Bar No. 351873
Attorney for Employer


By: **Daniel J. DeMay, Esq.**
Fla. Bar No. 764728
Attorneys for Employer/
Carrier/Servicing Agent

AFFIDAVIT

State of Florida

County of Hillsborough

BEFORE ME, the undersigned authority duly authorized to administer oaths and take acknowledgments, personally appeared JOHN RICHMOND, who is personally known to me or was identified by driver's license number _____ on this 29th day of November, 2017, and who, upon being duly sworn, certifies that the information furnished by him as incorporated in the foregoing Stipulation & Release is true and correct and that he has read the Stipulation & Release or had the Stipulation & Release read to him and believes the lump sum settlement to be in his best interest.



(SEAL)

Danielle Sciarra
Notary Public

State of Florida

Printed Name: Danielle Sciarra

Commission No.: ~~FF~~ FF948411

My commission expires: 4/22/20