

230605-00981-00

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Chicago Neuropsychology Group

333 N. Michigan Ave, Suite 1801

Chicago, Illinois 60601

Phone: 312-345-0933

Fax: 312-345-0934

www.chicagoneuropsychology.com

Director
Robert L. Heilbronner, Ph.D., ABPP-CN

Associate
Alissa H. Wicklund, Ph.D.

INVOICE

Record Retrieval for patient Ted Baxter

Administrative Record Retrieval Fee \$75.00
Shipping Charges \$7.00

Total Due \$82.00

Make checks payable: Dr. Alissa Wicklund
333 N. Michigan Ave, #1801
Chicago, IL 60525

*old to my
Brunu Bew
2/24/08*

Request for Taxpayer Identification Number and Certification

Give form to the requester. Do not send to the IRS.

Part I See specific instructions on page 2

Name: Alissa Wicklund

Business name (if different from above):
Dr. Alissa Wicklund, PC

Check appropriate box:
 Individual Sole proprietor
 Corporation
 Partnership
 Other: _____
 Trust or estate
 Limited liability company

Address (number, street and apt. or R.F.D. no.)
37 DRYDEN AVE

City, town, and ZIP code
LAURENS, IL 60525

Test or wire number(s) (if any)

Part II Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 2. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 2.

Note: If the account is in more than one name, see the chart on page 2 for publishers or whose number to enter.

SOCIAL SECURITY NUMBER

or
 EMPLOYER IDENTIFICATION NUMBER
21015110102713

Part III Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am acting for a resident alien to be issued to me) and:
- I am not subject to backup withholding because: (a) I am exempt from backup withholding or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. person (including a U.S. resident alien).

Certification instructions: You must check one item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply for mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends; you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 2.)

Sign Here: Signature of U.S. person: Alissa Wicklund Date: 2/21/08

Purpose of Form
 A person who is required to file an information return with the IRS must get your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions involving payment you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

The Form W-9 only if you are a U.S. person (including a resident alien) to give your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify the TIN you are giving is correct for you and will be a resident to be based.
- Certify you are not subject to backup withholding.
- Claim exemption from backup withholding if you are a U.S. exempt payee.

If you are a foreign person, use the appropriate Form W-9 or Form W-9-INT. Withholding of tax on Nonresident Aliens and Foreign Entities.

Note: It is required in part as a form other than Form W-9 to request your TIN; you must use the requester's form if it is substantially similar to this Form W-9.

What is backup withholding? Persons making certain payments to you may, under certain conditions, withhold and pay to the IRS 20% of such payments after December 31, 2001 (20% after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rent, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certification, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

- You do not furnish your TIN to the requester; or
- You do not certify your TIN when required, use the Form W-9 instructions on page 2 for initial or
- The IRS tells the requester that you are under a current backup withholding.
- The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return for the year that you received the interest or dividends.

1. You do not certify to the requester that you are not subject to backup withholding under 4 above for reportable interest and dividend accounts opened after 1982 only.

Certain payees and payments are exempt from backup withholding. See the instructions on page 2 and the separate instructions for the Requester of Form W-9.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for supplying information. Willfully supplying certification or other information may subject you to criminal penalties including fines and imprisonment.

Denial of TIN. If the requester disputes or uses TINs in multiple Federal law, the requester may be subject to civil and criminal penalties.

Personally Prepped By: Carol C.

This Document Was Received With:

- Original Death Certificate
- Raised Seal Present On:

- Certified Document:

- No Raised Seals
- No Certified Documents
- EMSI Best Copy available
(Please Index)
- Original Policy
- Prepaid Envelope For:
- Non Scannable Document
- Referenced Enclosure Was Not Found:

Returned Post Office Mail:

- Not Deliverable
- Return To Sender
- Not At This Address
- Insufficient Address
- Forwarding Order Expired

Notes:

Adjustments

- COLA
- FICA
- General Cal Worksheet
- Other
(Activities/Financial Check/Bill)
- Overpayment Worksheet
- Partial Cal Worksheet
- Pension
- Personal Check
- Rehab Earnings
- Salary Adjustment
- SLF Check
- SLF Check Undeliverable
- Social Security
- SS Award
- SS Calc Worksheet
- SS Reimbursement
- WCB

General Docs

- Authorizations
- Change of Address
- Complaints
- Correspondence
- EFT Forms
- E-Mail
- FML
- Job Description
- Notice of Return to Work
- Notice of Death
- Other Adjustments
- Other
- Police / Accident Report
- Proof of Age
- Surveillance
- Surveillance Bill
- Unassigned Doc Type
(Personal Profiles)

General Worksheet

- Telephone Template

Legal Docs 2

- Appeal 2
- Court Order 3
- Demand 1
- Full and Final Release 1
- Other 2
- POA / Guardianship 1
- Subrogation 7

Medical Docs 1

- APS Behavioral Health Condition 3
- APS Supplementary
- Clinical Notes
- FCE
- IME
- Internal Medical Opinion
- Internal Psychiatric Opinion
- List of Providers
- Medical Bills
- Other Medical
- Surveillance

New Claim Docs

- Attending Physician Statement
- Complete Claim Package
- Employee Statement
- Enrollment Card
- Employer Statement
- Notice of Claim
- Other New Claim Documents
- Partial Claim Package
- Sun Advisor
- Telephonic
- Transitional Claim Form
- Unassigned Doc Type

Rehab Docs

- Rehab Bills
- External Vendor Corresp
- FCE Report
- Other
- Rehab Correspondence
- TSA / LMS



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2306058098/00

Director
Robert L. Heilbrunner, Ph.D., ABPP-CN

Associate
Alissa H. Wicklund, Ph.D.

CLINICAL NEUROPSYCHOLOGICAL EVALUATION
CONFIDENTIAL

Name: Baxter, Ted	Date of Birth: 11/	Age: 43
Date of Evaluation: 11/14/07	Education: 18 years (MBA)	
Handedness: Right	Occupation: Finance Manager (disabled)	

Referral Source/Question: Dr. Sullivan; Objective neuropsychological examination to assess neurocognitive and emotional functioning in the context of a history of a left MCA stroke and subsequent seizures.

Annotated History/Clinical Interview: Symptom history was obtained from a review of records, and an interview with the patient and his wife, Kelly. Mr. Baxter suffered a left MCA stroke on 4/15/05. Records indicate the stroke was due to a DVT after a flight from London. Initial symptoms included right hemiparesis and severe aphasia. He underwent occupational, speech, and physical therapy at the Rehabilitation Institute of Chicago for 5 weeks. He returned home and continued therapy, and has not been able to return to work. Cognitive sequelae from the stroke include aphasia, slowed mentation, and difficulty with multi-tasking. Mr. Baxter and his wife described that his speech output is labored with significant word finding difficulties. Basic auditory comprehension is preserved, with difficulty for more complex grammatical structures. He has difficulty writing numbers or performing mental calculations, but understands basic mathematical concepts. Reading is slowed, but again he can understand written concepts when given ample time for processing. He described difficulty with multi-tasking, but can complete tasks when focused.

In 2/06 Mr. Baxter had a grand mal seizure while exercising. Speech was impaired, but he was able to return to his post stroke baseline. In 9/06 he suffered another grand mal seizure, again effecting speech. He was medically stable until 3/07 at which time he had a petit mal seizure, witnessed by his wife, and described as a period of confusion. He has no current symptoms to suggest seizure activity, and takes anti-seizure medications.

In regard to his emotional functioning, Mr. Baxter indicated that his mood is good, and denied symptoms of depression or anxiety. He and his wife described some personality changes since the stroke. For example, he is more "laid-back" than in the past, and there is some blunting of his previous high energy personality. He also becomes overwhelmed more easily. Sleep and appetite are good. He is in psychotherapy once a month.

Mr. Baxter's medical history is notable for varicose veins, left MCA stroke, and seizure disorder. Current medications include Lamictal, Aricept, and Lipitor. A CT from 2/06 (most recent imaging) showed large left MCA encephalomalacia involving lateral aspects of the left temporal lobe and extending to lateral aspects of the lentiform nucleus, white matter of the insula, and frontal and parietal lobes. There is no history of other neurologic or psychological problems. He is a non-smoker and drinks alcohol on occasion. He has no history of alcohol or drug abuse. Family history is notable for Parkinson's disease (father) and cancer (mother).

Mr. Baxter obtained an MBA from Wharton Business School, and described himself as a good student with no history of a learning disability or attentional problems. He was working as a managing director of a hedge fund at the time of his stroke. He has been unable to return to work due to his aphasia. Mr. Baxter has been married for 15 years. He spends his time exercising and attending medical appointments and cognitive and speech therapy sessions. He is also involved in a volunteer organization aimed at educating the public about stroke and aphasia. He has five siblings and a small group of friends. He indicated his wife and siblings as his main source of emotional support.

Behavioral Observations: Mr. Baxter was an extremely pleasant Caucasian male who was well-groomed and casually dressed. Rapport was easily established, he was forthcoming and honest in the interview, and motivated to complete the evaluation. He ambulated independently and no gross motor abnormalities were observed. There were no symptoms to suggest seizure activity during the evaluation. Speech was slow and labored, agrammatic, and with significant word-finding difficulties and semantic paraphasic errors. Basic auditory comprehension was intact, although he often required repetition of information to aid in processing. His mood was euthymic with an appropriate range of affect. Mr. Baxter was motivated and cooperative throughout the test administration. The present results are considered a reliable and valid estimate of his current neurocognitive status.

Tests Administered: Wechsler Test of Adult Reading (WTAR), demographic estimate; Wechsler Adult Intelligence Scale - 3rd edition (WAIS-3); Wechsler Memory Scale - 3rd Edition (WMS-III), select subtests; California Verbal Learning Test 2nd edition (CVLT-II); Brief Visuospatial Memory Test-Revised (BVM-T-R); Rey Complex Figure Copy and Delayed Recall; Delis Kaplan Executive Function System (DKEFS), select subtests; Trail Making Test; Verbal Fluency (Letter and Semantic); Boston Naming Test (BNT); Western Aphasia Battery (WAB), select subtests; Visual Form Discrimination (VFD); Wisconsin Card Sorting Test (WCST); Beck Depression Inventory-2nd edition (BDI-2); Grooved Pegboard; Finger-Tapping Test.

