



HUFF

LAW FIRM LLC

E. Ros Huff, Jr.
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Shelby H. Kellahan
skellahan@colalaw.com

December 5, 2013

The Honorable V. Claire Allen
Deputy Clerk, South Carolina Court of Appeals
PO Box 11629
Columbia, South Carolina 29211

RECEIVED
DEC 09 2013
SC Court of Appeals

Re: Homer Williams v. Walter P. Rawl and Sons, Inc.
Appellate Case Number: 2013-000239

Dear Ms. Allen:

Pursuant to Rule 261(B) Enclosed for filing is a copy of the Final Settlement Agreement between the parties to serve as Notice of Settlement in the above referenced matter. Please return a stamped copy of these documents in the envelope included.

Please let me know if you have any questions or require anything additional.

Sincerely,

Shelby H. Kellahan / for
E. Ros Huff, Jr.

ERH/shk

Enclosure

cc: Virginia Crocker, SCWCC
David N. Truitt, Esquire

RECEIVED

DEC 09 2013

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION *Court of Appeals*

Homer Williams,)
)
 Employee/Claimant,)
)
 -vs-)
)
 Walter P. Rawl & Sons,)
)
 Employer,)
)
 and)
)
 Great American Alliance Insurance Co.,)
)
 Carrier,)
)
 Defendants.)

W.C.C. FILE NO. 1009201

**FINAL LUMP SUM
AGREEMENT AND RELEASE**

RECEIVED
SETTLEMENT

NOV 25 2013

*Division of Claims
SC Workers Comp. Comm.*

The Claimant, Homer Williams, while in the course of employment of Walter P. Rawl & Sons claimed an injury to his right lower extremity in an alleged accident arising out of and in the course of his employment on or about June 10, 2010, in the County of Lexington, State of South Carolina.

At the time of the alleged accident aforementioned, the Claimant and the Employer were subject to the Workers' Compensation Law of South Carolina (hereinafter called "Act") and the Carrier was the Employer's insurer under said Act.

This is a doubtful and disputed case. As the result, no temporary total or temporary partial benefits were paid and the parties agree none are due. The Defendants paid for or on behalf of the Claimant, medical costs or expenses in the amount of \$600.00 Dollars. Additionally, defendants agree to fund \$62,483.34 (*exhibit A*) into a Medicare Set-aside account to be professionally

administered by Franco Signor which will cover future medical expenses which Medicare would otherwise cover which are related to the injury described herein.

The employee is represented by David N. Truitt, Esquire of Salley Law Firm, PA in Lexington, South Carolina. The employer and carrier are represented by E. Ros Huff, Jr., Esquire of Huff Law Firm, LLC in Irmo, South Carolina. Disputes exist between the parties as to: Whether or not the claimant sustained a compensable injury by accident arising out of and in the course of employment; Claimant's entitlement to further medical benefits; Claimant's entitlement, if any, to payment of temporary total disability benefits; the extent of permanent partial impairment, if any and any other issues which might arise under South Carolina's Workers' Compensation Law.

The parties hereto now advise that, in view of the aforementioned disputes, an agreement has been reached to settle this matter in its entirety, pursuant to Section 42-9-390.

Under the proposed settlement, the Defendants have agreed to pay, and the Claimant has agreed to accept, the sum of **\$25,000.00 (Twenty Five Thousand Dollars and 00/100)** in full settlement and satisfaction of every liability under the Act growing out of or in any way connected with any injury and/or accident occurring on or about June 10, 2010. Further, claimant states there are no other workers' compensation claims, reported or unreported, at any other time prior to this agreement.

Additionally, defendants agree to fund \$62,483.34 (*exhibit A*) into a Medicare Set-aside Account to be professionally administered by Franco Signor to cover future medical expenses which Medicare would otherwise cover which are related to the injury described herein.

