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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

SC Court of Appeals

Appeal from the South Carolina Workers' Compensation Commission

Susan S. Barden, Commissioner
Derrick L. Williams, Commissioner
Andrea C. Roche, Commissioner

W.C.C. File No. 0809520

Yuri Valderrama, Employee,Respondent,

v.

Kohler Company, Employer, Self-InsuredAppellant.

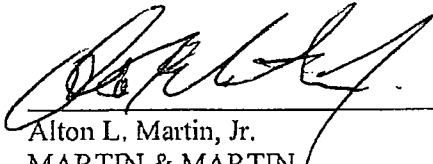
JOINT MOTION TO DISMISS APPEAL

Appellant Kohler Company and Respondent Yuri Valderrama hereby jointly move this Court to dismiss the appeal in the above-referenced matter pursuant to Rule 260(b) SCACR. This matter is currently pending before this Court on appeal from an Order of the South Carolina Workers' Compensation Commission ("Commission"). Respondent is represented by Alton L. Martin, Jr., Esquire and Appellant is represented by W. Hugh McAngus, Esquire and Weston Adams, III, Esquire. The parties have reached a settlement agreement regarding the issues on appeal, and have filed an executed Settlement Agreement and Release with the Commission. (Exhibit A). The parties have further agreed that each party will bear its own costs with respect to this appeal.

The parties hereby move to dismiss this appeal with prejudice.

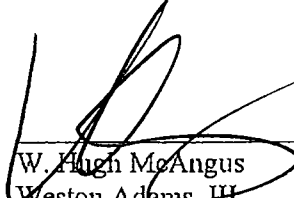
This motion conforms with Rules 240 and 267, SCACR.

August 9, 2013



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*Attorney for Respondent
Yuri Valderamma*



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*Attorneys for Appellant
Kohler Company*

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0809520

YURI VALDERRAMA,
Employee,
Claimant,
vs.
KOHLER COMPANY,
Employer,
AND
ACE USA C/O BROADSPIRE,
Carrier,
Defendants.

SETTLEMENT AGREEMENT
AND RELEASE

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SETTLEMENT

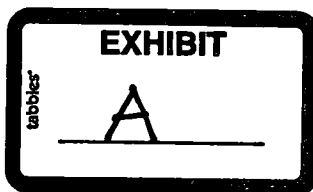
JUL 17 2013

Division of Claims
SC Workers Comp. Comm.

Yuri Valderrama "Claimant" alleges to have injured both knees, his back, stomach, liver, skin and psyche, by accident arising out of and in the course of his employment with Kohler Company "Employer" on or about June 24, 2008 when he allegedly lifting a bowl. Claimant is no longer employed by Employer.

Claimant's average weekly wage is \$678.01; and the compensation rate is \$452.03, by stipulation of the parties.

Claimant contends that he sustained an accidental injury arising out of and in the course of employment; that he is in need of additional medical examination and treatment; that he has lost compensable time from work and wages; that he has sustained permanent disability in excess of any ratings by treating physicians; that he is entitled to lifetime medical care; and Defendants dispute the Claimant's allegations and deny that any benefits are due.



[Handwritten signature]

Claimant has been treated and/or evaluated by Mary Black, M.D., who did not rate Claimant's permanent impairment, Eric Cole, M.D., who did not rate Claimant's permanent impairment, James Paul Behr, M.D., who did not rate Claimant's permanent impairment, Albert Fedalei, M.D., who did not rate the Claimant's permanent impairment, Robert Brabham, Ph.D., who did not rate Claimant's permanent impairment, Greenville Dermatology, whose physicians did not rate Claimant's permanent impairment, John E. Keith, Jr., M.D., who found that Claimant suffered 10% impairment to the left knee, and William DeVault, M.D., who found that Claimant suffered 25% impairment to he left knee and 5% to the back

In consideration of the sum of Four Hundred Seventy-Six Thousand Four Hundred Dollars and No Cents (\$476,400.00), Claimant does hereby release and forever discharge Defendants from any and all claims, demands, actions or causes of action under the South Carolina Workers' Compensation Act, on account of any and all injuries, disability, disfigurement, specific loss, death, operations, medical, hospital or like expense, continuances, recurrences, aggravations, changes of condition, ailments, illnesses, and diseases or other damages, consequences or results, past, present or future in any way connected with, or arising from the alleged injury sustained by Claimant on or about June 24, 2008, and does hereby acknowledge that Defendants have fully, finally and completely paid and discharged all of their obligations, liabilities and responsibilities under the South Carolina Workers' Compensation Act, and that the sum set forth above is being paid to, and received by, Claimant in full and final satisfaction of all claims whatsoever as a result of the alleged accident described above and that Defendants shall not be liable for any additional payments whatsoever.