Test Results: Demographic variables estimated Mr. Baxter's pre-morbid intellectual abilities to be in the high average to superior range. The remainder of the results was interpreted at that level of expectation. His current general intellectual abilities were in the low average range (WAIS-III FSIQ=82, 12th %ile), with low average verbal (VIQ=80, 9th %ile) and non-verbal (PIQ=87, 19th %ile) abilities, and scores represent a decline from pre-morbid capabilities. Scores likely underestimate his true intellectual capabilities given that responses are limited by his aphasia. His highest score, in the superior range, was obtained on a measure of non-verbal problem solving and reasoning. Scores were in the average range on measures of vocabulary, verbal abstract reasoning, his general fund of knowledge, and the ability to construct visual designs requiring problem solving. While scores on these measures were in the average range, they represent an area of weakness given the expectation of high average to superior intellectual abilities. In addition, he required a significant amount of time to complete these tasks (when allowed) given his difficulties with articulation. Lowest scores, in the low average to impaired range, were obtained on measures of immediate auditory attention, manipulation of number sequences and his ability to describe general conceptual information related to everyday scenarios (often indicated that he knew the answer but could not adequately articulate).

Scores on an index of working memory were in the mild to moderately impaired range (WAIS-III WMI SS=73, 4th %ile). Examination of specific subtests revealed borderline performance on a test of immediate auditory attention. Low average performance was demonstrated in his ability to solve mental arithmetic problems and manipulate number and letter sequences in working memory. His score on an index of processing speed was in the average range (PSI SS=93, 32nd %ile). Specifically, average abilities were apparent on a non-verbal test of sustained and divided attention performed under time constraints. However, on a measure of divided attention that required the use of numbers, scores were in the low average range. Performance on a measure of visual scanning and sequencing was mild to moderately impaired. He was slow to complete the task, but made no errors. On a more difficult version of a similar task, requiring cognitive flexibility, scores were mildly impaired. Again, he was slow to complete the task, but made no errors. Verbal fluency, a measure of sustained attention and word generation, was moderately impaired with a phonemic cue, and at the low end of the average range with a categorical cue. An analogous task of fluency, requiring the generation of non-verbal designs, was average.

On tests of verbal memory, acquisition of words from a word list was in the average range, and he benefited from repeat exposure to the stimuli to enhance encoding. Recall of the words after a brief and long delay was average and commensurate with encoding. Recognition of previously learned words was mildly impaired, and characterized by source memory errors and false positive errors for semantically related words. His ability to learn and recall pictures of faces was average. New learning of six visual figures was low average, and his ability to spontaneously recall the figures after a delay was impaired. However, he was able to accurately identify the figures in a recognition paradigm. His copy of a complex visual figure was impaired and characterized by poor spatial planning and inattention to detail. Incidental recall of the figure was severely impaired and again reflected poor spatial organization. Recall of the figure after a delay was impaired, but commensurate with encoding. He was able to accurately identify the figure details in a recognition paradigm.

A brief language evaluation was conducted, as Mr. Baxter has undergone many extensive evaluations with a speech therapist. Speech was slow and labored, agrammatic, and with word-finding difficulties. Occasional semantic paraphasic errors were noted. Writing was agrammatic. Auditory comprehension was intact. However, he often required repetition to aid in information processing. Confrontation naming was low average. As described, intrinsic word generation was moderately impaired with a phonemic cue, and average with a categorical cue. He was able to execute sequential commands, but required a lot of time to process the verbal information. Repetition was intact for single words and phrases, but impaired for lengthier grammatical constructions. Silent reading comprehension was relatively preserved, although he had mild difficulty with complex passages. He was able to perform basic mathematical operations of addition, subtraction, multiplication, and division on paper, but could not do complex calculations in his head.

Basic visuoconstructional abilities were performed at the level of expectation. However, deficits were apparent on tasks of spatial planning and organization, reflecting executive dysfunction. On other tests of executive functioning (i.e. cognitive flexibility, problem solving, and reasoning) scores were variable. As described, scores on a measure of non-verbal reasoning were superior. Verbal abstract reasoning was in the average range. Scores were mildly impaired in his ability to initiate strategies for problem solving on a task of cognitive flexibility and reasoning. On a task of spatial planning, rule learning, inhibition, and establishing and maintaining cognitive set, his score was in the low average range. His ability to generate a complex figure was impaired and characterized by poor spatial planning and inattention to detail. Fine motor speed was average bilaterally. Fine motor speed and dexterity was mild to moderately impaired with the dominant right hand, and mildly impaired with the non-dominant left hand.

In regard to his mood, Mr. Baxter scored in the non-depressed range on a questionnaire to assess depressive symptomatology. He is currently in psychotherapy once a month, and indicated that he uses this time to discuss his feelings regarding the adjustment to life after stroke.

Diagnostic Impressions/Recommendations: Results from the present neuropsychological evaluation reveal deficits in the area of language, memory, and some aspects of executive functioning (i.e. problem solving, organization, and cognitive flexibility). His significant aphasia also influenced his performance across all cognitive domains given that many of the tests are verbally mediated. As such, even scores in the average range likely represent a decline for Mr. Baxter given his estimated high average to superior level of premorbid abilities.

Speech output is non-fluent and agrammatic, with pauses for word-finding. Auditory comprehension is relatively preserved, but he requires repetition of information to aid in processing. Silent reading comprehension is also relatively preserved, with mild difficulty on complex and lengthy passages. Memory problems are characterized by mild difficulty with working memory (i.e. the ability to manipulate information online). However, many of these tests are verbally mediated and poor performance was influenced by his aphasia. Mild difficulty was also apparent in his ability to encode, consolidate, and retrieve new information on some memory tasks. However, he was able to process and recognize information suggesting that with time for consolidation, he was able to process and recognize the previously learned information. Executive dysfunction is characterized by mild difficulty with cognitive flexibility, spatial organization, and his ability to maintain cognitive set. Attentional abilities are below expectation (i.e. low average range) but scores are also likely

influenced by the verbal nature of many of the tasks. Processing speed is average when he is presented with non-verbal information, but declined when presented with speeded tasks requiring verbal processing. Basic visuospatial abilities are intact. His mood is good, and he denied symptoms of anxiety and depression.

Mr. Baxter's pattern of performance on testing is consistent with cognitive dysfunction secondary to his stroke in the left hemisphere. Most notable is his non-fluent aphasia which influenced his performance across multiple cognitive domains. For example, tests of intellectual ability that are verbally mediated likely underestimate his true intellectual capabilities as he has difficulty articulating concepts secondary to his aphasia. In addition, his verbal processing is slowed, and he requires repetition of information to enhance processing. Additional cognitive deficits are also apparent, and consistent with the large area of encephalomalacia resulting from his stroke. For example, there is evidence of mild executive dysfunction, which was demonstrated on tests that require minimal verbal demands. However, in the context of these deficits, I think it is important to note that Mr. Baxter has been devoted to his recovery and therapy. Clearly his hard work has positively influenced his recovery and his ability to circumvent some of his language deficits.

Mr. Baxter continues to receive speech and cognitive therapy. Continued treatment is recommended as a method of maintenance of cognitive function and for the purpose of learning new strategies to help him circumvent his language deficits on a daily basis. Mr. Baxter would not be able to maintain the demands of his high level job given his significant aphasia, difficulty manipulating verbal information in working memory, need for repetition for information processing, and executive dysfunction that effects his cognitive flexibility and organizational abilities. However, he is encouraged to continue working with his volunteer organization that engages individuals who have aphasia and can work with and understand his language limitations.

Lastly, Mr. Baxter articulated that his mood is good and that he sees a therapist on a regular basis. It is important that he continue his treatment to maintain a healthy mood. In addition, he indicated that his wife is his main source of emotional support. The Baxter's may consider regular couples counseling, as well, as both articulated the dramatic change Mr. Baxter's sudden stroke has understandably caused in their lives.

Dr. Sullivan, it was a pleasure to work with Mr. Baxter. Should any questions arise, please do not hesitate to contact me.

Sincerely,



Alissa Wicklund, PhD
Licensed Psychologist
Clinical Neuropsychologist

Personally Prepped By: Carol C.

This Document Was Received With:

- Original Death Certificate
- Raised Seal Present On:

- Certified Document:

- No Raised Seals
- No Certified Documents
- EMSI Best Copy available
(Please Index)
- Original Policy
- Prepaid Envelope For:
- Non Scannable Document
- Referenced Enclosure Was Not Found:

Returned Post Office Mail:

- Not Deliverable
- Return To Sender
- Not At This Address
- Insufficient Address
- Forwarding Order Expired

Notes:

Adjustments

- COLA
- FICA
- General Cal Worksheet
- Other
(Activities/Financial Check/Bill)
- Overpayment Worksheet
- Partial Cal Worksheet
- Pension
- Personal Check
- Rehab Earnings
- Salary Adjustment
- SLF Check
- SLF Check Undeliverable
- Social Security
- SS Award
- SS Calc Worksheet
- SS Reimbursement
- WCB

General Docs

- Authorizations
- Change of Address
- Complaints
- Correspondence
- EFT Forms
- E-Mail
- FML
- Job Description
- Notice of Return to Work
- Notice of Death
- Other Adjustments
- Other
- Police / Accident Report
- Proof of Age
- Surveillance
- Surveillance Bill
- Unassigned Doc Type
(Personal Profiles)

General Worksheet

- Telephone Template

Legal Docs 2

- Appeal
- Court Order
- Demand
- Full and Final Release
- Other
- POA / Guardianship
- Subrogation

Medical Docs 1

- APS Behavioral Health Condition
- APS Supplementary
- Clinical Notes
- FCE
- IME
- Internal Medical Opinion
- Internal Psychiatric Opinion
- List of Providers
- Medical Bills
- Other Medical
- Surveillance

New Claim Docs

- Attending Physician Statement
- Complete Claim Package
- Employee Statement
- Enrollment Card
- Employer Statement
- Notice of Claim
- Other New Claim Documents
- Partial Claim Package
- Sun Advisor
- Telephonic
- Transitional Claim Form
- Unassigned Doc Type

Rehab Docs

- Rehab Bills
- External Vendor Corresp
- FCE Report
- Other
- Rehab Correspondence
- TSA / LMS

Updated: October 18, 2007

SUN BAXTER 001379

Clinical Neuropsychological Consultation

Claimant name: Ted BAXTER
Control number: 230605-00981-00
Date: March 7, 2008
Status: Pending

Please note this review does not represent an administrative determination of any kind. Rather, it represents an assessment of whether the treatment record provides credible, objective and contemporaneous evidence of an incapacitating psychiatric disorder (IPD). "Objective" refers, for example, to data obtained via detailed cognitive examinations; standardized rating scales of mood or behavior such as the Hamilton, Beck, or GAF scores; and/or psychological testing. "Contemporaneous" refers to data obtained and documented at the time of the actual clinical evaluation.

Documents reviewed

Neuropsychological evaluation by Dr. Alissa Wicklund (11/14/07)
APS by Dr. Terrence Sullivan (10/9/07)
MRI report (3/19/07)

Background

Mr. Baxter is a 44 y/o status post severe stroke that resulted in ongoing aphasia and cognitive complaints. I have been asked to review notes on file relevant to his neuropsychological status.

