

The Office Of  
State Treasurer  
Denise L. Nappier

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**Press Statement**

FOR IMMEDIATE RELEASE  
August 16, 2012

**TREASURER NAPIER'S STATEMENT  
CONCERNING ATTORNEY GENERAL'S OPINION:  
\$225,000 AWARD OF WORKERS' COMPENSATION BENEFITS WAS PROPER**

"Yesterday, the Office of the Attorney General issued an informal opinion which affirmed the propriety of a settlement that was challenged by the Auditors of Public Accounts in its May 16, 2012 report on the State Treasurer. I am pleased that the Attorney General has agreed that the award of \$225,000 to the spouse of an injured worker was, in fact, proper, and that the settlement of this claim was in the best interests of both the injured worker and the Fund."

Attached are: (1) Treasurer Nappier's letter of August 16, 2012 to the Auditors of Public Accounts; (2) Assistant Deputy Treasurer Maria Greenslade's letter of May 18, 2012 to the Attorney General; and (3) the Office of the Attorney General's response of August 15, 2012.

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DENISE L. NAPPIER  
TREASURER

State of Connecticut  
Office of the Treasurer

CHRISTINE SHAW  
DEPUTY TREASURER

August 16, 2012

John C. Geragosian  
Robert M. Ward  
Auditors of Public Accounts  
State Capitol  
210 Capitol Avenue  
Hartford, Connecticut 06106-1559

Dear Messrs. Geragosian & Ward,

I am writing to advise you of an informal opinion from the Office of the Attorney General (OAG) concerning the premise of an audit finding involving the Second Injury Fund and published May 16, 2012 in the Auditors' Report on the State Treasurer and the State Financial Operations for the Fiscal Year Ending June 30, 2011.

For your review, I have attached the OAG opinion which affirms the Second Injury Fund's ("the Fund") authority to settle claims, including claims with potential surviving spouses, and, further, deems proper the actions taken by the Fund in connection with the matter of Coleman v. Yale.

It bears noting that the Auditors' focus on this matter has been constructive. In addition to the OAG's affirmation of the points of law noted above, we have taken steps to shore up the Fund's internal procedures regarding the settlement of claims. Our policy now makes clear that any stipulated agreement must conform to the terms of what has been authorized by the Fund's Settlement Review Committee or authorized Fund representative and, further, that the OAG must sign off on such agreements as to form and legality.

With respect to the finding itself, your report stated that an "injured worker's spouse did not meet the statutory requirements to qualify as the surviving spouse; therefore, the claims manager had no authority to process the payment."<sup>1</sup> The report went on to conclude that "[t]he injured worker's spouse had no legal standing to make any claim for settlement funds" and that the "Second Injury Fund's internal control procedures were circumvented to allow settlement funds to be paid to an individual that did not have a valid claim."<sup>2</sup>

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<sup>1</sup> See *Auditors' Report: State Treasurer, State Financial Operations for the Fiscal Year ended June 30, 2011* at 18.

<sup>2</sup> *Id.*

Messrs. Geragosian & Ward  
August 16, 2012  
Page Two

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Given that this audit finding raised questions concerning the requirements of state statute and the boundaries of our authority to settle claims, I sought and received from the OAG an informal opinion that makes two key points abundantly clear: (1) the OAG “is authorized by statute to negotiate a settlement with a spouse of his or her prospective claim for survivor’s benefits;”<sup>3</sup> and (2) the settlement and subsequent payment by the Fund to the spouse of an injured worker was proper, and that the Treasury “absolutely acted properly in doing so.”<sup>4</sup>

The OAG also squarely addressed the Auditors’ assertion that “[i]t appears that the Second Injury Fund was seeking to minimize potential liability by protecting self-interest instead of the injured worker’s interest.”<sup>5</sup> Given the facts and circumstances of the case cited in the audit finding, the OAG concluded that “the allocation of the settlement proceeds into two settlement agreements... was ‘for the best interests of the employee.’”<sup>6</sup> Moreover, the OAG affirmed the propriety of the Second Injury Fund “capping its liability” by settling claims with injured workers’ dependents.<sup>7</sup>

In light of the Attorney General’s informal opinion, I respectfully request a modification of the audit finding, specifically as it relates to the scope of the Fund’s settlement authority and the propriety of settling with a potential surviving spouse.

Thank you for your attention to this matter. Should you wish to discuss this further, please feel free to call on me.

Sincerely,



Denise L. Nappier  
State Treasurer

Cc: Thomas W. Willametz, Administrative Auditor

Enclosures

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<sup>3</sup> Letter from Office of the Attorney General dated August 15, 2012 at 2.

<sup>4</sup> *Id.* at 4.

