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**UTAH LABOR COMMISSION**

**ALBERTO CENICEROS,**

**Petitioner,**

vs.

**JOHN KUHNI SONS, INC. and  
WORKERS COMPENSATION FUND,**

**Respondents.**

**ORDER APPROVING  
SETTLEMENT AGREEMENT**

**Case No. 09-0132**

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Petitioner Albert Cenicerros and Respondents John Kuhni Sons, Inc. and Workers Compensation Fund (referred to jointly as “Kuhni” hereafter) seek Commission approval of their proposed settlement of Mr. Cenicerros’s claim for benefits under the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated. Administrative Law Judge La Jeunesse has previously declined to approve the settlement. The parties now ask the Commission to consider the matter and to approve the settlement.

**BACKGROUND**

Mr. Cenicerros injured his right knee while working for Kuhni during May 2007. He underwent two arthroscopic surgeries and reached medical stability by July 2008. Kuhni paid all medical and disability benefits that were due Mr. Cenicerros for his injury.

After the two surgeries, Mr. Cenicerros continued to experience right-knee pain. His current treating physician suggests that he undergo a meniscal transplant. However, Kuhni’s medical consultant does not believe Mr. Cenicerros is a good candidate for such surgery, and the physician who performed Mr. Cenicerros’s previous arthroscopic surgeries doubts that the proposed surgery would help Mr. Cenicerros. For these reasons, Kuhni refused to pay for the proposed surgery. In response, Mr. Cenicerros filed an application asking the Commission to resolve this dispute. The matter was assigned to Judge La Jeunesse for adjudication.

Mr. Cenicerros’s claim is currently pending before Judge La Jeunesse. However, the parties have reached a voluntary settlement of their dispute. In summary, Kuhni has agreed to pay Mr. Cenicerros \$45,000, less attorney’s fees, and Mr. Cenicerros has agreed to release Kuhni from all further liability for any medical benefits, disability compensation, or other workers’ compensation benefits arising from his right-knee injury.

As required by § 34A-2-420(4)(a) of the Utah Workers’ Compensation Act, the parties submitted their proposed settlement agreement to Judge La Jeunesse. Judge La Jeunesse rejected the settlement on the grounds that “[w]hether or not a proposed controversial procedure is medically reasonable and necessary is not a sufficient basis to close out all workers’ compensation benefits on

a full and final basis with respect to an accepted claim.” Mr. Cenicerros and Kuhni have now jointly asked the Commission to review this matter and to approve their proposed settlement agreement.

## DISCUSSION

In considering any proposed settlement, the Commission must bear in mind that the Utah Workers’ Compensation Act provides an integrated system to provide for the needs of injured workers. Specifically:

- The Act requires employers or their insurance carriers to pay the reasonable expense of all medical care necessary to treat employees’ work-related injuries, regardless of the dollar amount or duration of such medical care.
- The Act also requires employers to pay disability compensation: 1) while employees recover from their workplace injuries; and 2) for any permanent disability caused by the workplace injury. The Act directs that this disability compensation be paid in monthly installments in order to partially replace the wages lost by injured employees as a result of their injuries.

As the Utah Supreme Court observed in *Reteuna v. Industrial Commission*, 185 P. 535, 537 (Utah 1919), decided shortly after enactment of the Workers Compensation Act: “[t]he Utah Workers Compensation Act embodies a public policy and legislative intent to ‘secure compensation to an injured employee ... (and) to relieve society of the care and support of the unfortunate victim of the industrial accident.’”<sup>1</sup> Thus, the Act’s provisions for on-going medical care and periodic payment of disability compensation are a legislatively-created method intended to serve the foregoing public policy. For that reason, the Act’s provisions for payment of all medical expenses and periodic payment of disability compensation must be viewed as the customary and preferred method by which employers and insurers discharge their liability for workers’ compensation benefits. Any proposal to substitute some other form of payment for the method established by the Act must be carefully scrutinized to insure that the proposal does not undermine the public policy and legislative intent underlying the Act.

Nevertheless, the Act itself contemplates that settlements sometimes may be appropriate. Section 34A-2-420 of the Utah Workers’ Compensation Act states (emphasis added):

(4) Notwithstanding Subsection (1) and Section 34A-2-108, an administrative law judge shall review and **may** approve the agreement of the parties to enter into a full and final:

(a) compromise settlement of disputed medical, disability, or death benefit

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<sup>1</sup> It must also be noted that, in return for the medical and disability benefits provided by the Act, injured workers have given up their right under the common law to bring tort claims against their employers for work injuries, thereby exchanging their right to bring civil damage lawsuits against their employers for the benefits provided by the Act. It is important that the Commission ensure that settlement agreements do not unreasonably deprive injured workers of the benefit of that exchange.

entitlements under this chapter or Chapter 3, Utah Occupational Disease Act; or  
(b) commutation and settlement of reasonable future medical, disability, or death benefit entitlements under this chapter or Chapter 3 by means of a lump sum payment, structured settlement, or other appropriate payout.

The Commission has previously observed that “[s]ettlement of . . . disputed claims allows the parties to assess the strengths and weaknesses of their respective positions and then strike a compromise in order to avoid the risk, expense and delay of further adjudication.” (See Commissioner Hayashi’s letter of August 4, 2008, to workers’ compensation practitioners.) In this case, the parties would resolve their dispute over the proposed surgery by fully and finally settling Mr. Ceniceros’s claim for workers’ compensation benefits for his right-knee injury. The record shows the parties’ dispute to be genuine--Mr. Ceniceros’s treating physician recommends surgery but Kuhni’s medical consultants view the surgery as ill-advised and unnecessary. Each party’s position presents some risk and further litigation certainly will entail expense and delay. Both parties have had the advice of counsel on the advisability of settlement. Finally, the Commission notes Mr. Ceniceros has already received payment for previous disability and medical care of the right knee, and the knee is medically stable. Any additional surgery reasonably could be viewed as palliative rather than medically necessary. The consequences of such surgery would be entwined with the effects of the original knee injury and subsequent arthroscopic surgeries, thereby creating a situation where questions of causation and compensability would be difficult to resolve.

When all these factors are considered, it is reasonable to allow the parties to allocate the risk of the proposed surgery by means of a full and final settlement agreement. The Commission finds the terms of the proposed settlement to be reasonable and fair.

### **ORDER**

The Commission hereby approves the parties’ Settlement of Claim of Disputed Validity in the case of *Alberto Ceniceros v. John Kuhni Sons, Inc. and Workers Compensation Fund*, Labor Commission Case No. 09-0132, in relation to all provisions of the settlement that fall under the jurisdiction of the Utah Labor Commission pursuant to provisions of the Utah Labor Commission Act, Title 34A, Chapter 1, Utah Code Annotated; the Utah Workers’ Compensation Act, Title 34A, Chapter 2, Utah Code Annotated; and the Utah Occupational Disease Act, Title 34A, Chapter 3, Utah Code Annotated. Accordingly, Mr. Ceniceros’s claim is dismissed with prejudice. It is so ordered

Dated this 29<sup>th</sup> day of July, 2009.

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Sherrie Hayashi  
Utah Labor Commissioner