Medical records indicate that Mr. Baxter suffered a left MCA on 4/15/05 and that he presented with a right hemiparesis and aphasia. He underwent treatment at the Rehabilitation Institute of Chicago for five weeks. He also suffered several grand mal seizures in 2006 and 2007.

Mr. Baxter underwent neuropsychological evaluation with Dr. Alissa Wicklund (11/14/07). Notes from Dr. Wicklund indicated that Mr. Baxter was motivated to perform well and that he put forth good effort during the exam. He spoke in a slow and labored manner with aggramatisms and word finding problems. His pre-stroke IQ was estimated as high average to superior (Wharton MBA) which contrasted with his post-stroke performance on tests of intelligence (low average, IQ=82). Moderate level problems were seen on tasks of verbal attention span, problem solving, processing speed, memory, speed of word retrieval and basic communication skills. His memory for faces was relatively intact. Auditory comprehension was preserved but Mr. Baxter needed repetition to aid in processing. Findings revealed deficits that were consistent with Mr. Baxter's clinical history of a left hemisphere stroke. Ongoing work with speech therapy was recommended.

An MRI (3/19/07) revealed left temporal encephomalacia.

QUESTIONS

1. Are the results valid based on the data provided?

Mr. Baxter's pattern of neuropsychological deficits is consistent with his clinical history of a left hemisphere stroke and with brain imaging findings. The consistency suggests that the results are valid.

2. Are the EE's continuing R&L's supported based on the results of this exam?

An APS by Dr. Terrence Sullivan (10/9/07) indicated that Mr. Baxter presented with aphasia and that this was a limitation. I agree with this assessment.

3. If the R&L's are supported, is the EE likely to improve to the point of returning to work in his former capacity? In any capacity? Please explain.

I am not a vocational assessment expert so I cannot comment directly on Mr. Baxter's ability to return to work. Test data indicated that he has moderate to severe cognitive deficits related to his prior stroke. He would have difficulty performing tasks dependent on communication skills, new learning, problem solving, speed of processing and auditory comprehension.

Margaret O'Connor, Ph.D., ABPP-CN
Board Certified in Neuropsychology

MED PSYCH REFERRAL

Work Type
Psychiatric Referral

Claim Control #: 230605-00981-00	Claim Status: Approved Paying	Claim Type: LTD
Policy #: 67534	Cert #: 84503725	Group Office: CHICAGO
Last Name: BAXTER	First Name: TED	Claim Office: Boston
Last Payment Date: 21/Jul/2008		
Start Date: 26/Feb/2008	Due Date: 28/Feb/2008	Priority: 2

Created Date:	26/Feb/2008	Referred By:	Otis Goodall
Sex:	Male	City:	Chicago
Age at Referral:		Province/State:	IL
Home Phone Num:	(312) 654-9949	Job/Occupation On File:	
Job/Occupation Title:		Hours per day:	
Regularly scheduled work week: Days per week:			

Disability Date:	22/Apr/2005	Transition Date STD/ECI to LTD:	
LTD Change of Def Date:	21/Jul/2008	Employment Date:	21/Jun/2004

Primary Diagnosis: Other disorders of circulatory system

Secondary Diagnosis:

Attending Physicians Name:

Specialty:

Telephone No:

Ext: 0

Other Attending Physicians Name:

Specialty:

Telephone No:

Ext: 0

Other Attending Physicians Name:

Specialty:

Telephone No:

Ext: 0

Other Attending Physicians Name:

Specialty:

Telephone No:

Ext: 0

REASON FOR REFERRAL

Reason for Referral:

This is an initial referral requesting review of the results of a recent neuropsychiatric evaluation report with the raw data on the above referenced EE.

The EE is a 44 y/o status post severe stroke that has left the EE with ongoing aphasia and cognitive complaints. Prior to claim, the EE was a highly functioning executive for the ER.

As no cognitive testing had been completed since the onset of claim, the EE's attorney had his client submit to this exam.

Questions for Medical Consultants:

Please review the results of the exam including the raw data and provide your opinion regarding these results.

1. Are the results valid based on the data provided? Please explain.
2. Are the EE's continuing R&L's supported based on the results of this exam?
3. If the R&L's are supported, is the EE likely to improve to the point of returning to work in his former capacity? In any capacity? Please explain.

Any additional information you can provide is appreciated.

Special Reply Instructions For Medical Consultant/Support Staff:

MEDICAL CONSULTANT RESPONSE

Response Created Date: 03/07/2008 Created By: Margaret OConnor

Medical Consultants Comments:

Please see my review dated 3/7/08 under Internal Psychiatric Opinion

Special Reply Instructions For Medical Consultant/Support Staff:

Assigned To: Otis Goodall **Created:** 26/Feb/2008 **Work Item ID:** 3020186



Sun Life Assurance
Company of Canada
SC 3208
One Sun Life Executive Park
Wellesley Hills, MA 02481-5699

1-800-247-6875

April 18, 2008

Mark D. DeBofsky
Law Offices of Daley, DeBofsky & Bryant
55 W Monroe St., Ste 2440
Chicago, IL 60603

Re: Policy No. 067534-GD-Long Term Disability
Control # 230605-00981-00
Claimant: Ted Baxter

Dear Mr. DeBofsky:

This is in follow up to my previous correspondence of February 11 concerning our review of the proceeds of Mr. Baxter's settlement with Evanston Northwest Health Care and his continued eligibility for benefits under the above reference Long Term Disability claim.

Based on the recent documentation received, including the report of the face to face visit with Mr. Baxter and the results of the recent exam by Dr. Wicklund, we agree that Mr. Baxter remains Totally Disabled under the terms and provisions of the policy.

However, we have also determined that Mr. Baxter's settlement with Evanston Northwest Health Care in the amount of \$19,500,000 should be offset from the monthly benefit received. Please allow me to explain.

Mr. Baxter's policy contains the following terms and provisions regarding this matter:

Other Income Benefits

Other Income Benefits are those benefits provided or available to the Employee while a Long Term Disability Benefit is payable. These Other Income Benefits, other than retirement benefits, must be provided as a result of the same Total or Partial Disability payable under this Policy.

Other Income Benefits include:

1. The amount the Employee is eligible for under:
 - a. Workers' Compensation Law; or
 - b. Occupational Disease Law; or
 - c. Unemployment Compensation Law; or
 - d. Compulsory Benefit Act or Law; or
 - e. an automobile no-fault insurance plan; or
 - f. any other act or law of like intent.

9. Any amount due to income replacement or lost wages the Employee receives by compromise, settlement or other method as a result of a claim for any Other Income Benefit.

Lump Sum Payment

If an Employee receives a lump sum payment for any Other Income Benefits, Sun Life will prorate the lump sum on a monthly basis over the time period specified for the lump sum payment. If no time period is stated, the lump sum payment will be prorated on a monthly basis over a reasonable period of time as determined by Sun Life.

Adjustment of Benefits

The Employee must notify Sun Life in writing, within 31 days of receipt of notice, of the amount of Other Income Benefits when it is approved or if the amount is adjusted (other than for cost of living increases). Sun Life will make an adjustment to the Net Monthly Benefit payment when Sun Life receives written notice of the amount of the Other Income Benefit.

If after Sun Life makes an adjustment to the Net Monthly Benefit the Employee has been underpaid, Sun Life will immediately make a lump sum refund of the amount that has been underpaid to the Employee.

If after Sun Life makes an adjustment to the Net Monthly Benefit the Employee has been overpaid, the Employee must reimburse Sun Life the amount of the overpayment within 31 days of the award. Sun Life has the right to reduce or eliminate future LTD benefit payments until the amount of the overpayment has been repaid. During the overpayment reimbursement period, the Minimum Monthly Benefit will not apply.

In your correspondence of December 5, 2007, you included various documents from Mr. Baxter's medical malpractice claim, including responses to interrogatories, the mediation statement, Mrs. Baxter's deposition and the preliminary Economic Loss Report. Mr. Baxter's reported damages included disability, loss of normal life, disfigurement, lost income, loss of society, physical pain and mental suffering. However, it is clear upon review of this information that the vast majority of Mr. Baxter's claims relate to lost wages. The preliminary Economic Loss Report indicated that as of March 19, 2007, Mr. Baxter had a "net past lost income" of \$997,342 and "net future lost income" ranged from \$28,943,212 to \$63,248,192. In contrast, the "known specials" as of March 19, 2007, including patient out of pocket medical expenses totaled only \$76,344.88.

In settlement, the Baxters agreed to release Defendant, Evanston Northwestern Healthcare Corp and all other parties for "personal injuries, demands, costs, loss of services, expenses, compensation, damages, and any other claims or causes of action" related now or in the future in the amount of \$19,500,000. Although the financial settlement was not itemized, given the claims outlined in the documents you provided and the clear focus on the very substantial loss of earnings, it appears that the \$19,500,000 settlement recovered under an Illinois Medical Malpractice claim was based in large part on the reported lost income. Therefore, the above referenced Other Income Benefit provisions indicating income Mr. Baxter received; "by compromise, settlement or other method as a result of a claim for any Other Income Benefit" through "any other act or law of like intent" would apply in this matter.

Because the settlement represents damages incurred at the onset of disability, we are calculating the offset from the onset of disability on April 22, 2005. In an effort to take into account other damages that were claimed in the medical malpractice action, we have calculated and considered only a third of the total settlement for loss of income.

However, since the monthly amount offset exceeds the Gross Monthly LTD benefit, Mr. Baxter will only be eligible to receive the minimum monthly benefit of \$1,500. Therefore, Mr. Baxter's benefits have been recalculated as follows:

Basic LTD Benefits:	\$15,000.00
Social Security Offset:	\$ 2,049.00
*Settlement Offset:	\$22,965.90 (19.5 million x 33.33% ÷ 283 months)
Recalculated Net Benefit:	\$ 1,500.00 (The minimum Net Benefit is 10% of the gross monthly benefit).

*The monthly settlement offset was calculated from the date of onset, on April 22, 2005, through the claim expiry date on November 17, 2028.

Please see the below benefit calculation breakdown by year. This covers the applicable period when Mr. Baxter received both Long-Term Disability benefits and the Settlement with Evanston Northwest Health Care. According to our records, we paid the following long-term disability benefits:

<u>Period Covered</u>	<u>We Paid</u>	<u>We Should Have Paid</u>
07/21/05 – 12/31/05	\$ 74,353.00	\$ 8,000.00
01/01/06 – 12/31/06	\$155,412.00	\$ 18,000.00
01/01/07 - 12/31/07	\$155,412.00	\$ 18,000.00
01/01/08 - 03/31/08	\$ 38,853.00	\$ 4,500.00
Totals	\$424,030.00	\$ 48,500.00

Total Paid =	\$424,030.00
<u>Total Should Have Paid =</u>	<u>\$ 48,500.00</u>
Overpayment	\$375,480.00

We are requesting that Mr. Baxter reimburse Sun Life Financial the full amount of the overpayment in the amount of \$375,480 and/or advise us of when the overpayment will be returned within the next 30 days.