<sup>5</sup> *Auditors’ Report* at 18.

<sup>6</sup> Letter from Office of the Attorney General at 4.

<sup>7</sup> *Id.*



DENISE L. NAPIER  
TREASURER

State of Connecticut  
Office of the Treasurer

May 18, 2012

Attorney Philip M. Schulz  
Attorney General's Office  
55 Elm Street  
Hartford, CT 06106

Dear Attorney Schulz:

The Office of the State Treasurer hereby requests an informal opinion from the Office of the Attorney General (OAG) regarding a settlement and subsequent payment by the Second Injury Fund ("SIF" or "Fund") to the spouse of an injured worker.

**Background:**

The case of Debra Coleman v. Yale University and the Second Injury Fund involved a claim for workers' compensation benefits in connection with injuries sustained by Ms. Coleman while employed by Yale University. The Fund was liable for payment of cost of living benefits pursuant to section 31-307a of the Connecticut General Statutes.

In January of 2011, Ms. Coleman, Yale and the Fund agreed to enter into a full and final settlement of all claims, with the Fund contributing \$450,000 for cost of living benefits. The Workers' Compensation Commission, upon request of Ms. Coleman's counsel, ordered the settlement to be divided into two payments - \$225,000 to Ms. Coleman in connection with her claim pursuant to 31-307a; and \$225,000 to her spouse (a potential surviving spouse) pursuant to 31-306 - in exchange for full and final settlement of all claims against the Fund.

Thereafter, two stipulated agreements were presented to the OAG and the Fund, and neither office objected to the splitting of the \$450,000 settlement between the injured worker and the potential surviving spouse. In accordance with the Workers' Compensation Commission's order, the Second Injury Fund issued two checks as set forth in the stipulated agreements.

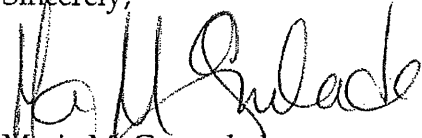
**Issues Presented:**

We seek an informal opinion on the following:

- 1) Whether the Office of the Attorney General is authorized to negotiate settlement on behalf of the Second Injury Fund with the spouse of an injured worker (i.e., a potential surviving spouse);
- 2) Whether settlement and subsequent payment by the Second Injury Fund to the spouse of an injured worker -- in accordance with section 31-306 of the Connecticut General Statutes or any other relevant provision of state law -- was proper; and
- 3) If the payment to the spouse of an injured worker was improper, what recourse does the Fund have to recover said payment.

Please advise if you have any questions or if you require additional information with regard to this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Maria M. Greenslade". The signature is fluid and cursive, with the first name being the most prominent.

Maria M. Greenslade  
Assistant Deputy Treasurer  
Second Injury Fund/Unclaimed Property Division

GEORGE C. JEPSEN  
ATTORNEY GENERAL



55 Elm Street  
P.O. Box 120  
Hartford, CT 06141-0120

Tel: (860) 808-5050  
Fax: (860) 808-5388

Office of The Attorney General  
**State of Connecticut**

August 15, 2012

Maria M. Greenslade,  
Assistant Deputy Treasurer  
State of Connecticut  
Office of the Treasurer  
55 Elm Street  
Hartford, CT 06106-1773

OFFICE OF THE  
STATE TREASURER  
2012 AUG 15 P 2:29  
SECOND INJURY FUND

Re: Debra Coleman v. Yale University and the Second Injury Fund

Dear Ms. Greenslade:

This letter responds to your letter dated May 18, 2012, wherein you request an informal opinion regarding the full and final settlement of the claim of Debra Coleman, as well as settlement of her husband's future claim for death benefits as her prospective surviving dependent spouse.

As you indicated in your letter, Ms. Coleman, Yale University and the Second Injury Fund ("Fund") agreed to enter into a full and final settlement of all claims in January of 2011. The Fund agreed to contribute the sum of \$450,000 in order to settle its liability for cost of living adjustments (COLAs) as provided for in Conn. Gen. Stat. § 31-307a. This sum was approved by the settlement committee of the Fund. Counsel for Ms. Coleman proffered two stipulation documents, each for the sum of \$225,000, one containing language to settle the Fund's COLA liability by means of a payment to Ms. Coleman and the other containing language to settle any future liability the Fund may have had for survivor's benefits pursuant to Conn. Gen. Stat. § 31-306(a)(2) by a payment to Ms. Coleman's spouse. These payments were made to Ms. Coleman and her husband in exchange for their agreement to settle all claims against the Fund past, present and future.