The claimant agrees that, if CMS requires that additional money be placed into the Medicare Set-aside Account in this case, the defendants will pay all such additional amounts and

comply with all Medicare requirements regarding such. Should Medicare require that it be reimbursed for any past medical expenses which it has paid for the claimant's medical treatment which is related to the injury described herein, the defendants agree to pay all such money and be solely responsible for the same.

As an integral part of this settlement agreement, it is expressly understood and agreed that the Defendants have paid all causally related authorized medical expenses for which they are liable and that the Claimant is responsible for any and all other medical expenses of whatsoever nature and the Defendants shall have no liability therefore (with the exception of the MSA).

The Claimant hereby asserts that he has been fully advised of all his rights under the South Carolina Workers' Compensation Act, and is of the opinion that the proposed settlement is reasonable and fair and in this opinion, the Claimant's attorney concurs. The Claimant hereby asserts that he recognizes that his consent to, and the approval of, this settlement 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, any known injury and/or accident occurring on or about June 10, 2010.

NOW, THEREFORE, in consideration of the payment to the Claimant of the sum of **\$25,000.00 (Twenty Five Thousand Dollars and 00/100)**, and in further consideration of the mutual covenants, stipulations, and releases herein contained, the Claimant hereby releases and discharges Walter P. Rawl & Sons and Great American Alliance Ins. Co., and binds Claimant's heirs, executors, administrators, dependents, next of kin, privies, and assigns under the Act and agrees to release, discharge, defend, and indemnify Walter P. Rawl & Sons and Great American Alliance Ins. Co. and their respective agents, servants, insurers, physicians, privies, and their successors, from any and all debts, claims, demands, causes of action, rights of action, and

liabilities whatsoever of any known injury and/or accident on or about June 10, 2010 including, but not limited to, any right which the Claimant might otherwise have to demand benefits for disability, disfigurement, bodily impairment, medical treatment, medicine or drugs, prosthetic devices, lost time or death, under the Act or otherwise and specifically including any right which Claimant might otherwise have to demand further benefits by way of compensation or medical care under the Act because of a change in condition hereinafter (which is expressly waived, released and renounced) whether or not arising out of, or directly or indirectly in any way conceivably attributable to any known injury and/or accident occurring on or about June 10, 2010. Further, claimant states there are no other workers' compensation claims, reported or unreported, at any other time prior to this agreement.

That the aggregate of the proposed settlement is the sum of \$25,000.00 that Employee requests this Commission to approve the allocation of the aforementioned proposed settlement as follows: \$8,333.33 to the Salley Law Firm, P.A. as attorneys' fees; \$1,102.33 to Salley Law Firm, P.A. as reimbursement of costs and expenses; \$15,564.34 to the employee as compromise settlement of future disability benefits commencing as of 11/07/2013 for a period of 13.99 years or 727.48 weeks, the life expectancy of the employee, at the rate of \$21.39 per week pursuant to the South Carolina Life Expectancy Table in 19-1-150, 1976 Code of Laws of South Carolina, as amended, and as interpreted by the South Carolina Supreme Court in the decision of Utica Mohawk Mills v. Orr, 277 S.C. 226; 87 S.E.2d 593 (1955), James v. Anne, Inc. 390 S.C. 188; 701 S.E.2d 730 (2010), and the case of Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1989). A final determination of the actual amount to be paid to Claimant, as well as the actual attorney's fees and costs will be determined upon approval of the Form 61 and accompanying Order.

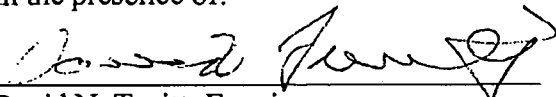
The parties have taken into consideration Social Security Disability and Medicare's potential interest in the resolution of the claim.

This Agreement shall not be subject to review, modification, or amendment by the Commission or the Courts of this State and is res judicata.

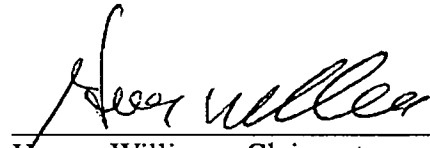
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of November 19, 2013.

