

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC File No. 1402522

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MAR 03 2017

SC Court of Appeals

Jeffrey S. Tracy, Employee,Appellant,

v.

Peoplease Corporation, Employer, and
National Interstate Insurance Company, Carrier Respondents.

MOTION TO DISMISS APPEAL

The parties to this appeal hereby jointly move to dismiss the appeal in the above-reverenced matter pursuant to Rule 260(c) SCACR. This matter is currently pending before this Court on appeal from an Order of the South Carolina Worker's Compensation Commission. Appellant Jeffrey S. Tracy is represented by Tyler A. Bathrick, Esquire and Respondents Peoplease Corporation and National Interstate Insurance Company are represented by Helen F. Hiser, Esquire, and Kelly Morrow, Esquire. The parties have reached a settlement agreement regarding the issues on appeal, and have further agreed that each party will bear its own costs with respect to this appeal.

The parties move to dismiss this appeal with prejudice. Under § 42-9-390 (Voluntary Settlements), for injuries occurring after July 1, 2007, and so long as both parties are represented by an attorney, the employer only needs to file a copy of the settlement agreement with the Commission. Appellant Jeffrey S. Tracy alleged injuries

arising out of a March 14, 2014 accident, and both parties have been represented throughout this case by counsel. The settlement agreement has been filed with the Commission and is attached hereto for the Court's files. As a result, no Commission approval is necessary in order to make this settlement final and binding. Therefore, this appeal should be dismissed without further delay.

This motion conforms with Rule 240 and Rule 267, SCACR.

March 1,
February 2, 2017



Tyler A. Bathrick, Esq.
STEWART LAW OFFICES, LLC
P.O. Box 670
Rock Hill, SC 29731

Attorney for Appellant



MCANGUS GOUDELICK & COURIE
Helen F. Hiser
S.C. Bar No. 76124
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

Kelly Morrow
P.O. Box 12519
Columbia, South Carolina 29211-2519
(803) 779-2300
Attorneys for Respondents

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 1402522

JEFFREY S. TRACY,

Employee,

Claimant,

vs.

PEOPLEASE & PLC SERVICES,

Employer,

AND

NATIONAL INTERSTATE INSURANCE
COMPANY,

Carrier,

Defendants.

SETTLEMENT AGREEMENT
AND RELEASE

RECEIVED
SETTLEMENT

FEB 23 2017

Division of Claims
Workers Comp. Comm.

Jeffrey S. Tracy ["Claimant"] alleges to have injured his stomach, back, right shoulder, left knee, left leg, right knee and right leg, by accident arising out of and in the course and scope of his employment with Peoplease & PLC Services ["Employer"] on or about March 14, 2014, when he involved in a motor vehicle accident.

Claimant's average weekly wage is \$716.80 and the applicable compensation rate is \$477.89.

Claimant contends that he is in need of additional medical examination and treatment; that he has lost compensable time from work and wages and that he has sustained permanent disability in excess of any ratings by treating physicians. The Defendants dispute the Claimant's allegations and deny that any benefits are due.

Claimant has been treated and/or evaluated by Sarjoo "Sam" Bhagia, M.D., who has rated the Claimant's permanent impairment at three percent (3%) of the spine on October 8, 2015, and by Dana P. Piasecki, M.D., who has rated the Claimant's permanent impairment at twelve percent (12%) percent of the right shoulder and two percent (2%) to each knee on October 6, 2015.

In consideration of the sum of One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00), 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 March 14, 2014, 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 causally-related authorized medical expenses through January 24, 2017, incurred as a result of the alleged accident described above, in such amounts as may be approved by the South Carolina Workers' Compensation Commission.

Moreover, the Defendant have agreed to waive any subrogation lien rights and interests they may have in any third (3rd) party recovery, as the result of any action the Claimant may bring relative to his March 14, 2014, work-related accident.

In further consideration of settlement, the Claimant has agreed that he shall dismiss his claim pending before the Court of Appeals related to this case.

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* 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 Claimant 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.

Furthermore, it is the understanding of the parties that there is *not* a reasonable expectation that Claimant will be eligible to become a Medicare beneficiary within thirty (30) months of the date of this compromise settlement agreement and the total payout under the terms of this compromise settlement agreement will *not* exceed Two Hundred Fifty Thousand and NO/100 Dollars (\$250,000.00). Therefore, Claimant is not a Class II Medicare beneficiary.

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 and this settlement does not exceed Two Hundred Fifty Thousand and NO/100 Dollars (\$250,000.00), and Claimant has not even in fact applied for Social Security Disability benefits to date. 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 requests that the settlement proceeds of One Hundred Fifty Thousand Dollars and No Cents (\$150,000.00) shall be allocated as follows: Ninety Four Thousand Two Hundred Eleven Dollars and Two Cents (\$94,211.02) in compromise settlement of disputed future wage loss at the rate of \$53.78 per week for a period of 1751.88 weeks, representing the remainder of the Claimant's life, pursuant to South Carolina Code of Laws Ann. Section 19-1-150 and the South Carolina Supreme Court decisions of James v. Anne's, Inc., 390 S.C. 188, 701 S.E.2d 730 (2010), Utica-Mohawk Mills v. Orr., 227 S.C. 226, 87 S.E.2d 589 (1955) and pursuant to Sciarotta v. Bowen, 837 F2d 135 (3d Cir. 1988); Fifty Thousand and Dollars and No

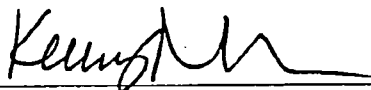
Cents (\$50,000.00) as attorney's fees and Five Thousand Seven Hundred Eighty Eight Dollars and Ninety Eight Cents (\$5,788.98) as expenses incurred in bringing this action, pursuant to a written agreement between the claimant and his attorney. Claimant and his attorney represent that Claimant has been 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.