Mr. Baxter will begin receiving his new monthly benefit of \$1,500.00 in April 2008. However, should we not receive a response from you regarding reimbursement of the overpayment within the next 30 days, we will begin to reduce the amount of the overpayment from the monthly benefit due as provided under the policy.

Appeal Process

If Mr. Baxter disagrees with our decision, he may request in writing a review of the denial within 180 days after receiving this notice of denial.

He may submit written comments, documents, records or other information relating to this matter, and may request free of charge copies of all documents, records, and other relevant information.

We will review the matter on receipt of the written request for review, and will notify you of our decision within a reasonable period of time but not later than 45 days after the request has been received. If an extension of time is required to process the appeal, we will notify him in writing of the special circumstances requiring the extension and the date by which we expect to make a determination on review. The extension cannot exceed a period of 45 days from the end of the initial review period.

If a period of time is extended because we did not receive information necessary to decide the matter, the period for making the decision on review is tolled from the date we send notice of the extension until the date on which Mr. Baxter responds to the request for additional information. He will have 45 days to provide the specified information.

Mr. Baxter may have the right to bring a civil action under the Employee Retirement Income Security Act of 1974 (ERISA), §502(a) following an adverse determination on review.

The request for a review should be addressed to:

**Sun Life Financial
PO Box 81601
Wellesley Hills, MA 02481-0006**

Appeals Unit

Additionally, Rule 919 of the Rules and Regulations of the Division of Insurance, Illinois Department of Financial and Professional Regulation, requires that our company advise you that if you wish to take this matter up with the Illinois Division of Insurance, it maintains a Consumer Division in Chicago at:


**James R. Thompson Center
100 W. Randolph St., Suite 9-301
Chicago, IL 60601-3395**

or in Springfield at: **320 W. Washington Street
Springfield, IL 62767**

Page 5
Ted Baxter

If you have any questions regarding this matter, please do not hesitate to contact me at (877) 260-9778, extension 7107.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Goodall". The signature is fluid and cursive, with the first name "Robert" and last name "Goodall" clearly distinguishable.

Robert Goodall
Claim Consultant
SC 3208

Fax

To: Mark D. DeBofsky

From: Robert Goodall

Fax: 312-372-2778

Pages: 6

Phone: 972-790-9902

Date: April 18, 2008

Re: Ted Baxter

CC:

Urgent **For Review** **Please Comment** **Please Reply** **Please Recycle**

● **Comments:** Notice of claim liability determination is attached. Original will follow via U.S. Mail.

PLEASE NOTE: The information contained in this facsimile is privileged and confidential, and is intended only for the use of the individual named above and others who have been specifically authorized to receive it. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this information is strictly prohibited. If you have received this message in error, or any problems occur with this transmission, please notify us immediately by telephone at (877) 260-9778, extension 7107. Thank you.

CLAIMS REPLY ADDRESS

Sun Life Financial
One Sun Life Executive Park
Wellesley Hills, MA 02481

Daley, DeBofsky & Bryant

April 21, 2008

55 W Monroe St
Ste 2440
Chicago, Illinois 60603

VOICE (312) 372-5200
FAX (312) 372-2778
WEB ddbchicago.com

Frederick J. Daley Jr. 2
Mark D. DeBofsky 5
David A. Bryant
Marcie E. Goldbloom 1
Violet H. Borowski 2
Sandra M. Dye
Gregory A. Benker 6
Kimberly A. Jones 5

Of Counsel
David R. Bryant
Heather F. Aloc

Robert Goodall
Claim Consultant
Sun Life
P.O. Box 81830
Wellesley, MA 02481

RE: Ted Baxter


Dear Mr. Goodall:

With respect to our client Ted Baxter, enclosed please find documentation relating to his Workers' Compensation claim. Although we do not believe we are required to seek pre-approval or consent from Sun Life, the workers' compensation attorney presents a very convincing rationale as to why the settlement proposal should be accepted. We would therefore appreciate Sun Life's assent to the settlement so that we cannot later be accused of a collusive settlement.

In addition, with respect to the claim that the medical malpractice recovery constitutes "other income," we respectfully decline to reimburse Sun Life. We have previously pointed out why Sun Life has no basis for claiming an offset and that the risk of faulty drafting is on the insurer pursuant to the legal doctrine of *contra proferentem*. We therefore wish this letter, along with our prior correspondence which is attached, to constitute Ted Baxter's appeal of Sun Life's determination. Upon further review by your appeals department, we are confident you will agree that the claimed offset is not appropriate and that Mr. Baxter can continue to receive his full benefit payment less Social Security (and workers' compensation) which we acknowledge are proper offsets under the "other income" provisions of the policy.

If you have any questions, please contact us. Thank you for your attention to this matter.

Very truly yours,



Mark D. DeBofsky

MDD/ccm

Enclosure

cc: Ted Baxter

DO NOT WRITE ON THIS DOCUMENT

LAW OFFICES

Daley, DeBofsky & Bryant

October 11, 2007

55 W Monroe St
Ste 2440
Chicago, Illinois 60603

VOICE (312) 372-5200
FAX (312) 372-2778
WEB ddbchicago.com

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David A. Bryant
Marcie E. Goldbloom
James R. Comerford
Violet H. Borowski
Sandra M. Dye
Gregory A. Benker

Of Counsel
Heather F. Aloe

Robert Goodall
SunLife
P.O. Box 81830
Wellesley Hills, MA 02481
By Facsimile: 781.304.5537

RE: Ted Baxter

Dear Mr. Goodall:

With respect to our client, Ted Baxter, as we discussed yesterday, we take the position that Sun Life has no right to offset against Mr. Baxter's benefits any sums he received on account of his medical malpractice settlement. The "Other Income Benefits" provisions of the policy do not encompass the medical malpractice lawsuit. Nor do we believe that the provision you cited, which states that Other Income Benefits includes "any amount you receive due to income replacement or lost wages paid to you by compromise, settlement or other method as a result of a claim for any Other Income Benefit," is applicable. Particularly since the attached release does not specify payment of lost income, we do not see how that provision is applicable.

According to *In re Unisys Corp. Long-Term Disability Plan ERISA Litig.*, 97 F.3d 710 (3d Cir. 1996), where an offset provision in a disability insurance policy is ambiguous, the insurer may not claim a greater right than what is indicated. Clearly, Social Security and workers' compensation fall within the Other Income Benefits provisions, and you are already offsetting the Social Security benefits. As we have indicated, the workers' compensation claim is contested and is unlikely to result in any recovery or, at best, a nominal recovery. Consequently, in view of the general language in the policy, there is no basis whatsoever to claim an offset in relation to the third party recovery Mr. Baxter has obtained.

Therefore, we anticipate the Mr. Baxter's benefits will be continuing at the present scheduled amount. Should there be any development with respect to the workers' compensation claim, we will promptly notify you.

If you have any questions, please contact us. Thank you for your attention to this matter.

Very truly yours,



Mark D. DeBofsky
MDD/ms

Enclosure

cc: Kelly/Ted Baxter

2008 JUN 12 09

2006 NOV 17 4 00 PM '06

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

TED BAXTER and KELLY BAXTER

Plaintiffs,

v.

EVANSTON NORTHWESTERN HEALTHCARE CORPORATION
d/b/a EVANSTON HOSPITAL; THE MCGAW MEDICAL CENTER
OF NORTHWESTERN UNIVERSITY; ENH MEDICAL GROUP, INC.;
DANIEL HOMER, M.D.; JENNIFER STERN, M.D, and
SIVARAJA KUPPUSWAMI, M.D.

Defendants

No. 06 L 12259 X

RELEASE OF ALL CLAIMS

In consideration of the payment of Nineteen Million Five Hundred Thousand Dollars (\$19,500,000.00), does hereby release Defendant, EVANSTON NORTHWESTERN HEALTHCARE CORPORATION d/b/a EVANSTON HOSPITAL; its heirs, executors, administrators, successors, assigns, agents, employees, insurance carriers, and all other persons and corporations of and from any causes of action and claims for personal injuries, demands, costs, loss of services, expenses, compensation, damages, and any other claims or causes of action whether or not presently known, pending or threatened, which we now have or may have hereafter on account of, arising out of or relating to any of the matters alleged or which could have been alleged in the lawsuit entitled Ted Baxter and Kelly Baxter v. Evanston Northwestern Healthcare Corporation d/b/a Evanston Hospital, filed in the Circuit Court of Cook County, Illinois, as Case No. 06 L 12259, including without limitation any demand, claim or cause of action on account of, arising out of or relating to the injuries and medical care and treatment rendered to plaintiffs, Ted

liens will be satisfied out of the proceeds of this settlement.

This release contains the ENTIRE AGREEMENT between the parties hereto, and the terms of this release are contractual and not a mere recital. The undersigned have CAREFULLY READ this release, fully understand it, and sign this as the free and voluntary act of the undersigned.

WITNESS our hand(s) and seal(s) this 18th day of April 2007.
READ BEFORE SIGNING

OCT-10-2007(WED) 14:50

Corboy and Demetrio

(FAX)3123454225

P. 002/004

Baxter and Kelly Baxter, at anytime, as more fully forth in the Complaint at Law. It shall be payable upon execution of the release and settlement agreement and entry of the appropriate dismissal order.

Ted Baxter and Kelly Baxter for the aforesaid consideration, does hereby expressly agree to indemnify and hold forever harmless Evanston Northwestern Healthcare d/b/a Evanston Hospital, and all other persons and corporations, from and against any loss from any further claims and demands, of whatsoever kind or nature, that may hereafter be made or brought by anyone for the purpose of enforcing a further claim for damages resulting or to result from the aforesaid occurrence.

It is further agreed that this Release expresses a full and complete SETTLEMENT of a liability claimed and denied regardless of the adequacy of the aforesaid payment made, and that said payment and the acceptance of this Release shall not operate as an admission of liability on the part of anyone, nor as an estoppel, waiver, or bar with respect to any claim the parties released may have against the undersigned. No inducements or representations have been made by agents or attorneys of the parties hereby released as to the legal liability or other responsibility of any party claimed responsible, nor has any representation been made to us as to the nature or extent of injuries or disabilities. It is agreed that this Release applies to known injuries as well as to unknown and is intended to be a full and complete disposition of the entire claim or cause.

It is further understood and agreed that the above payment is made in the compromise of a doubtful and disputed claim, and that the payment is not to be construed as an admission of any liability therefore, such a liability having been expressly denied.

All parties agree to participate fully and to execute any and all supplementary documents

and to take all additional actions which may be necessary or appropriate to give full force and effect to the basis terms and intent of this release and settlement agreement.

It is further agreed that Ted Baxter and Kelly Baxter will satisfy any and all liens of whatever nature which may have accrued as a result of medical care and treatment and that such liens will be satisfied out of the proceeds of this settlement.

