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MAR 13 2017

STATE OF SOUTH CAROLINA Court of Appeals BEFORE THE SOUTH CAROLINA
COUNTY OF ABBEVILLE WORKERS' COMPENSATION COMMISSION

Kim E. Argo,
Employee,
Claimant,

-vs-

Flexible Technologies, Inc.,
Employer,
and Liberty Insurance Corporation,
Carrier,
Defendants.

AGREEMENT AND FINAL RELEASE /
ORDER

W.C.C. FILE NO. 1304205

CARRIER FILE NO. WC555-A96869

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SETTLEMENT

FEB 08 2017

Division of ~~Workers' Compensation~~
SC Workers' Compensation

This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of the claimant, Kim E. Argo. The claimant is represented by Stephen B. Samuels, Esquire, and the defendants, Flexible Technologies, Inc. and Liberty Insurance Corporation, are represented by L. Brenn Watson, Esquire of Willson Jones Carter & Baxley, P.A. The South Carolina Workers' Compensation Commission has jurisdiction. The parties agree that venue is proper in Abbeville County, South Carolina.

The claimant was an employee of Flexible Technologies, Inc. and on or about April 18, 2013, he sustained injuries by accident arising out of and in the course of said employment when he sustained liquid propane burns to his right hand, right arm, and left hand. Claimant also alleged injury to his left arm, which the defendants deny. As a result of this work accident, claimant sought and received medical treatment and/or medical evaluation from Doctors Hospital of Augusta and JMS Burn Center, Carolina Neurology Associates, Dr. Rudisill, and Dr. Falcon. Disputes have now arisen concerning claimant's entitlement to further medical care and treatment, further temporary total disability compensation and the extent of causally related permanent disability, if any. Claimant's compensation rate is Two Hundred Ninety-Six and 10/100 Dollars (\$296.10). Claimant was rated as having twenty-one percent (21%) impairment to the right upper extremity and one percent (1%) impairment to the left upper extremity by Dr. Falcon on June 22, 2016.

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 parties have agreed to the following terms:

1. Defendants shall pay, and the claimant shall accept, the total final settlement sum of Forty Thousand and 00/100 Dollars (\$40,000.00) in full settlement and satisfaction of every liability of whatsoever nature or kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, said work accident occurring on or about April 18, 2013, while the claimant was an employee of Flexible Technologies, Inc..
2. The total amount of the lump sum settlement is \$40,000.00. The settlement shall be allocated as follows: (A) \$20,302.25 of disability benefits at a rate of \$15.75 commencing December 19, 2016 and continuing thereafter for 1,289.08 weeks which is life expectancy pursuant to § 19-1-150 of the South Carolina Code of Laws and § 42-9-10 of the South Carolina Workers' Compensation Law, as interpreted in the case of James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (2010), and also under the authority of Sciarotta v. Bowan, 837 F.2d 135 (3d Circ. 1989); (B) \$11,820.00 in attorney's fees and \$7,877.75 in litigation costs paid in a lump sum.
3. 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.
4. Defendants shall be responsible for all causally related medical expenses authorized by them and incurred through September 9, 2014 and as approved by this Commission pursuant to the South Carolina Worker's Compensation Fee Schedule.
5. Any and all further medical expenses of whatsoever nature or kind incurred after September 9, 2014 shall be the express liability of the claimant, and the defendants shall have no liability therefore. However, Flexible Technologies will pay, or cause to be paid by and through its group health insurance, any alleged causally related medical expenses incurred between September 10, 2014 and November 8, 2016, pursuant to the group health insurance policy terms, which specifically includes but is not limited to, any

surgeries and follow up treatment at the Joseph M. Still Burn Center. Flexible Technologies waives any right to reimbursement from the claimant for paying, or causing to be paid by and through its group health insurance, any alleged causally related medical expenses incurred between September 10, 2014 and November 8, 2016. Claimant remains responsible for any co-pays or deductibles for any and all medical expenses incurred between September 10, 2014 and November 8, 2016 pursuant to the group health policy terms. Nothing in this agreement is intended to end the claimant's right to participate in Flexible Technologies' group health policy after November 8, 2016. Any rights or benefits the claimant might have to participate in Flexible Technologies group health insurance after November 8, 2016 shall be determined by the terms of the group health policy, subject to any applicable laws.