WITNESSED AND APPROVED:

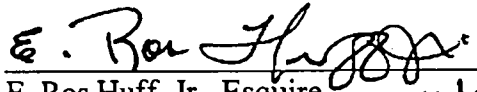
In the presence of:



David N. Truitt, Esquire
Attorney for Claimant



Homer Williams, Claimant



E. Ros Huff, Jr., Esquire
Attorney for Employer/Carrier 11/12/13

FEE SUBJECT TO FORM. 61

Medicare Set Aside Allocation

CLAIMANT INFORMATION:

Claimant:	Homer Williams	Claim Number:	564-558248
Address:	322 Center St East, Salley, SC 29137	Date of Injury:	6/10/2010
Telephone:	803-227-9529	Jurisdiction:	SC
SSN:	249-78-5473	Type of Claim:	WC
Date of Birth:	3/30/1945	Life Expectancy:	12 years
Date of Report:	October 25, 2013		

ALLOCATION DETAIL:

Total proposed Future Medical Costs:	\$ 32,754.54
Total proposed Future Prescription Costs:	\$ 29,728.80
Total proposed Future Medicare Care Costs:	\$62,483.34

ANNUITY FUNDING PARAMETERS:

<u>Initial Deposit:</u>		<u>Annual Payments:</u>	
Future Medical:	\$ 25,452.32	Future Medical:	\$ 663.84
Future Rx:	\$ 4,954.80	Future Rx:	\$ 2,252.18
Total Seed Deposit:	\$ 30,407.12	Total Annual Payments:	\$ 2,916.02

SSDI/MEDICARE STATUS & LIFE EXPECTANCY:

Social Security Disability Status:	Not an SSDI recipient (receives Social Security)
Medicare Status:	Active Medicare beneficiary
Rated Age: 75	Life Expectancy: 12 years Utilizing National Vital Statistics Report Table 1, Volume 61, Number 3, issued September 24, 2012.

"Our organization certifies that all rated ages we have obtained and/or have knowledge of regarding this claimant, and generated at any time on or after the Date of Incident for the alleged accident/illness/injury/incident at issue, have been included as part of this submission of a proposed amount for a Workers' Compensation Medicare Set-Aside Arrangement (WCMSA) to the Centers for Medicare & Medicaid."

Medical Treatment Unrelated to the Injury Claim/Co-Morbid Conditions:

The following conditions and risk factors were given consideration in determining life expectancy and/or causal relationship.

- ❖ Chronic knee pain
- ❖ History of prostate cancer
- ❖ Hypercholesterolemia
- ❖ BPH. Chronic prostatitis
- ❖ GERD
- ❖ Type II diabetes
- ❖ Fatty liver
- ❖ Hypertension

Initial Injury Description:

Primary Treating physician Keith D. Lobel at the Lexington Family Practice stated on 6/10/2010 that Mr. Williams had right knee pain after jamming his leg when he "was hopping out of his truck at the time." Mr. Williams claimed pain and difficulty bearing weight and walking on the knee. (However, Mr. Williams' deposition stated that he did not twist or jar his knee, and did not dismount the truck onto uneven ground. He described exiting the truck in a normal manner with no abnormalities noted, except when he put his right foot on the ground and bore weight on his right leg he had excruciating pain in his right knee.)

Initial Treatment:

Mr. Williams saw Primary Treating Physician Keith D. Lobel about one hour after the injury, who ordered a knee x-ray, which had findings of degenerative arthritic changes in the right knee but no acute injury. Mr. Williams was advised to use ice packs for the rest of the day and compression bandaging, and to keep the leg elevated. Crutches were provided, and Lortab medication was ordered for pain. A return appointment was scheduled.