Defendants have paid or have agreed to pay authorized medical expenses through July 16, 2013, incurred as a result of the alleged accident described above, in such amounts as may be

approved by the South Carolina Workers' Compensation Commission. This deadline allows for payment of a medical appointment previously scheduled for July 15, 2013.

Defendants agree to continue temporary total disability benefits pending approval of the settlement of this claim, paying to the date the settlement check is mailed to Claimant's attorney. Defendants will be given no credit for temporary total benefits paid from the date of approval until the date of mailing of the settlement check.

Claimant expressly understands and agrees and this settlement resolves any and all sanctions and/or penalties against the Defendants. Claimant understands and agrees that he will withdraw any pending motions for sanctions and/or penalties in this case. Furthermore, Claimant and his attorney agree that they will not participate in any hearings or proceedings against the Employer/Carrier for sanctions and/or penalties in this case unless compelled to do so by the South Carolina Workers' Compensation Commission.

Employer/Carrier agrees to pay all mediation charges, if any, outstanding in this claim.

The parties have reasonably and adequately considered the interests of Medicare in reaching this compromise settlement agreement pursuant to 42 CFR §411.46 and §411.47, the Medicare intermediary manual, the Medicare carriers manual, and under the terms of the memorandum to All Associate Regional Administrators from Parashar B. Patel of the Centers for Medicare and Medicaid Services (CMS) dated July 23, 2001, and the subsequent related memoranda issued up to the date of this compromise settlement agreement, including, but not limited to, the Gerald Walters memorandum dated December 30, 2005, upon which the parties to this agreement expressly rely. Claimant is not a U.S. citizen or legal resident alien. As such, he is not entitled to any Social Security or Medicare benefits. Therefore, Claimant is *not* currently receiving or determined to be eligible to receive Medicare benefits and has *not* applied for Social

Security Disability benefits at this time. Claimant is not a Class I beneficiary as he is not 65 years old or older, has not been on Social Security Disability for 24 months or longer, and is not in end stage renal disease.

Therefore, it is the understanding of the parties, based on the foregoing paragraphs, that it is *not* recommended nor required by Centers for Medicare and Medicaid Services (CMS) that this compromise settlement agreement be approved and/or reviewed by CMS in order to preserve Claimant's eligibility for Medicare coverage, as Claimant is not currently eligible for Medicare and not currently eligible for Social Security Disability benefits. In that regard, the parties have reasonably considered the interest of Medicare in reviewing all medical records related to this matter and have in good faith determined that no allocation is needed and, therefore, propose that no monetary amount of the total settlement be allocated to pay for the anticipated future "qualified" Medicare-covered medical expenses Claimant will incur for treatment of the work injury. None of the parties in this matter, by entering into this compromise settlement agreement, is attempting to shift to the Federal Government or Medicare the responsibility for paying for medical treatment for these alleged work-related injuries and medical conditions.

The Claimant, who was born on April 4, 1970 and is presently 43 years of age and who, as provided in the mortality tables set forth in S.C. Code Ann. §19-1-150, has a life expectancy of 35.53 years which is 1,847.56 weeks, hereby requests this Commission to approve the allocation of the aforementioned proposed settlement sum which is compensation for permanent impairment that will affect the Claimant for life, as follows: \$89,098.88 as attorney's fees and \$7,301.12 for costs in prosecuting this action and \$380,000.00 in compromise settlement of disputed future disability benefits at the rate of \$205.67667 per week for a period of 1,847.56, pursuant to S.C. Code Ann. §42-9-10, as interpreted in Utica-Mohawk Mills v. Ott, 227 S.C. 226, 87 S.E.2d 589 (1955). See

also Sciarotta v. Bowen, 837 F.2d 135 (3d Cir. 1988); S.C. Code Ann. § 19-1-150; POMS 11501.235(c). (\$380,000.00 divided by 1,847.56 weeks equals \$205.67667 per week).