6. Defendants agree to waive any lien or right to reimbursement from third-party proceeds recovered by the claimant arising from the claimant's April 18, 2013 work accident.
7. Flexible Technologies will agree to reasonably cooperate in good faith with the claimant with discovery needed in the third party claim within the bounds of the law and pursuant to discovery requests made pursuant to the SC Rules of Civil Procedure and/or SC Rules of Evidence and/or any applicable Federal Rules of Civil Procedure and/or Rules of Evidence. Flexible Technologies agrees to designate Jeanine Crowder, or another suitable representative in her absence, to coordinate discovery requests made by the claimant through his legal counsel.
8. All prior orders of the South Carolina Workers' Compensation Commission, including Commissioner Barden's September 11, 2015 Decision and Order and the May 6, 2016 Appellate Panel Decision and Order shall be entirely vacated by Consent Order of the parties.
9. Any and all appeals pertaining to this workers' compensation claim will be withdrawn and dismissed with prejudice, including the appeal pending in the South Carolina Court of Appeals designated Appellate Care Number 2016-000617, and this workers' compensation claim shall be closed.

Claimant hereby asserts that he has been fully advised by his attorney of record of all of 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. Claimant hereby asserts that he recognizes that his consent to, and the approval of, this Agreement and Final Release/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 work accident occurring on or about April 18, 2013, while the claimant was an employee of Flexible Technologies, Inc..

Claimant hereby affirms that he has not applied for and is not receiving Social Security disability, is not on Medicare, is not enrolled in Medicare Advantage, and is not aware of any Medicare liens. The parties expressly agree that the claimant does not have a reasonable expectation of Medicare eligibility within 30 months from the date of this settlement. The parties have taken into consideration Medicare's potential interest in the resolution of this claim and believe Medicare has no interest. The parties agree that a Medicare Set-Aside will not be submitted to CMS for review and/or approval. Claimant has been advised of the potential risks associated with not establishing a Medicare Set-Aside account and not submitting a Medicare Set-Aside to CMS for review and/or approval, including but not limited to, CMS/Medicare's potential withholding of Medicare benefits to the claimant.

Claimant also expressly represents and agrees that he sustained no work accidents or work injuries while employed by Flexible Technologies, Inc. other than the work accident and resulting injury occurring on or about April 18, 2013.

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.

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 for any reason, including on the basis that either or both parties relied on statements or opinions from physicians, or other medical providers, in entering into this agreement.

NOW, THEREFORE, IT IS AGREED, SETTLED, APPROVED, and ORDERED that upon the payment of the sum of Forty Thousand and 00/100 Dollars (\$40,000.00) by the defendants, and the acceptance of said sum by the claimant, and the payment of the medical expenses as specifically set forth hereinabove, the defendants be, and they hereby are, fully and forever discharged of all liability, obligations and/or responsibilities of whatsoever nature and kind under the South Carolina Workers' Compensation Act growing out of, or in any way connected with, the aforesaid work accident occurring on or about April 18, 2013, while the claimant was an employee of Flexible Technologies, 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. Claimant enters into this Agreement and Final Release freely and voluntarily, without undue influence, coercion, or duress of any kind.

WE CONSENT TO THE FOREGOING
AGREEMENT/ORDER:

Dorothy Argo POA for Kim E. Argo
Kim E. Argo, Claimant

Dated: 1-17-17

Stephen B. Samuels
Stephen B. Samuels
Attorney for Claimant

WILSON JONES CARTER & BAXLEY, P.A.

L. Brenn Watson
BY: L. Brenn Watson
L. Brenn Watson
Attorneys for Defendants