ICD-9 Codes; Accepted, Denied & Contested:

ICD-9 Diagnoses in the report: 72751: Baker's Cyst; 72661: Pes Anserine Bursitis; 71946: knee pain; 71516: osteoarthritis of knee

Accepted Body Parts/Diagnoses: None

Denied Body Parts/Diagnoses: All

Contested Body Parts: None

Diagnosis: Degenerative arthritis of the right knee with knee pain

Past Medical History:

Diabetes type II, hyperlipidemia, hypertension, history of adenocarcinoma, and obesity. Three-year history of arthritis in both knees, per claimant's deposition.

Surgical History:

None

Current Medical Treatment:

After his initial appointment with Dr. Lobel on the day of injury, Mr. Williams returned to the doctor on 6/14/10 for re-assessment. Mr. Williams had discontinued the use of crutches, and stated he was about 50% improved. The knee was found to have no swelling and mild tenderness. Mr. Williams had a normal gait with no limp. Dr. Lobel issued an off work order for the remainder of the week, and scheduled a return appointment on Friday. He was advised to use OTC analgesics for pain.

When Mr. Williams returned to Dr. Lobel on 6/18/10, he stated increased knee pain but no swelling was noted. He had a positive McMurray test, and Dr. Lobel subsequently ordered a MRI of the knee.

The knee MRI was completed on 7/24/10, with impression of nonspecific marrow edema or bone bruise for the medial femoral condyle. Degenerative myxoid signal was present on the posterior horn of the medial meniscus, and a moderate joint effusion with a sizeable Baker's cyst was noted. No acute derangement was noted, but degenerative changes of the medial tibiofemoral joint were seen. The medial collateral ligament complex showed minimal strain.

On 8/5/2010 Dr. David Kingery MD at Lexington Orthopedics evaluated Mr. Williams for his ongoing right knee pain. Dr. Kingery noted a large Baker's cyst, which he aspirated at the appointment, however he stated the cyst could recur. He did not plan surgical treatment due to a high incidence of recurrent of this type of cyst.

At his return appointment on 8/12/2010, Dr. Kingery noted that the cyst-related pain in the posterior knee had dissipated, however Mr. Williams cited pain within the knee joint, therefore Dr. Kingery injected the knee with Depo-Medrol for what he assessed as patellofemoral symptoms indirectly related to the Baker's cyst.

At his return appointment on 8/31/2010 Mr. Williams' complaints had again changed, this time with stated improvement in some of his knee symptoms but now with new symptoms primarily at the medial border of the patella, suggestive of plica and also in the pes bursa. Dr. Kingery injected these two painful areas and anticipated a return to work by the end of September.

At his return appointment on 9/27/2010 Dr. Kingery noted that Mr. Williams' "knee symptoms are mostly resolved" however he continued with some mild medial side pain with full flexion. Dr. Kingery noted that Mr. Williams was pleased with his decreased pain level and received a return to work order effective 10/4/2010. He was to return if he had recurrent symptoms.

Mr. Williams returned to Dr. Kingery on 12/16/2010 with mild to moderate anterior knee pain. Dr. Kingery diagnosed mild ongoing pain in the knee related to mild osteoarthritis, and ordered Meloxicam 7.5 mg daily.

Mr. Williams returned to Dr. Kingery on 1/13/2011 with symptoms of pes anserine bursitis, pain below the medial knee, and tenderness to touch. Dr. Kingery injected the painful area with Depo-Medrol, and stated this was related to his WC knee injury.

Mr. Williams returned yet again to Dr. Kingery on 3/17/2011 with recurrent pes anserine bursitis and some mild medial knee pain. Dr. Kingery injected both areas with Depo-Medrol and stated Mr. Williams should return if he had a lack of improvement.

On 6/16/2011 Mr. Williams returned with pain now in both knees. His right knee was diagnosed as pes bursitis, and the left knee was suggestive of chondromalacia. X-rays showed early medial arthrosis in the right knee and patellar chondromalacia in the left knee. The right knee was again injected in the pes bursa, and the left knee was injected intra-articularly for chondromalacia of the patella. He issued an off work order for one week.