This release contains the ENTIRE AGREEMENT between the parties hereto, and the terms of this release are contractual and not a mere recital. The undersigned have CAREFULLY READ this release, fully understand it, and sign this as the free and voluntary act of the undersigned.

WITNESS our hand(s) and seal(s) this 18th day of April 2007.

READ BEFORE SIGNING

Ted Baxter
Ted Baxter

Kelly Baxter
Kelly Baxter

State of Illinois
County of Cook

Subscribed and sworn to before me this 18th day of April, 2007

Tavarus Adams
NOTARY PUBLIC





Blue Cross Blue Shield of Illinois

RELEASE OF LIEN

WHEREAS, A LIEN HAS BEEN ASSERTED BY HEALTH CARE SERVICE CORPORATION, a Mutual Legal Reserve Company, d/b/a Blue Cross and Blue Shield of Illinois (hereafter "HCSC") against Ted Baxter (hereinafter "Insured") to the extent that HCSC has provided benefits for medical services rendered to Ted Baxter resulting from an injury or illness caused by the act or omission of another person. Case Number 05158IL0016030.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENT THAT HCSC for and in consideration of the sum of

Thirty-One Thousand One Hundred Eighty-Eight Dollars and fifty cents (\$31,188.50) paid to HCSC by Insured, the receipt of which is hereby acknowledged, for itself and its heirs, representatives, successors, and assigns, has removed, released, relinquished, satisfied and forever discharged Insured from any and all claims, debts, demands, rights and causes of action HCSC has or may have arising from and based upon Insured's Blue Cross and Blue Shield of Illinois case number 05158IL0016030 and contract pertaining thereto and arising from or relating to benefits provided by HCSC for medical services rendered to Ted Baxter resulting from an injury or illness caused by the act or omission of another person on 04/21/05.

WITNESS MY HAND AND SEAL this 29th day of May, 2007.

Norma Thomas

Blue Cross and Blue Shield of Illinois Authorized Representative
Corporate Reimbursement/Subrogation

Subscribed and sworn to
before me this 29th
day of May, 2007.

Les Alberts

Notary Public



DALEY DEBOFSKY & BRYANT

FACSIMILE TRANSMITTAL SHEET

TO: **Robert Goodall** FROM: **Marvet M. Sweis,
Paralegal for Mark D. DeBofsky, Esq.**

COMPANY: **SunLife** DATE: **OCTOBER 11, 2007**

FAX NUMBER: **781-304-5537** TOTAL NO. OF PAGES INCLUDING COVER: **7**

PHONE NUMBER:

RE: **Ted Baxter** CC:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

CONFIDENTIAL

This communication may contain privileged and confidential information. It is intended only for the use of the recipient named above. If you are not the intended recipient of this communication, or the employee or agent responsible for delivering it to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by collect telephone call and return the original message to us at the address above via United States Postal Service.

55 WEST MONROE SUITE 2440
CHICAGO, ILLINOIS 60603
(312) 372-5200
FAX (312) 372-2778

SUN BAXTER 001398

TX Report

10/11/2007 13:44
 Serial No. 311711153
 TC: 93281

Destination	Start Time	Time	Prints	Result	Note
917B13045537	10-11 13:42	00:01 33	007/007	OK	L1

Note L1: Main Circuit, L2: Sub Circuit, TMR: Timer, POL: Poll, ORG: Original,
 FME: Frame Erase TX, MIX: Mixed Original, CALL: Manual Communication,
 CSRC: CSRC, FWD: Forward, PC: PC-FAX, BND: Bind, SP: Special Original,
 FCODE: F-Code, RTX: Re-Tx, RLY: Relay, MBX: Secure, BUL: Bulletin

Result OK: TX OK, S-OK: Stop Communication, PW-OFF: Power Switch OFF, TEL: RX from TEL,
 NB: Other Error, Cont: Continue, No Ans: No Answer, Refuse: Receipt Refused,
 Busy: Busy, M-Full: Memory Full.

2
 10-11-07

DALEY DEBOFSKY & BRYANT

FACSIMILE TRANSMITTAL SHEET

TO: Robert Goodall	FROM: Marvet M. Swels, Paralegal for Mark D. DeBofsky, Esq.
COMPANY: SunLife	DATE: OCTOBER 11, 2007
FAX NUMBER: 781-304-5537	TOTAL NO. OF PAGES INCLUDING COVER: 7
PHONE NUMBER:	
RE: Ted Baxter	CC:

URGENT FOR REVIEW PLEASE COMMENT PLEASE REPLY PLEASE RECYCLE

NOTES/COMMENTS:

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LAW OFFICES

Daley, DeBofsky & Bryant

December 5, 2007

55 W Monroe St 2
Ste 2440 0
Chicago, Illinois 60603
VOICE (312) 372-5200
FAX (312) 372-2778
WEB ddbchicago.com

Frederick J. Daley Jr.
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James R. Comerford
Violet H. Borowski
Sandra M. Dye
Gregory A. Benker

Of Counsel
Heather F. Aloe

Robert Goodall
SunLife
P.O. Box 81830
Wellesley Hills, MA 02481
BY CERTIFIED MAIL

RE: Ted Baxter
Policy No. 067534-GD-Long Term Disability
Control #230605-00981-00

Dear Mr. Goodall:

Per your request of November 8, 2007, please be advised that we are enclosing all of the documents responsive to your request:

- Plaintiffs' Answers to Interrogatories
- Plaintiffs' Mediation Statement
- Kelly Baxter's Deposition

These are the only documents in existence that are on the list contained in your letter of November 8, 2007. We are also enclosing a recently completed neuropsychological evaluation documenting Mr. Baxter's significant cognitive impairments.

The only provision in the policy that is potentially at issue with respect to the medical malpractice settlement is paragraph 9 on page 35 of the policy, which identifies "Other Income Benefits" to include:

Any amount you receive due to income replacement or lost wages paid to you by compromise, settlement or other method as a result of a claim for any Other Income Benefit.

None of the categories of "other income benefits" include a suit for medical malpractice. If, indeed, there was an intent by Sun Life to offset such recoveries, the provision would resemble one that is used by Unum and Prudential which reads:

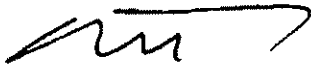
The amount that you receive: from a third party (after subtracting attorneys' fees) by judgment, settlement or otherwise.

There is no comparable language in the Sun Life policy at issue.

Accordingly, based on the documentation previously sent, which shows that a settlement was reached which did not itemize a loss of wages, Sun Life has no claim for an offset. (Further, particularly since lost wages were never itemized in the settlement, the situation is analogous to Section 104 of the Internal Revenue Code as explained by Rev.Ruling 61-1 which deems the entire amount payable damages on account of bodily injury. Consequently, since there was no claim or recovery that was specifically for loss of wages, Sun Life has no basis whatsoever to either seek recovery or offset long-term disability payments. Ambiguous provisions such as the one in the Sun Life policy at issue do not allow for offsets in such circumstances. See, *In re Unisys Long-Term Disability Plan ERISA Litigation*, 97 F.3d 710 (3d Cir. 1996)(holding that an ambiguous provision regarding whether an offset of dependent social security benefits was permissible could not be expanded to allow such an offset to be taken under the insurance law principle of *contra proferentem*, by which ambiguities in insurance contracts are construed against the drafter). Sun Life is currently offsetting Social Security disability payments and that is the only offset to which Sun Life is entitled.

If you have any questions, please contact us. Thank you for your attention to this matter.

Very truly yours,



Mark D. DeBofsky
MDD/ms

Enclosures
cc: Kelly/Ted Baxter

WITTENBERG, DOUGHERTY & MACLIONE, LTD.
ATTORNEYS AT LAW

DAVID M. WITTENBERG
MARYBETH DOUGHERTY
DANIEL F. MACLIONE

April 17, 2008

SUITE 602
100 WEST MONROE STREET
CHICAGO, ILLINOIS 60603-1920
TELEPHONE (312) 782-1808
FAX (312) 782-1801
www.wdmltd.com

Mark DeBofsky, Esq.
Daley, DeBofsky & Bryant
55 West Monroe Street, 24th Floor
Chicago, IL 60603

Re: TED BAXTER V. CITADEL INVESTMENT GROUP, LLC
Illinois Workers' Compensation Commission Number: 05 WC 40121

Dear Mr. DeBofsky:

I filed a Workers' Compensation claim in connection with Ted Baxter's stroke condition which I allege arose out of and in the course of his employment by Citadel. Mr. Baxter retained the firm of Corboy & Demetrio and filed a medical malpractice case against Evanston Hospital, et.al. for the medical treatment he received which ultimately, in my opinion, caused his stroke.

At the request of Corboy & Demetrio and the Baxters, I did not immediately proceed on the Workers' Compensation matter since we did not want to provide any kind of extra discovery to the Defendant in the medical malpractice case or do anything that might hinder their efforts to get him the best and fastest result. Corboy & Demetrio settled the medical malpractice case against Evanston Hospital, et.al. for the sum of Seventeen Million Five Hundred Thousand Dollars.(\$17,500,000.00).

All of this information subsequently became known to the Workers' Compensation attorney representing Citadel Investment Group, a/k/a Citadel Investment Services. Acting upon the information they were aware of, they prepared and are presenting a Motion for Credit under the Illinois Workers' Compensation Act for \$17,500,000.00

In my opinion, the likelihood of their having their lien upheld is very high, if not absolute. Accordingly, it is probable that Mr. Baxter will receive nothing in the Workers' Compensation case because his employer would be entitled to an off-set for its lien and Mr. Baxter's rate is only in the area of \$1,050.00 per week, that being the maximum rate under Illinois law at the time of his alleged injury.

I have researched whatever law I could find relating to the credit Citadel is claiming under Section 5(b) of the Illinois Workers' Compensation Act and have not been able to come up with any kind of theory that would enable me to get over and beyond their lien.

I did provide counsel for Citadel Investment Services two separate medical reports outlining the nature and extent of Mr. Baxter's injuries and stating opinions that there was a causal relationship between his flying on the job and the stroke which he ultimately had.

Mark DeBofsky, Esq.

-2-

After several conferences, the attorney for Citadel Investment Services stated that he has been instructed to take any and all steps necessary to protect their lien interests. He further told them that I was being difficult and did apparently have a very good case but not for the lien. He finally resolved that he would recommend payment of up to \$25,000.00 as a purchase of peace in the matter to put the matter to rest without extensive additional time and expense in protecting his client's interests. He estimated that it would take him so much time that his legal fees alone would exceed the \$25,000.00 which he is willing to recommend.