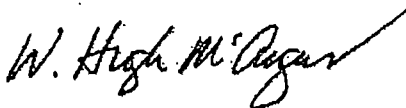
Claimant and his attorney represent that Claimant has been fully advised of his rights under the South Carolina Workers' Compensation Act and that they are of the opinion that the proposed settlement is reasonable and fair. Claimant's attorney represents that he has reviewed the settlement and has explained the terms fully to Claimant and Claimant voluntarily and without coercion agreed to the terms.

Claimant hereby relinquishes and releases each and every claim which he or anyone on his behalf now has, or may hereafter have, so that he shall not have any other or future claim or demand of any kind or nature as a result of the alleged accident described above.

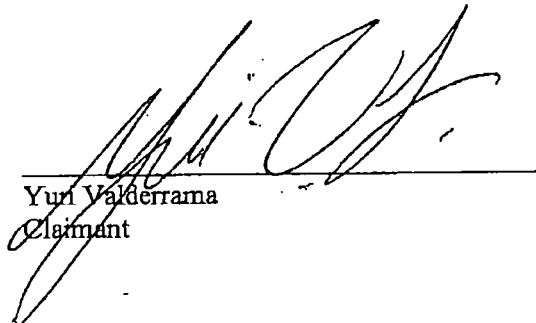
The parties are hereby filing this SETTLEMENT AGREEMENT AND RELEASE with the South Carolina Workers' Compensation Commission as required by S.C. Code Ann. §42-9-390.

WE CONSENT:

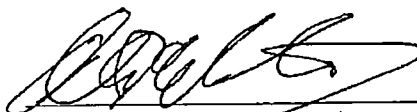
McAngus Goudelock & Courie, L.L.C.



W. Hugh McAngus
Attorney for Defendants



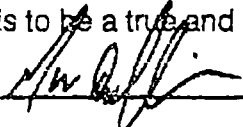
Yun Valderrama
Claimant



Alton L. Martin, Jr., Esquire
Attorney for Claimant

Columbia, South Carolina
Date: 7/16/13

I certify this to be a true and correct copy.

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

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SC Court of Appeals

Susan S. Barden, Commissioner
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Andrea C. Roche, Commissioner

W.C.C. File No.: 0809520

Yurri Valderrama, Employee, Respondent,

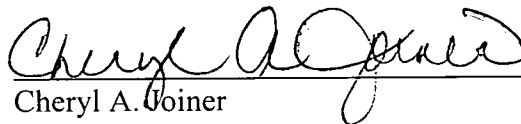
v.

Kohler Company, Employer, Self-Insured Appellant.

PROOF OF SERVICE

I certify that on the 9th day of August 2013, I served the **Joint Motion to Dismiss Appeal** on Yurri Valderrama by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Alton L. Martin, Jr., Esq.
Martin & Martin
P.O. Box 8220
Greenville, SC 29604



Cheryl A. Joiner
Legal Assistant to W. Hugh McAngus
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Attorneys for Kohler Company



ATTORNEYS AT LAW

Reply To
W. HUGH MCANGUS
Direct Dial: (803) 227-2221
hmcangus@mgclaw.com
COLUMBIA

August 9, 2013

Via hand delivery
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Yurri Valderrama v. Kohler Company
W.C.C. File No. 0809520
Our File No.: 20149.13010
Appeal Tracking No.: 2012-212658

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of the Joint Motion to Dismiss Appeal and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return the clocked-in copies via our courier. If you have any questions, please contact me.

Also, enclosed is our firm's check in the amount of \$25 for filing the motion.

Yours truly,

W. Hugh McAngus

WHM/caj
Enclosures

cc: Alton L. Martin, Jr., Esquire
Jennifer Buffett, Broadspire (via email)
Chris Algero, Broadspire (via email)
Broadspire Hub (via email)
Dean Yagodinski, Kohler Company (via email)
Jeff Plass, Kohler Company (via email)

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