Mr. Williams saw Dr. Kingery's partner Matison Boyer MD at Lexington Orthopedics on 6/23/2011, requesting an intra-articular injection to the right knee, which he received. Dr. Boyer stated that Mr. Williams had "documented osteoarthritis."

Dr. Kingery provided another injection to each knee for "medial arthrosis on the right and less arthrosis on the left" on 9/29/2011. Mr. Williams had now retired from work. Two more right knee injections were administered on 1/23/12, intra-articular and in the pes bursa.

Mr. Williams returned to Dr. Kingery on 3/27/12, with recurrent osteoarthritis pain in the right knee. Another cortisone injection was administered to the right knee and Dr. Kingery suggested possible Synvisc injections and knee placement surgery if the cortisone injection did not provide relief.

Dr. Kingery again injected the right knee for osteoarthritis on 9/25/12.

On 3/26/12 Mr. Williams returned to Dr. Kingery, requesting injections to both knees. Dr. Kingery injected both knees with Depo-Medrol for a diagnosis of osteoarthritis.

On May 21, 2012, WC Commissioner Gene McCaskill rendered a single order mandating future medical care for Mr. Williams, to include physician visits with orthopedist or family doctor for medical care for his knee, to include a knee brace, cane, possible injections and non-steroidal anti-inflammatory medications. This order was upheld the Appellate Panel of the South Carolina WC Commission Decision and Order rendered on 1/3/2013.

Mr. Williams' deposition stated that after this knee injury, he was off about 3 months from work during which time he received three injections to his knee and then he returned to work at his regular job and worked until he retired in July 2011. Mr. Williams stated that he had been diagnosed with bilateral knee arthritis about three years prior to the injury.

Current Treating Providers:

David Kingery, MD, Orthopedics
Lexington Orthopaedics
146 N. Hospital Dr., Suite 140
West Columbia, South Carolina 29169
Tel 803-936-7230

Keith Lobel, MD, Family Practice
Lexington Family Practice White Knoll
5535 Platt Springs Road, Lexington, SC 29073
Tel 803-951-1880

Current Medications:

- ❖ Celebrex 200 mg daily

Projected Future Medical Treatment:

Mr. Williams had a stated work-related injury to the right knee, which was initially diagnosed as Baker's Cyst and Pes anserine bursitis. He also had underlying pre-existing degenerative knee disease, and the aggravation of this condition is covered by this WC plan. He additionally has left knee degenerative disease, which is not covered by this WC injury.

The South Carolina WC Commission has delineated future medical care for Mr. William's work injury to the right knee to include, but not be limited to:

- Future physician care, either orthopedist or family doctor
- Knee brace
- Cane
- Anti-inflammatory medication
- Knee injections as needed for pain relief

The future medical care for Mr. Williams WCMSA includes the above specified care, plus therapy and diagnostics. He will additionally require yearly laboratory blood testing due to the Celebrex medication. He may at some future time require a total right knee arthroplasty, in view of the frequency of the injection treatments to the right knee.