It is my opinion that since there is really nowhere else to go, it is probably in the best interest of everyone to conclude the matter for around \$25,000.00, if he can get it, or even a little less. I think we do not have a problem with a Medicare set-aside situation because the amount of money they are talking about falls below the threshold for submitting the matter along with the Medicare set-aside agreement for approval. The net result could be a \$25,000.00 settlement less our attorney's fees and costs of approximately \$5,400.00 and a balance for Mr. Baxter of \$19,600.00

I am enclosing a copy of the Motion for Credit served upon me by Citadel Investment Services. It sets out Section 5(b) of the Illinois Workers' Compensation Act and it should be read along with this letter.

Would you please indicate for me your opinion as to whether I should accept this settlement. If I do not, I think the only alternative I have is to withdraw as Mr. Baxter's attorney since I do not appear to be going anywhere with this and really am not interesting in spending many years in many different Courts trying to get to the bottom of an issue where there is really no light at the end of the tunnel for Mr. Baxter. I would appreciate your thoughts.

Very truly yours,

David M. Wittenberg

David M. Wittenberg

DMW:jj

Enclosed

BEFORE THE ILLINOIS WORKERS' COMPENSATION COMMISSION

TED BAXTER,)
)
 Petitioner,)
)
 vs.) No. 05 WC 40121
)
 CITADEL INVESTMENT SERVICES,)
)
 Respondent.)

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MOTION FOR CREDIT

NOW COMES the Respondent, CITADEL INVESTMENT SERVICES, and asks this Honorable Arbitrator to enter an order acknowledging Respondent's credit under Section 5(b) of the Illinois Workers' Compensation Act. In support of this motion, Respondent states as follows:

1. The Petitioner has filed an Application for Adjustment of Claim seeking workers' compensation benefits he alleges resulted from an accident which he alleges occurred on February 15, 2006.
2. Specifically, the Petitioner has alleged that a stroke he suffered on or around that date arose out of and occurred in the course of his employment for the Respondent.
3. Respondent's liability under the Illinois Workers' Compensation Act for that injury has been denied by the Respondent.
4. No workers' compensation benefits have been paid to the Petitioner by the Respondent for his alleged injury.
5. In addition to seeking workers' compensation benefits, the Petitioner also filed a lawsuit in the Circuit Court of Cook County alleging that he was the victim of

medical malpractice resulting from the care he received for the stroke he alleges arose out of and occurred in the course of his employment on February 15, 2006.

6. The Petitioner's civil medical malpractice action settled for \$17,500,000.00. Respondent has filed a true and correct copy of the settlement statement signed and filed by the Petitioner in his third party case as Respondent's Exhibit "A".

7. Section 5(b) of the Illinois Workers' Compensation Act states as follows:

Where the injury or death for which compensation is payable under this Act was caused under circumstances creating a legal liability for damages on the part of some person other than his employer to pay damages, then legal proceedings may be taken against such other person to recover damages notwithstanding such employer's payment of or liability to pay compensation under this Act. In such case, however, if the action against such other person is brought by the injured employee or his personal representative and judgment is obtained and paid, or settlement is made with such other person, either with or without suit, then from the amount received by such employee or personal representative there shall be paid to the employer the amount of compensation paid or to be paid by him to such employee or personal representative including amounts paid or to be paid pursuant to paragraph (a) of Section 8 of this Act [820 ILCS 305/8]. If the employee or personal representative brings an action against another person and the other person then brings an action for contribution against the employer the amount, if any, that shall be paid to the employer by the employee or personal representative pursuant to this Section shall be reduced by an amount equal to the amount found by the trier of fact to be the employer's pro rata share of the common liability in the action.

Out of any reimbursement received by the employer pursuant to this Section the employer shall pay his pro rata share of all costs and reasonably necessary expenses in connection with such third-party claim, action or suit and where the services of an attorney at law of the employee or dependents have resulted in or substantially contributed to

the procurement by suit, settlement or otherwise of the proceeds out of which the employer is reimbursed, then, in the absence of other agreement, the employer shall pay such attorney 25% of the gross amount of such reimbursement.

8. It is well settled law in Illinois that Section 5(b) creates a "lien" for an employer on monies recovered in a medical malpractice case arising from an alleged work-related injury. Kelvin Robinson v. Liberty Mutual Insurance Company, et al., 222 Ill.App.3d 443 (1st Dist. 1991),

9. Despite the size of the Respondent's lien in the above-captioned matter, Petitioner's counsel has asserted that he will continue to pursue his client's workers' compensation benefits pursuant to the previously filed Application for Adjustment of Claim.

10. Respondent asks that this Arbitrator enter an order recognizing that the Respondent is entitled to a credit of \$17,500,000.00 in the Petitioner's underlying workers' compensation case. Specifically, Respondent requests that an order be entered indicating that it has no liability to the Petitioner under the Illinois Workers' Compensation Act until its liability to the Petitioner exceeds \$17,500,000.00.

11. It is well settled law in Illinois that the Workers' Compensation Commission has the authority to award a Credit under Section 5(b) of the Act on behalf of the employer when the employee's third party civil action has already been completed. Selleck v. The Industrial Commission, 233 Ill.App.3d 17 (4th Dist. 1992).

12. Petitioner has asserted that he has a right to offset the Respondent's pro rata share of the costs and expenses associated with prosecuting the Petitioner's third party case and Petitioner's attorney has asserted that he is entitled to an offset of any

credit in the amount of 25% out of any liability established for the Respondent by the Workers' Compensation Commission under the Illinois Workers' Compensation Act for the Petitioner's alleged injury. Those assertions by the Petitioner and his attorney are not supported by the law.

13. Since the settlement proceeds in the Petitioner's third party case have already been paid to the Petitioner, Section 5(b) does not provide the Petitioner with a right to receive the employer's "pro rata share of all costs and reasonably necessary expenses in connection with such third party claim, action or suit. . ." as stated in Section 5(b) of the Act. Specifically, the Respondent will not be receiving reimbursement for any payments made under the Act. Instead, because the Petitioner has already settled his third party case, the Respondent is not pursuing reimbursement, but is asserting a credit under Section 5(b) to avoid payment to the Petitioner of the Respondent's adjudicated liability until that credit is extinguished. Since no reimbursement will be made to the employer, the statutory right vested in the Petitioner by Section 5(b) of the Act to recover the employer's pro rata share of all costs and reasonably necessary expenses does not apply under these circumstances.

14. As stated, Petitioner's counsel is asserting that he is entitled to attorney fees of 25% out of any payment the Workers' Compensation Commission indicates must be paid by the Respondent in Petitioner's pending workers' compensation claim. Again, Section 5(b) of the Illinois Workers' Compensation Act does not support that argument or create that right in Petitioner's counsel. Specifically, the relevant portion of Section 5(b) states:

. . . where the services of an attorney at law of the employee or dependents have resulted in or substantially contributed

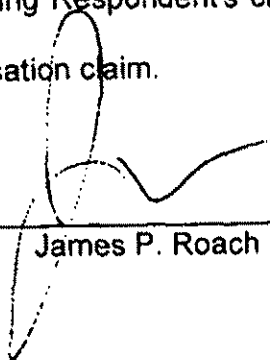
to the procurement by suit, settlement or otherwise of the proceeds out of which the employer is reimbursed, then, in the absence of other agreement, the employer shall pay such attorney 25% of the gross amount of such reimbursement."

11/10/08 4:00 PM

15. Again, no reimbursement will be paid to the Respondent in the above-captioned matter. Instead, Section 5(b) of the Act creates a credit for the Respondent for any money the Workers' Compensation Commission adjudicates are owed to the Petitioner by the Respondent. Therefore, since no reimbursement will be made by the Petitioner to the employer as outlined in Section 5(b), the Petitioner's attorney is not entitled to any attorneys fees. Furthermore, even if Section 5(b) created a right under these circumstances to attorneys fees, the Petitioner's attorney in the Petitioner's workers' compensation claim would not be entitled to those fees. Specifically, Section 5(b) only refers to an attorney being entitled to a 25% fee who was involved in a third party suit or settlement. Therefore, Petitioner's attorney, in his workers' compensation claim, David Wittenberg, would not be able to avail himself of that provision of Section 5(b) to assert a right to attorneys fees.

Therefore, the Respondent, CITADEL INVESTMENT SERVICES, requests that this Court enter an order acknowledging Respondent's credit of \$17,500,000.00 in the Petitioner's pending workers' compensation claim.

By:



James P. Roach

Hennessy & Roach, P.C.
140 South Dearborn, Suite 520
Chicago, Illinois 60603
(312) 346-5310
Attorney No.: 766

Michael B

Personally Prepped By: ~~Michael B~~

This Document Was Received With:

- Original Death Certificate
- Raised Seal Present On:

- Certified Document:

- No Raised Seals
- No Certified Documents
- EMSI Best Copy available
(Please Index)
- Original Policy
- Prepaid Envelope For:
- Non Scannable Document
- Referenced Enclosure Was Not Found:

Returned Post Office Mail:

- Not Deliverable
- Return To Sender
- Not At This Address
- Insufficient Address
- Forwarding Order Expired

Notes:

Adjustments

- COLA
- FICA
- General Cal Worksheet
- Other
(Activities/Financial Check/Bill)
- Overpayment Worksheet
- Partial Cal Worksheet
- Pension
- Personal Check
- Rehab Earnings
- Salary Adjustment
- SLF Check
- SLF Check Undeliverable
- Social Security
- SS Award
- SS Calc Worksheet
- SS Reimbursement
- WCB

General Docs

- Authorizations
- Change of Address
- Complaints
- Correspondence
- EFT Forms
- E-Mail
- FML
- Job Description
- Notice of Return to Work
- Notice of Death
- Other Adjustments
- Other
- Police / Accident Report
- Proof of Age
- Surveillance
- Surveillance Bill
- Unassigned Doc Type
(Personal Profiles)

General Worksheet

- Telephone Template

Legal Docs

- Appeal
- Court Order
- Demand
- Full and Final Release
- Other
- POA / Guardianship
- Subrogation

Medical Docs

- APS Behavioral Health Condition
- APS Supplementary
- Clinical Notes
- FCE
- IME
- Internal Medical Opinion
- Internal Psychiatric Opinion
- List of Providers
- Medical Bills
- Other Medical
- Surveillance

New Claim Docs

- Attending Physician Statement
- Complete Claim Package
- Employee Statement
- Enrollment Card
- Employer Statement
- Notice of Claim
- Other New Claim Documents
- Partial Claim Package
- Sun Advisor
- Telephonic
- Transitional Claim Form
- Unassigned Doc Type

Rehab Docs

- Rehab Bills
- External Vendor Corresp
- FCE Report
- Other
- Rehab Correspondence
- TSA / LMS

Updated: October 18, 2007



Sun Life Assurance
Company of Canada
SC 3208
One Sun Life Executive Park
Wellesley Hills, MA 02481-5699
1-800-247-6875

April 29, 2008

Daley, DeBofsky & Bryant
Attn: Mark DeBofsky
55 W Monroe Street
Ste. 2440
Chicago, IL 60603

RE: Ted Baxter
Control No: 230605-00981-00
Policy No: 67534-GD-Long Term Disability

Dear Mr. DeBofsky:

Your letter dated April 21, 2008 requesting an appeal review of Mr. Baxter's Other Income offset and overpayment was received in our office on April 25, 2008. Thank you for your submission.