After the two stipulations were signed by the parties, they were presented to a workers' compensation commissioner who approved the agreements and ordered that they be paid. As you noted in your letter, the Fund issued a check to Ms. Coleman and a separate check to her husband as provided for in the stipulation agreements. The two checks totaled \$450,000, the amount specifically approved by the settlement committee of the Fund, and the Fund did not lose any money because of the settlement structure.

In your letter, you request my legal opinion as to whether the Office of the Attorney General is authorized to negotiate settlements on behalf of the Fund with the spouse of an injured worker in recognition of the spouse's status as a potential surviving dependent.

Conn. Gen. Stat. § 3-125 provides, in pertinent part, as follows:

The Attorney General shall have general supervision over all legal matters in which the state is an interested party. . . . He shall appear for the state... the Treasurer . . . in all suits and other civil proceedings . . . in which the state is a party or is interested. . . .

The "general supervision" that this office exercises when it appears for state agencies in civil proceedings includes the power to negotiate the settlement of claims on terms fair and equitable to claimants as well as the state agencies we represent. As you know, the Second Injury Fund is administered by the state Treasurer, who by statute is the custodian of the Fund. Conn. Gen. Stat. § 31-354(a). Settlement of cases on a basis that appropriately protects the Fund's assets is consistent with the Treasurer's duties as custodian. See Public Act 96-242; Going v. Cromwell Fire District, 159 Conn. 53, 61 (1970). As legal counsel for the Fund, when called upon, the Attorney General, or his designated assistant attorneys general, is empowered to decide, on a case-by-case basis, whether contested matters should be tried or disposed of by mean of settlement. This office has represented the Fund for decades and, consistent with its statutory powers as enumerated in §3-125, exercises its authority to resolve contested cases in a manner most likely to serve the interests of injured workers as well as to preserve Fund assets. This office is authorized by statute to negotiate a settlement with a spouse of his or her prospective claim for survivor's benefits.

In your letter, you have also requested an opinion as to whether settlement and subsequent payment by the Fund to Ms. Coleman's spouse was proper under Conn. Gen. Stat. § 31-306 and other relevant provisions of state law. Here, as noted above, the Fund's representative signed and the compensation commissioner approved a separate settlement stipulation that allocated one-half of the gross settlement proceeds to the spouse. Simply because Conn. Gen. Stat. § 31-306 does not specifically authorize the Fund to compensate claimants' dependents directly for potential future claims for death benefits does not end the inquiry.<sup>1</sup> Rather, the determinative question is whether the Fund's and the commissioner's

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<sup>1</sup> Conn. Gen. Stat. § 31-306(a) provides, in pertinent part: "Compensation shall be paid to dependents on account of death resulting from an accident arising out of and in the course of employment or from an occupational disease as follows:

To those wholly dependent upon the deceased employee at the date of the deceased employee's injury, a weekly compensation equal to seventy-five per cent



decision to allocate and pay one-half of the settlement proceeds to Ms. Coleman's spouse in a separate settlement agreement was in the best interests of not only the injured employee but also the Fund. *See* Conn. Gen. Stat. Section 31-353.<sup>2</sup> As a result, and explained more fully below, I

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of the average weekly earnings of the deceased calculated pursuant to section 31-310, after such earnings have been reduced by any deduction for federal or state taxes, or both, and for the federal Insurance Contributions Act made from such employee's total wages received during the period of calculation of the employee's average weekly wage pursuant to said section 31-310, as of the date of the injury but not more than the maximum weekly compensation rate set forth in section 31-309 for the year in which the injury occurred or less than twenty dollars weekly.

(A) The weekly compensation rate of each dependent entitled to receive compensation under this section as a result of death arising from a compensable injury occurring on or after October 1, 1977, shall be adjusted annually as provided in this subdivision as of the following October first, and each subsequent October first, to provide the dependent with a cost-of-living adjustment in the dependent's weekly compensation rate as determined as of the date of the injury under section 31-309 . . . . With respect to any dependent receiving benefits on October 1, 1997, with respect to any injury occurring on or after July 1, 1993, and before October 1, 1997, such benefit shall be recalculated to October 1, 1997, as if such benefits had been subject to recalculation annually under this subparagraph. The difference between the amount of any benefits that would have been paid to such dependent if such benefits had been subject to such recalculation and the actual amount of benefits paid during the period between such injury and such recalculation shall be paid to the dependent not later than December 1, 1997, in a lump-sum payment. The employer or its insurer shall be reimbursed by the Second Injury Fund, as provided in section 31-354, for adjustments, including lump-sum payments, payable under this subparagraph for deaths from compensable injuries occurring on or after July 1, 1993, and before October 1, 1997, upon presentation of any vouchers and information that the Treasurer shall require. No claim for payment of retroactive benefits may be made to the Second Injury Fund more than two years after the date on which the employer or its insurer paid such benefits in accordance with this subparagraph.

