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Blake Alexander Hewitt  
Kenneth Henry Dojaquez  
John Clarke Newton

OF COUNSEL  
O. Eugene Powell, Jr.

August 6, 2013

**RECEIVED**  
AUG - 6 2013  
S.C. Supreme Court

**VIA HAND DELIVERY**

The Honorable Daniel E. Shearouse  
Clerk of Court  
Supreme Court of South Carolina  
Post Office Box 11330  
Columbia, South Carolina 29211

RE: Ricky Burton v. Hardaway Concrete Co., Inc., and  
Liberty Mutual Fire Insurance  
Case Tracking No. 2011-199766

Dear Mr. Shearouse:

This case is currently being held in abeyance per the Court's order of May 24, 2013. Pursuant to Rule 261, SCACR, the parties have settled this matter. Please find attached for the Court's records the filed settlement order. At this time, we respectfully request the Court consider the parties' joint request for dismissal of May 21, 2013.

Thank you for your attention to this matter. If you have any questions or need any additional information, please do not hesitate to contact me.

Sincerely,

John S. Nichols  
BLUESTEIN, NICHOLS, THOMPSON  
& DELGADO, LLC

JSN:emb  
Enclosures

cc: Luther Battiste, Esquire  
William T. Toal, Esquire  
Michael W. Burkett, Esquire

STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )  
Ricky Burton, )  
Employee, )  
Claimant, )  
- vs - )  
Hardaway Concrete Company, Inc., )  
Employer, )  
and Liberty Mutual Fire Insurance )  
Company, )  
Carrier, )  
Defendants. )

**BEFORE THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION**

**ORDER**

W.C.C. FILE NO. 0717674  
CARRIER FILE NO. WC550-575832

**RECEIVED**  
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SETTLEMENT  
JUL 30 2013  
Division of Claims  
SC Worker's Comp. Comm.  
**S.C. Supreme Court**

This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of the claimant, Ricky Burton. The claimant is represented by Luther J. Battiste, III, Esquire, and the defendants, Hardaway Concrete Company, Inc. and Liberty Mutual Fire Insurance Company, are represented by Michael W. Burkett, Esquire of Willson Jones Carter & Baxley, P.A. The South Carolina Workers' Compensation Commission has jurisdiction.

It appears that the claimant was an employee of Hardaway Concrete Company, Inc. and alleges that on August 18, 2007, he sustained an injury by accident arising out of and in the course of said employment when he was unloading a truck and allegedly injured his back. Defendants deny that the alleged accident or injuries occurred. It is expressly understood and agreed that this case settled on a doubtful and disputed basis and defendants continue to deny liability in this matter. Claimant's compensation rate is Four Hundred Two and Ninety-Four/One-Hundredths Dollars (\$402.94).

The parties hereto now advise that in their opinion the matter is in bona fide dispute and in view of such dispute an agreement has been reached to settle this matter in its entirety, subject to the approval of the South Carolina Workers' Compensation Commission.

Under the proposed settlement the defendants have agreed to pay and the claimant has agreed to accept the sum of One Hundred Thirty-Five Thousand and No/One-Hundredths Dollars (\$135,000.00) in full settlement and satisfaction of the indemnity and/or disability portion of his claim under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, said alleged injury by accident occurring on or about August 18, 2007, while the claimant was an employee of Hardaway Concrete Company, Inc. As an integral part of this settlement agreement, it is expressly understood and agreed that any and all medical expenses of whatsoever nature or kind from the date of Claimant's alleged accident until the approval of this agreement shall be the express liability of the claimant and the defendants shall have no liability therefore. Claimant fully understands and acknowledges that the payment of the sum of One Hundred Thirty-Five Thousand and No/One-Hundredths Dollars (\$135,000.00) represents the final settlement agreement.

The parties agree that the compensability of Claimant's claim is in dispute as is the Defendant's responsibility for the cost of future medical care is in dispute. The parties realize that time may reduce and/or increase the need for future medical care, and as a compromise and recognition of the disputed compensability of his claim agree that Zero Dollars (\$0.00) of the total settlement amount of Zero Dollars (\$0.00) shall be allocated to release all liability for future medical care and attention. The parties reached this compromise based upon careful consideration of all the medical reports and opinions, merits of the Claim, and the claimant's own knowledge of his condition and symptoms.

Claimant is currently a Medicare beneficiary and the parties have taken careful consideration of Medicare's interest in this claim. The parties have a proposed a zero dollar Medicare Set-Aside (MSA) to the Center for Medicare Services (CMS) and have requested approval of the proposal based upon the unique circumstances of Claimant's workers' compensation claim. If CMS approves the proposed zero dollar MSA then Claimant is responsible for all future medical expenses of whatsoever kind or nature for the rest of his lifetime. If CMS does not approve the zero dollar allocation, the Defendants may at their own choice either 1) fund the

MSA to the satisfaction of CMS or 2) agree to pay Claimant's causally related medical benefits for the Claimant's lower back injury for the remainder of Claimant's life beginning with the date of approval of this agreement pursuant to the South Carolina Workers' Compensation Act.