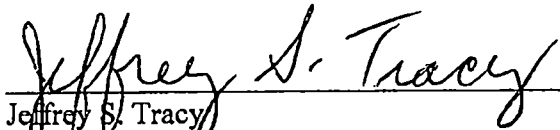
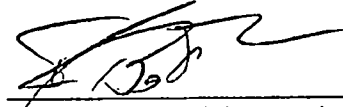
The parties are hereby filing this SETTLEMENT AGREEMENT AND RELEASE with the South Carolina Workers' Compensation Commission as required by S.C. Code Ann. § 42-9-390.

WE CONSENT:

McAngus Goudelock & Courie, L.L.C.



Kelly F. Morrow, Esquire
Attorney for Defendants


Jeffrey S. Tracy
Claimant

Tyler A. Bathrick, Esquire
Attorney for Claimant

Columbia, South Carolina

Date: 2/21/17

South Carolina Workers' Compensation Commission
 1333 Main Street, Suite 500
 P.O. BOX 1715
 Columbia, SC 29202-1715
 (803) 737-5723



WCC File #: 1402522
 Carrier File #: 1164385
 Carrier Code #: 06731570
 Employer FEIN #: 570993401

Claimant's Name: Jeffrey S Tracy Employer's Name: Peoplease Corporation
 Address: 2449 Trussell Rd Address: 210 Wingo Way #400
 City: Chester State: SC Zip: 29706 City: Mt. Pleasant State: SC Zip: 29464
 Home Phone: (803) 519-7298 Work Phone: () - Insurance Carrier: National Interstate Insurance Co
 Preparer's Name: Sharon White Law Firm: _____ Preparer's Phone #: (800) 929-1500

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1. Number of Weeks T.T.	<u>150.1</u>	<u>3/15/2014</u>	<u>01/28/17</u>	<u>\$ 71,683.50</u>
2. Number of Weeks T.P.	_____	_____	_____	<u>\$ _____</u>
3. Number of Weeks P.P.	_____	_____	_____	<u>\$ _____</u>
4. Disfigurement	_____	_____	_____	<u>\$ _____</u>
5. Agreement and Final Release	_____	_____	_____	<u>\$ 150,000</u>
Total Compensation Paid				<u>\$ 221,683.50</u>
6. Total Medical Benefits* Paid	_____	_____	_____	<u>\$ 106,961.30</u>
7. Funeral Benefits	_____	_____	_____	<u>\$ _____</u>

Case Denied

Date of Injury: 03/14/2014
(m/d/yyyy)

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

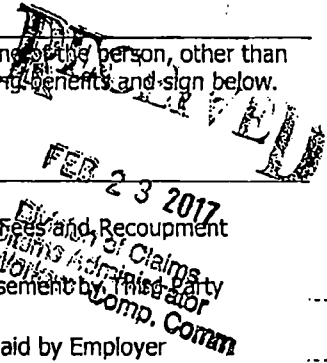
By: Jeffrey S. Tracy
Claimant

By: Sharon White
Employer's Representative

1/31/17
Date
(m/d/yyyy)

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 _____ \$ _____



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 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

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SC Court of Appeals

Jeffrey S. Tracy, Employee,.....Appellant,

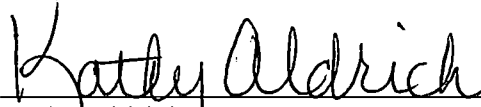
v.

PeopLease Corporation, Employer, and
National Interstate Insurance Company, Carrier, Respondents.

PROOF OF SERVICE

I certify that on the 1st day of March 2017, I served the joint **Motion to Dismiss Appeal** on Jeffrey S. Tracy by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record:

Tyler A. Bathrick, Esq.
Stewart Law Offices, LLC
P.O. Box 670
Rock Hill, SC 29731



Kathy Aldrich
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900

*Attorneys for Respondents Peoplease Corporation
and National Interstate Insurance Company*

mgc

Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

March 1, 2017

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MAR 03 2017

SC Court of Appeals

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Jeffrey S. Tracy v. Peoplease Corporation and National Interstate
Insurance Company
Date of Accident: March 14, 2014
WCC File No.: 1402522
Our File No.: 20778.14007
Claim No.: 1164385
Appeal No.: 2015-001376

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SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of a 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 a clocked-in copy in the self-addressed, stamped envelope. Also enclosed is our firm's check in the amount of \$25 for filing the motion.

If you have any questions, please do not hesitate to contact me.

Yours truly,

McAngus Goudelock & Courie, LLC



Helen F. Hiser

Enclosures

cc: Tyler A. Bathrick, Esq.

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MT. PLEASANT, SC 29465

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DEFENSE

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