<sup>2</sup> Conn. Gen. Stat. § 31-353 provides, in pertinent part, that “[t]he Treasurer may make payment by way of final settlement in any matter concerning the fund . . . subject to the approval of the commissioner, *whenever it is for the best interests of the injured employee.*” (Emphasis added).



believe your office had the authority to enter into the settlement in this matter, and absolutely acted properly in doing so.

First, at the time that the two settlement agreements were presented to the Fund by claimant's counsel, he advised the Fund that if Ms. Coleman were to receive the full \$450,000 payment in her name alone, she would likely forfeit a substantial portion of the long term disability payments she was receiving from private insurance when her settlement agreement was approved by the commissioner and paid by the Fund. Thus, the allocation of the settlement proceeds into two settlement agreements, one payable to Ms. Coleman and other payable to her spouse, was "for the best interests of the injured employee" as mandated by § 31-353. Second, regardless of the absence of a statute that specifically authorizes the payment of money to a prospective surviving dependent spouse by the Fund, the compensation commissioner was obligated under our Workers' Compensation Act and the case law interpreting it to review the settlement agreements before him and determine whether the agreements were legally sufficient in all respects and in the best interests of the injured employee. See Conn. Gen. Stat. §§ 31-278 and 31-353. See also Muldoon v. Homestead Insulation Co., 231 Conn. 469, 479-80 (1994).<sup>3</sup> In the Coleman matter, such a determination was facilitated when the commissioner was advised by the parties of the reasons that the settlement proceeds were allocated to Ms. Coleman and her spouse in separate settlement agreements. Finally, the Fund and Yale University made the payments to Ms. Coleman's spouse in exchange for valuable consideration: her spouse's waiver of any rights he may have had to future survivor's benefits in the event that his wife died as a consequence of her compensable injuries. That is to say, although Ms. Coleman's spouse might not have been a "survivor" at the time of the settlement, it is entirely possible that he might have been in the future, a contingency that clearly could give rise to the Fund's further liability for benefits under § 31-306(a)(2).

Under those circumstances I believe it is entirely appropriate when the Fund is resolving a matter with an injured employee and capping its liability also to resolve the matter with the injured employee's dependents, where it is in the Fund's best interest to do so. Resolving such

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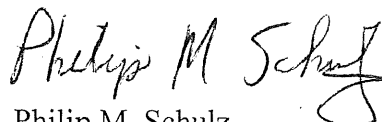
<sup>3</sup> It should be noted that the compensation commissioner actually approved a total of four settlement agreements in the Coleman matter, two involving the Fund and two others involving Ms. Coleman's employer, Yale University, which settled both Mrs. Coleman's workers' compensation claim and her spouse's future claim for survivor's benefits for the sum of \$550,000, one half of which was allocated and paid to Ms. Coleman and the other half allocated and paid to her spouse.

contingencies in the Fund's best interest is consistent with the Treasurer's custodial duty to the Fund just as any settlement in the Fund's best interest would be consistent with that duty.<sup>4</sup> Resolution by negotiated settlement often best serves the Fund's interests, and we are aware of no reason to conclude that this was not the case here.

Finally, you asked what legal recourse the Fund would have to recover the payment of \$225,000 to Ms. Coleman's spouse if settlement of his interests were improper. Because I conclude that your Office's settlement of this matter was entirely proper, I need not address this question. I recommend that no steps be taken to recover the money paid to Ms. Coleman's spouse.

I trust that the foregoing has answered your questions.

Very truly yours,



Philip M. Schulz  
Assistant Attorney General

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<sup>4</sup> As you know, § 31-353 was recently amended to broaden the scope of the parties who can lawfully enter into stipulated settlements with the Fund. As noted above, the new version of the statute (which will become effective on October 1, 2012) specifically authorizes the Fund to enter into stipulated settlements not only for the benefit of injured employees, but also for the benefit of the dependents of injured employees. Conn. Gen. Stat. § 31-353, as amended by Public Act 12-77, effective October 1, 2012, provides, in pertinent part, as follows:

(b) The Treasurer may make payment by way of stipulated settlement *in any matter* concerning the fund under this chapter, subject to the approval of the commissioner, whenever it is for (1) in the best interests of the injured employee, (2) *in the best interests of the injured employee's dependents*, or (3) for claims by an employer or insurer pursuant to section 31-306, 31-307a or 31-310. (Emphasis added).

In my view, this change further evidences a legislative intent to permit the Fund to enter into agreements directly with dependents of injured employees in "any matter that concerns the fund." Notably, the new language adopted by the legislature contains no qualification that the interests of dependents must have ripened at the time of a stipulated settlement.