



State of New Jersey

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
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Commissioner

MEMORANDUM

October 28, 2010

To: All Judges and Attorneys
From: Peter J. Calderone, Director and Chief Judge
Subject: Medicare Release Language

Attached are e-mails between the workers' compensation judges and this office concerning Medicare Release Language. Specifically, the consensus of the judges was to preclude such broad release language as part of a settlement order, attached to a settlement or placed on the settlement record.

I have been asked to include these e-mails in the Medicare section of the website, which will be done.

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Calderone, Peter

From: Calderone, Peter
Sent: Tuesday, September 07, 2010 12:00 PM
To: DWC Judges
Subject: FW: "Medicare Release" Language

While the "Medicare Release" language below or similar language has been include in a small number of case closures in the past, I am advised by the supervising judges that there is now agreement in all vicinages that such language should not be included as part of a settlement order, attached to a settlement order or placed on or part of the settlement record.

From: Calderone, Peter
Sent: Thursday, August 26, 2010 3:45 PM
To: DWC Judges
Subject: "Medicare Release" Language

I will need a memo (preferably e-mail) from every supervising judge in discussion with the judges in the vicinage on the following:

We have received numerous complaints about respondents who are seeking to have the below or similar language included in settlement orders, attached to settlement orders and/or placed on the record through petitioner's testimony, as an exhibit, as a stipulation or otherwise:

The claimant, _____, agrees to indemnify defendant, hold harmless the respondent from any action by Medicare seeking payment of past, current or future medical expenses for the claimant. Claimant shall further hold the respondent harmless from any and all adverse consequences in the event the settlement results in the loss of right to Social Security and/ Medicare benefits to the extent claimant would have been entitled to those benefits in the absence of the settlement agreement.

While this particular language comes from Freehold, I would like to know (a) whether you have encountered such situations and (b) if so, how are you handling them. In my view, Freehold was correct in not accepting this language as part of the order or settlement record since the judge considered such a clause to not be fair and just, which is a finding the judge must make in every settlement.

Supervising judges, please let me know as soon as possible if your vicinage is encountering this attempt to include this particular language, similar language or other tactics to absolve a respondent of future Medicare responsibilities and/or claims by the petitioner against the respondent due to Medicare issues.

10/28/2010