Life Expectancy In Years		12		Cost Calculated by:		
Jurisdiction		SC		WC fee schedule		
Surgical Procedures						
Procedure	CPT	# / YR	Cost One	Years	Lifetime Total	
Total Knee Arthroplasty						
MD procedure charge TKA	27447	1	\$2,100.00	1	\$2,100.00	
Hospital charge (469)		1	\$19,700.21	1	\$19,700.21	
Anesthesiology fee	01402	1	\$210.00	1	\$210.00	
Pre-op Lab						
Chemistry	80053	1	\$13.69	1	\$13.69	
CBC	85025	1	\$10.62	1	\$10.62	
Clotting time	85610	1	\$5.62	1	\$5.62	
EKG	93000	1	\$23.50	1	\$23.50	
Post-op Physical therapy						
Therapeutic exercises	97110	24	\$42.00	1	\$1,008.00	
Post op physician care	99213	6	\$95.00	1	\$570.00	
Post-op knee x-rays	73562	6	\$47.00	1	\$282.00	
Walker (post-op use)	E0135	1	\$68.24	1	\$68.24	
Total Surgery Cost				\$23,991.88		
Medical Care						
Physician care	CPT	# / YR	Cost One	Years	Lifetime Total	
Physician visits, orthopedist or family doctor						
Physician visits, orthopedist or family doctor	99213	2	\$95.00	12	\$2,280.00	
Cortisone Injection to knee						
Cortisone Injection to knee	20610	3	\$100.00	1	\$300.00	
Methylprednisolone 40 mg for injection (part B Medicare)						
Methylprednisolone 40 mg for injection (part B Medicare)	J2920	3	\$1.90	1	\$1.90	
Orthovisc Injection to knee						
Orthovisc Injection to knee	20610	3	\$100.00	1	\$300.00	
Orthovisc medication						
Orthovisc medication	J7324	3	\$167.50	1	\$502.50	
Therapies						
Physical therapy for exacerbation	97110	24	\$42.00	1	\$1,008.00	
Lab, Diagnostics, X-ray						
Lab, Diagnostics, X-ray	CPT	# / YR	Cost One	Years	Lifetime Total	
X-ray knee	73562	1	\$47.00	4	\$188.00	
MRI knee	73721	1	\$438.00	1	\$438.00	
Chemistry	80053	1	\$13.69	12	\$164.28	
CBC	85025	1	\$10.62	12	\$127.44	
DME						
DME	CPT	# / YR	Cost One	Years	Lifetime Total	
Knee brace	L1845	1	\$852.71	4	\$3,410.84	
Cane	E0100	1	\$20.85	2	\$41.70	
Total Medical Care Cost				\$8,762.66		
Medications						
NDC	Medication	Qty / Yr	Cost / Ea	Cost / Yr	Years	Lifetime Total
63739045510	Hydrocodone/APAP 5-500 mg—Post-op pain Rx	720	\$0.07	\$50.40	1	\$50.40
00025152531	Celebrex 200 mg	360	\$6.87	\$2,473.20	12	\$29,678.40
Total Medication Cost				\$29,728.80		
Total Medical/Surgical Care Minus Prescriptions				\$32,754.54		
Total Medicare Future Cost Including Prescriptions				\$62,483.34		

1612 Marion Street
South Carolina 29202-1715
737-5700

Homer Williams 249-78-5473
Claimant's Name SSN
322 Center Street, East Perry SC 29137
Address City State Zip
cell: 803-622-3629
Home Phone Work Phone

Walter P. Rawl & Sons
Employer's Name
824 Fairview Road Pelion SC 29123
Address City State Zip
Great American Alliance Ins. Co.
Insurance Carrier

E. Ros Huff, Jr. (803) 252-2232
Preparer's Name Phone #

Compensation Paid	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	_____	_____	_____	\$ _____ 0
2. Number of weeks T.P.	_____	_____	_____	\$ _____
3. Number of weeks P.P.	_____	_____	_____	\$ _____
4. Disfigurement	_____	_____	_____	\$ _____
5. Agreement and Final Release	_____	_____	_____	\$ _____ 25,000.00
Total Compensation Paid				\$ _____ 25,000.00
6. Total Medical Benefits* Paid	_____	_____	_____	\$ _____ 600.00
..... \$62,483.34 for a MSA				
7. Funeral Benefits	_____	_____	_____	\$ _____

Case Denied

Date of Injury: 06/10/10
month day year

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: [Signature]
Homer Williams-Claimant

By: [Signature]
E. Ros Huff, Jr., Esquire-Employer's Representative
11/2/13

Date: _____

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

- A. Carrier Reimbursement by Third Party \$ _____
- B. Attorney's Fee Paid by Employer \$ _____
- C. Attorney's Fee Paid by Claimant (Non contingent fees, only) \$ _____



File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied.

Division of Claims
Claims Administrator
S.C. Workers' Comp. Comm.