We will make a decision on review within a reasonable period of time, but not later than 45 days or June 9, 2008, following receipt of your appeal request unless special circumstances require an extension of time for processing. If an extension is required, we will notify you in writing of the extension prior to the end of the initial 45 day review period. Our notice of extension will explain the special circumstances requiring an extension of time and the date by which we expect to render a decision on review. The extension cannot exceed a period of 45 days from the end of the initial review period.

If a period of time is extended because we have not received information necessary to decide the claim, the period for making the benefit determination on review is tolled from the date on which the notice of extension is sent until the date on which you respond to the request for additional information.

Should you have any questions regarding this appeal, please contact me at 1-877-260-9778, extension 7102.

April 29, 2008
Page 2

Sincerely,

Brian Sullivan
Benefit Consultant
LTD Appeals

LAW OFFICES

Daley, DeBofsky & Bryant

April 25, 2008

55 West Monroe
Suite 2440
Chicago, Illinois 60603

VOICE (312) 372-5200
FAX (312) 372-2778
WEB ddbchicago.com

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Mark D. DeBofsky
David A. Bryant
Marcie E. Goldbloom
James R. Comerford
Violet H. Borowski
Sandra M. Dye
Gregory A. Benker
Kimberly Jones

Of Counsel
Heather F. Aloe

Robert Goodall
Claim Consultant
Sun Life
P.O. Box 81830
Wellesley, MA 02481

230605-00981-00

RE: Ted Baxter

Dear Mr. Goodall:

As an addendum to our letter dated April 21, 2008, we wish to make it clear that in the event Mr. Baxter negotiates checks for \$1,500, he is doing so without prejudice to his rights to contest the offset claimed by SunLife.

Thank you for your prompt attention to this matter, feel free to contact our office if you have any additional questions.

Very truly yours,



Mark D. DeBofsky

MDD/ch

Cc: Ted Baxter



Sun Life Assurance
Company of Canada
SC 3208
One Sun Life Executive Park
Wellesley Hills, MA 02481-5699

1-800-247-6875

June 4, 2008

Daley, DeBofsky & Bryant
Attn: Mark DeBofsky
55 W Monroe Street
Ste. 2440
Chicago, IL 60603

RE: Ted Baxter
Control No: 230605-00981-00
Policy No: 67534-GD-Long Term Disability

Dear Mr. DeBofsky:

We received your written request for a review of Mr. Baxter's claim April 25, 2008. The initial 45-day review period will expire on June 9, 2008.

In our letter to you dated April, 2008 we told you that if we could not render a decision within 45 days of receipt of your written appeal request due to special circumstances, we would advise you of the special circumstances requiring an extension of time and the date by which we expect to render a decision on review.

Accordingly, this letter constitutes written notice to you that we require an extension of time to make a determination on review. The extension period cannot exceed a period of 45 days from the end of the initial review period.

The review of Mr. Baxter's offset is ongoing at this time. You will be notified once a decision has been made. Please call me at (877) 260-9778, extension 7102, if you have any questions.

Sincerely,

Brian Sullivan
Benefit Consultant
LTD Appeals

DALEY, DEBOFSKY & BRYANT

FACSIMILE TRANSMITTAL SHEET

TO:	Robert Goodall	FROM:	Mark D. DeBofsky
COMPANY:	Sun Life	DATE:	6/12/08
FAX NUMBER:	781.304.5537	TOTAL NO. OF PAGES INCLUDING COVER:	4
PHONE NUMBER:		SENDER'S REFERENCE NUMBER:	
RE:	Ted Baxter	YOUR REFERENCE NUMBER:	

URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

NOTES/COMMENTS:

55 WEST MONROE STREET, SUITE 2440
 CHICAGO, ILLINOIS 60603
 VOICE 312.372.5200
 FAX 312.372.2778

SUN BAXTER 001414

LAW OFFICES

Daley, DeBofsky & Bryant

June 12, 2008

Robert Goodall
Claim Consultant
Sun Life
P.O. Box 81830
Wellesley, MA 02481

RE: Ted Baxter

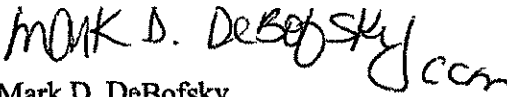
Dear Mr. Goodall,

Please be advised that we have not yet received a response to our April 21, 2008 correspondence regarding the workers compensation settlement for Mr. Baxter. As the offer on the table is about to expire, we need a response by noon today as to whether SunLife has chosen to reject the settlement or to take over representation of Mr. Baxter in the workers compensation claim.

If we do not receive a response by noon, we will assume an assent to the settlement and will accept it.

We appreciate your attention to this matter.

Very truly yours,


Mark D. DeBofsky

MDD/eh

Cc: Ted Baxter

55 West Monroe Street
Suite 2440
Chicago, Illinois 60603

VOICE (312) 372-5200
FAX (312) 372-2778
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Of Counsel
Heather F. Aloe

LAW OFFICES

Daley, DeBofsky & Bryant

April 21, 2008

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Of Counsel
David R. Bryant
Heather F. Aloe

Robert Goodall
Claim Consultant
Sun Life
P.O. Box 81830
Wellesley, MA 02481

RE: Ted Baxter

Dear Mr. Goodall:

With respect to our client Ted Baxter, enclosed please find documentation relating to his Workers' Compensation claim. Although we do not believe we are required to seek pre-approval or consent from Sun Life, the workers' compensation attorney presents a very convincing rationale as to why the settlement proposal should be accepted. We would therefore appreciate Sun Life's assent to the settlement so that we cannot later be accused of a collusive settlement.

In addition, with respect to the claim that the medical malpractice recovery constitutes "other income," we respectfully decline to reimburse Sun Life. We have previously pointed out why Sun Life has no basis for claiming an offset and that the risk of faulty drafting is on the insurer pursuant to the legal doctrine of *contra proferentem*. We therefore wish this letter, along with our prior correspondence which is attached, to constitute Ted Baxter's appeal of Sun Life's determination. Upon further review by your appeals department, we are confident you will agree that the claimed offset is not appropriate and that Mr. Baxter can continue to receive his full benefit payment less Social Security (and workers' compensation) which we acknowledge are proper offsets under the "other income" provisions of the policy.

If you have any questions, please contact us. Thank you for your attention to this matter.

Very truly yours,



Mark D. DeBofsky

MDD/cem

Enclosure

cc: Ted Baxter



Sun Life Assurance
Company of Canada
SC 3208
One Sun Life Executive Park
Wellesley Hills, MA 02481-5699

1-800-247-6875

July 23, 2008

Via FedEx

Eichhorn & Eichhorn, LLP
Attn: David C. Jensen
200 Russell Street
Hammond, IN 46320
(219) 931-0560

RE: Long Term Disability, Ted Baxter
Policy No: 67534-GD-Long Term Disability

Dear Mr. Jensen:

Enclosed are all claim file documents related to Mr. Baxter's employment, income, and litigation settlements. Mr. Baxter became disabled under the terms of the Policy on April 22, 2005 and received a Medical Malpractice Settlement related to his disabling condition in March 2007.

Mr. Baxter receives a monthly long term disability benefit from Sun Life, and Sun Life is currently offsetting that benefit by 1/3 the amount of the settlement amount. Mr. Baxter, through his attorney, has appealed Sun Life's decision to offset his long term disability benefit.

Please review the enclosed and provide your professional opinion on the following:

- Is it reasonable to conclude that no portion of Mr. Baxter's Medical Malpractice Settlement represents lost income and/or income replacement, as has been suggested by Mr. Baxter's attorney? Please explain.
- If it is not reasonable to conclude the above, what amount of Mr. Baxter's Medical Malpractice Settlement (either dollars or percentage) likely represents a recovery for lost income (please explain how you arrived at this conclusion)?

Please contact me if there are any additional documents, not contained in these file documents, that you feel are necessary to complete your review. I will obtain any such documents directly from Mr. Baxter's attorney.

Please include either a current curriculum vitae or resume with your report. Your bill for services can be sent to my attention at the address above.

July 23, 2008
Page 2

Thank you for your time in reviewing this case. If you have any questions, please call me at (877) 260-9778, extension 7102.

SUN BAXTER 001418

Sincerely,

Brian Sullivan
Benefit Consultant
LTD Appeals

US APPEAL REFERRAL

Work Type
Appeal Referral

Claim Control #: 230605-00981-00	Claim Status: End Pay Period	Claim Type: LTD
Policy #: 67534	Cert #: 84503725	Group Office: CHICAGO
Last Name: BAXTER	First Name: TED	Claim Office: Boston
Last Payment Date: 31/Jul/2008		
Start Date: 28/Apr/2008	Due Date: 29/Apr/2008	Priority: 4

APPEAL SUMMARY

Denial Date: 18/Apr/2008
 Reason For Denial:
 Letter of Appeal Rec'd dated: 25/Apr/2008
From Attorney

Appeal Summary:

We have applied the proceeds of a third party settlement to OIB provision of the policy, reducing the EE's net monthly benefit to the minimum benefit.

EE's attny is appealing this decision without providing any additional/new documentation.

APPEAL RESPONSE

Appeal Response if Required:

Assigned To: Brian Sullivan	Created: 28/Apr/2008	Work Item ID: 3165205
---------------------------------------	--------------------------------	---------------------------------

DALEY, DEBOFSKY & BRYANT

FACSIMILE TRANSMITTAL SHEET

TO: Robert Goodall	FROM: Mark D. DeBofsky
COMPANY: Sun Life	DATE: 8/20/08
FAX NUMBER: 781.304.5537	TOTAL NO. OF PAGES INCLUDING COVER: 5
PHONE NUMBER:	SENDER'S REFERENCE NUMBER:
RE: Ted Baxter	YOUR REFERENCE NUMBER:

URGENT
 FOR REVIEW
 PLEASE COMMENT
 PLEASE REPLY
 PLEASE RECYCLE

NOTES/COMMENTS:

55 WEST MONROE STREET, SUITE 2440
CHICAGO, ILLINOIS 60603
VOICE 312.372.5200
FAX 312.372.2778

LAW OFFICES

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Ste 2440
Chicago, Illinois 60603

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FAX (312) 372-2778
WEB ddbchicago.com

August 20, 2008

Frederick J. Daley Jr.
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Violet H. Borowski
Sandra M. Dye
Gregory A. Benker
Kimberly A. Jones

Of Counsel
David R. Bryant
Heather Freeman

Robert Goodall
Claim Consultant
Sun Life
P.O. Box 81830
Wellesley, MA 02481
Sent by fax to 781.304.5537

RE: Ted Baxter

Dear Mr. Goodall:

Enclosed please find a copy of our client, Ted Baxter's, tentative Workers' Compensation settlement contract. We have no objections to the settlement. Please advise us as soon as possible if Sun Life has any objections, and also advise us with respect to any offset issues you believe are applicable.