The claimant hereby asserts that he has been fully advised by his attorney of record of all his rights under the South Carolina Workers' Compensation Act, and that the claimant is of the opinion that the proposed settlement is reasonable and fair and in this opinion the claimant's attorney concurs and asserts that he has fully advised the claimant of all his rights under the South Carolina Workers' Compensation Act, and they respectfully request that this Commission approve the settlement as set forth above. The claimant hereby asserts that he recognizes that his consent to, and the approval of, this Order is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid alleged injury by accident occurring on or about August 18, 2007, while the claimant was an employee of Hardaway Concrete Company, Inc.

The claimant has been apprised of his right to seek assistance from legal counsel of his choosing or directly from the Social Security Administration or other governmental agencies regarding the impact this settlement agreement may have on the claimant's current or future entitlement to social security or other governmental benefits.

The claimant understands that the receipt of this workers' compensation settlement may affect the claimant's rights to other governmental benefits, insurance benefits, disability benefits, or pension benefits. Despite this possibility, the claimant desires to enter into this agreement to settle this workers' compensation claim as set forth in this settlement document.

The parties hereto acknowledge that the South Carolina Workers' Compensation Commission relies upon the representation of the attorney for the claimant that the claimant has been fully apprised of his rights under the South Carolina Workers' Compensation Act.

It is hereby agreed that the settlement proceeds of \$135,000.00 shall be allocated as follows: (a) \$45,150.00 for attorney's fees and \$2,665.47 for costs in prosecuting this action; and

(B) \$87,194.53 in compromise settlement of disputed future lost earning at the rate of \$282.28 per month for 307.8 months (Claimant, who was born on 4/5/1964 and was 45 years of age as of this date, has a life expectancy of 25.65 years or 307.8 months pursuant to South Carolina Code Ann. §19-1-150), commencing May 16, 2013. See Utica/Mohawk Mills v. Orr, 277 S.C. 226, 875 S.E.2d 589 (1955); See also Sciarotta v. Bowen, 837 F.2d 135 (3d Cir. 1988); See also on remand: Sciarotta v. Secretary of H.H.S., 735 F.Supp. 148 (D.N.J. 1989); POMS11501.235(c).

It is expressly understood that defendants take no position and make no representation as to the requested allocation of the settlement sum as set forth above and that the proposed allocation in no way affects the absolute release of defendants.

The parties acknowledge that the opinions stated by the physicians regarding the nature and extent of the employee's medical condition and disability are opinions, not facts, and that, to the extent they are relying on those opinions, they are doing so with the knowledge that such opinions may be incorrect. Accordingly, employee, employer and carrier and/or servicing agent agree that this settlement agreement cannot be voided in the future on the basis that either or both parties relied on statements or opinions from physicians, or other medical providers, in entering into this agreement.

**Finally, the parties agree payment to the Claimant and his attorney for the indemnification/disability portion of Claimant's claim will be payable within 20 days of the final determination by CMS regarding the proposed zero-dollar MSA. If CMS rejects the proposed zero-dollar MSA then the Defendants have 30 days in which to elect whether to 1) fund the MSA to the satisfaction of CMS or 2) agree to pay Claimant's causally related medical benefits for the Claimant's lower back injury for the remainder of Claimant's life beginning with the date of approval of this agreement pursuant to the South Carolina Workers' Compensation Act.**

NOW, THEREFORE, IT IS ORDERED that notwithstanding the above agreement with respect to responsibility for Claimant's past and future medical expenses, upon the payment of the sum of One Hundred Thirty-Five Thousand and No/One-Hundredths Dollars (\$135,000.00)

by the defendants, and the acceptance of said sum by the claimant, the defendants be, and they hereby are, fully and forever discharged of all liability of the indemnity/disability portion of Claimant's claim under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid alleged injury by accident occurring on or about August 18, 2007, while the claimant was an employee of Hardaway Concrete Company, Inc., so that upon such payment and the acceptance as aforesaid, this matter be, and it hereby is, res judicata and not subject to review under any conditions.

WE CONSENT TO THE  
FOREGOING ORDER:

Ricky N. Burton  
Ricky Burton, Claimant  
Dated: 7-29-2013

Luther J. Battiste, III  
Luther J. Battiste, III  
Attorney for Claimant

WILLSON JONES CARTER & BAXLEY, P.A.

BY: [Signature]  
Michael W. Burkett  
Attorneys for Defendants

FEE SUBJECT TO FORM 61