If you have any questions, please contact us. Thank you for your attention to this matter.

Very truly yours,



Mark D. DeBofsky

MDD/ccm
Enclosure

cc: David Wittenberg, Esq.

FROM Daley Debofsky

**ILLINOIS WORKERS' COMPENSATION COMMISSION
SETTLEMENT CONTRACT LUMP SUM PETITION AND ORDER**

ATTENTION. Please type or print. Answer all questions. File four copies of this form. Attach a recent medical report.

Workers' Compensation Act Occupational Diseases Act Fatal case? No Yes Date of death _____

TED BAXTER
Employee/Petitioner

Case # **05 WC 40121**

v.

CITADEL INVESTMENT GROUP, LLC.
Employer/Respondent

Setting **Chicago**

To resolve this dispute regarding the benefits due the petitioner under the Illinois Workers' Compensation or Occupational Diseases Act, we offer the following statements. We understand these statements are not binding if this contract is not approved.

Ted Baxter
Employee's name

Street address

City, State, Zip code

Citadel Investment Services
Employer's name

131 South Dearborn Street, Chicago, IL 60603
Street address City, State, Zip code

Employee's Social Security # **084-50-3725**

Male Female

Married Single

Dependents under age 18 _____

Birthdate **11/17/63**

Average weekly wage \$ **approx. \$28,000.00**

Date of accident **4/2/05**

How did the accident occur? **Petitioner at home watching television after international flight**

What part of the body was affected? **Whole**

What is the nature of the injury? **Stroke**

The employer was notified of the accident orally in writing . Return-to-work date **None**

Location of accident **Illinois** Did the employee return to his or her regular job? Yes No

If not, explain below and describe the type of work the employee is doing, the wage earned, and the current employer's name and address.

Petitioner is not returning to work.

TEMPORARY TOTAL DISABILITY BENEFITS: Compensation was paid for _____ weeks at the rate of \$ _____/week. **None - see terms**

The employee was temporarily totally disabled from _____ through _____

MEDICAL EXPENSES: The employer has has not paid all medical bills. List unpaid bills in the space below.

See Terms

PREVIOUS AGREEMENTS: Before the petitioner signed an *Attorney Representation Agreement*, the respondent or its agent offered in writing to pay the petitioner \$ **0** as compensation for the permanent disability caused by this injury.

An arbitrator or commissioner of the Commission previously made an award on this case on **none** regarding

TTD \$ _____ Permanent disability \$ _____ Medical expenses \$ _____ Other \$ _____

IC5 12/04 100 W. Randolph Street #8-200 Chicago, IL 60601 312/814-6611 Toll-free 866/352-3033 Web site: www.iwcc.il.gov
Downstate offices: Collinsville 618/346-3450 Peoria 309/671-3019 Rockford 815/987-7292 Springfield 217/785-7084
Disclosure of this information to the Commission is done voluntarily under 820 ILCS 305/6(b).

SEE ATTACHED RIDER

Total amount of settlement \$ 20,000.00
 Deduction: Attorney's fees \$ 4,000.00
 Deduction: Medical reports, X-rays \$ _____
 Deduction: Other (explain) \$ 558.41 med records + costs
 Amount employee will receive \$ 15,441.59

PETITIONER'S SIGNATURE. Attention, petitioner. Do not sign this contract unless you understand all of the following statements. I have read this document, understand its terms, and sign this contract voluntarily. I believe it is in my best interests for the Commission to approve this contract. I understand that I can present this settlement contract to the Commission in person. I understand that by signing this contract, I am giving up the following rights:

1. My right to a trial before an arbitrator;
2. My right to appeal the arbitrator's decision to the Commission;
3. My right to any further medical treatment, at the employer's expense, for the results of this injury;
4. My right to any additional benefits if my condition worsens as a result of this injury.

Signature of petitioner

Name of petitioner (please print)

Telephone number

Date

PETITIONER'S ATTORNEY. I attest that any fee petitions on file with the IWCC have been resolved. Based on the information reasonably available to me, I recommend this settlement contract be approved.

Signature of attorney

Date

Attorney's name and IG code # (please print)

Firm name

Street address

City, State, Zip code

Telephone number

E-mail address

RESPONDENT'S ATTORNEY. I attest that any fee petitions on file with the IWCC have been resolved. The respondent agrees to this settlement and will pay the benefits to the petitioner or the petitioner's attorney, according to the terms of this contract, promptly after receiving a copy of the approved contract.

Signature of attorney or agent

Date

James P. Roach #766

Attorney's name and IC code # or agent (please print)

Hennessy & Roach, P.C.

Firm name

140 South Dearborn, 7th Floor

Street address

Chicago, Illinois 60603

City, State, Zip code

(312) 346-5310

Telephone number

E-mail address

Name of respondent's insurance or service company (please print)

ORDER OF ARBITRATOR OR COMMISSIONER:

Having carefully reviewed the terms of this contract, in accordance with Section 9 of the Act, by my stamp I hereby approve this contract, order the respondent to promptly pay in a lump sum the total amount of settlement stated above, and dismiss this case.

ICS page 2

Re: Ted Baxter v. Citadel Investment Group, LLC
No. 05 WC 40121

RIDER

Respondent offers and the petitioner agrees to accept \$20,000.00 in full and final settlement of any and all claims under the Workers' Compensation Act and Occupational Disease Act for any and all accidental injuries of any nature, kind, or description allegedly incurred as a result of the accident of April 21, 2005 including any and all results, developments, or sequelae, fatal or non-fatal, allegedly resulting from such accidental injuries and whether or not such injuries are compensable. Issues exist between the parties as to whether petitioner has incurred injuries to the degree alleged and whether or not such injuries are compensable, and this settlement is made to amicably settle all issues on a disputed basis. Specifically, Respondent disputes that the Petitioner suffered an injury that arose out of or occurred in the course of his employment on April 21, 2005 or at any other time while employed by Respondent. In other words, Respondent disputes that Petitioner's stroke was work-related.

Additionally, Petitioner filed a third party case in the Circuit Court of Cook County (Court number 06 L 12259) alleging medical malpractice arising from the medical care he received for his alleged April 21, 2005 accident. That case settled for at least \$17,550,000.00. Therefore, while there exists a dispute between the parties as to the Respondent's legal rights under the Act, the Respondent further alleges that if the Petitioner did suffer a compensable injury under the Act on April 21, 2005, Respondent is entitled to a credit under Section 5(b) of the Act for 75% of the monies received in the Petitioner's third party case, or a credit of at least \$13,125,000.00. The dispute regarding the Respondent's credit rights under Section 5(b) is the basis of the consideration being paid by Respondent to settle this claim.

This settlement includes liability for temporary total compensation and all medical, surgical, rehabilitation and hospital expenses, past or future, allegedly resulting from said accidental injury for all of which petitioner expressly assumes responsibility. All rights under Section 8(a), Section 16 and Section 19, including but not limited to Section 19(h) of the Act are expressly waived by the parties. The petitioner and respondent agree that this settlement is made with the intent to preserve all rights afforded to respondent under Section 5(b) of the Act and in no way are any rights under Section 5(b) waived by respondent. The parties agree that other claims by the petitioner under the Act against the respondent may exist, and that petitioner fully releases respondent from any and all claims under the Act through contract approval as this settlement is based on petitioner's present condition and it is the specific intent of the petitioner to release respondent from any and all claims from alleged injuries of any nature arising through the date of contract approval without exception, whether filed or unfiled, known or unknown.

Both parties considered Medicare's interests in this settlement. Because of the disputed liability related to Petitioner's claim and the size of the Respondent's Section 5(b) credit,

however, the Respondent would not realistically ever face any liability to the Petitioner for medical care under Section 8(a) of the Act. Therefore, no portion of this settlement has been dedicated to a Medical Set Aside. The Petitioner agrees that this settlement covers any and all liens and federal rights of recovery under the Medicare Second Payor Act, and that any such lien would be paid out of the proceeds of this settlement if legally required. While fully disputing that a Medical Set Aside is necessary in this claim, if it is ever determined that one should have been established, Petitioner assumes liability to fund it out of those settlement proceeds.

Petitioner and petitioner's attorney agree to indemnify and hold respondent and respondent's attorney harmless with regard to any fee petitions, whether filed or unfiled, resolved or unresolved. This settlement is made to end all litigation between the parties in all jurisdictions, and constitutes a total waiver of petitioner's rights to further claims and/or benefits in other jurisdictions, if any. Without limiting the generality of the foregoing release, this settlement represents: A fully disputed lump sum settlement.

 Petitioner

 Attorney for Petitioner

 Attorney for Respondent

 Date

 Date

 Date

8/14/08



Sun Life Assurance
Company of Canada
SC 3208
One Sun Life Executive Park
Wellesley Hills, MA 02481-5699

1-800-247-6875

September 2, 2008

Mark D. DeBofsky
Law Offices of Daley, DeBofsky & Bryant
55 W Monroe St., Ste 2440
Chicago, IL 60603

Re: Policy No. 067534-GD-Long Term Disability
Control # 230605-00981-00
Claimant: Ted Baxter

Dear Mr. DeBofsky:

This is in response to your letter of August 20, 2008 and to acknowledge receipt of a copy of the Worker's Compensation Settlement Agreement between Mr. Baxter and Citadel Investment Group.

The file is currently in review on appeal with Brian Sullivan. Your August 20, 2008 correspondence with enclosures has been forwarded to him for response with the appeal.

Should you have any questions regarding this matter in the interim, please feel free to call me at 1-877-260-9778, extension 7107 or Brian Sullivan at extension 7102.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Goodall".

Robert Goodall
Claim Consultant
Group Long Term Disability
SC 3208



Sun Life Assurance
Company of Canada
SC 3208
One Sun Life Executive Park
Wellesley Hills, MA 02481-5699

1-800-247-6875

September 2, 2008

Via Fax: (312) 372-2778
Daley, DeBofsky & Bryant
Attn: Mark DeBofsky

RE: Ted Baxter
Policy No: 67534-GD-Long Term Disability
Control No: 230605-00981-00

Dear Mr. DeBofsky:

Attached is the report obtained as part of Mr. Baxter's appeal review. Please provide your response within a reasonable period of time, but not later than 45 days from the date of this letter. Once received, Sun Life will respond within a reasonable period of time.

Please call me at (877) 260-9778, extension 7102, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian Sullivan", with a long horizontal flourish extending to the right.

Brian Sullivan
Benefit Consultant
LTD Appeals