

BEFORE THE SOUTH CAROLINA
WORKERS COMPENSATION COMMISSION
W.C.C. File No. 1504993

Horace L. Adell, Jr.)
Claimant,)
)
-vs-)
Clean Streak, Inc.,)
Employer,)
)
-and-)
)
Builders Mutual Insurance Company,)
Carrier/Defendants.)
_____)

**SETTLEMENT AGREEMENT
AND RELEASE
("Clincher")**

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DEC 27 2017
SC Court of Appeals

This matter now comes before the South Carolina Workers' Compensation Commission upon the petition of the Claimant, Horace L. Adell, Jr. The Claimant is represented by Daniel E. Peagler of Michael Johnson & Associates, PC of Columbia, South Carolina. The Defendant, Builders Mutual Insurance Company, is represented by George A. Taylor of Callison Tighe & Robinson, LLC, of Columbia, South Carolina. The Defendant, Clean Streak, Inc., is represented by Mikell Wyman of Gallivan White & Boyd, PA of Charleston, South Carolina. The South Carolina Workers' Compensation Commission has jurisdiction.

Claimant alleges that, on or about March 24, 2015, while an employee of Clean Streak, Inc., he sustained injuries by accident arising out of and in the course of employment, suffering injuries to his neck and back. The Claimant asserts that medical treatment was necessitated by the injuries, and that he is in need of and entitled to additional medical treatment, as well as compensation benefits, both temporary and

permanent. The Defendants have disputed all claims for benefits under the South Carolina Workers' Compensation Act.

The claim is currently before the South Carolina Court of Appeals on the issue of compensability.

The Claimant's average weekly wage at the time of the alleged accident was \$1,500.00, rendering a compensation rate of \$766.05.

The parties hereto now advise that, in view of the aforementioned dispute, an Agreement has been reached between the Claimant and the Defendants to settle this matter in its entirety, subject only to the approval of the South Carolina Workers' Compensation Commission.

Under the proposed Settlement Agreement, the Defendants have agreed to pay, and the Claimant has agreed to accept the lump sum of Two Hundred Forty Thousand and 00/100 Dollars (\$240,000.00), for a complete and final release of, and in full settlement and satisfaction of, every liability of the Defendants of whatever nature or kind under the South Carolina Workers' Compensation Act growing out of or in any way connected with the aforescribed accident. As an integral part of this Settlement Agreement, it is expressly understood and agreed that the Defendants shall be responsible for all causally-related medical expenses incurred prior to the date of the Order and as approved by this Commission, including those causally-related medical expenses paid by the Claimant's health insurance provider, but that any and all further medical expenses of whatever nature or kind thereafter shall be the express liability of the Claimant, and that the Defendants shall have no liability therefor.

The parties have considered the interests of Medicare in reaching this compromise settlement agreement pursuant to 42 CFR §411.46 and §411.47, and applicable directives. Claimant has not received and 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. Furthermore, it is the understanding of the parties, based upon the representations of the Claimant and the relevant facts, that there is not a reasonable expectation that the Claimant will be eligible to become a Medicare beneficiary within thirty (30) months of the date of this compromise settlement agreement. Therefore, it is the determination of this Commission, based on the foregoing paragraphs, that (a) 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, (b) the parties have reasonably considered the interest of Medicare in reviewing all medical records related to this matter, and (c) the parties have in good faith determined that no allocation is needed for future medical expenses. This Commission finds that 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 hereby requests the Commission to approve the allocation of the settlement proceeds of \$240,000 as follows:

1. \$0.00 (Zero) Dollars for future medical expenses;
2. \$158,931.49 dollars in compromise settlement of disputed future disability benefits at the rate of \$127.67 dollars per week commencing December 6,

2017, for a period of 1,244.88 weeks representing the life expectancy of the claimant; and

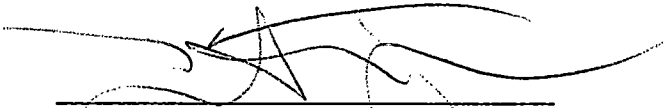
3. \$81,068.51 dollars as attorney's fees and costs; this pursuant to a written agreement between the claimant and his/her attorney of record pursuant to Sections 42-9-10 and 42-9-20 of the 1976 Code of Laws as interpreted by the South Carolina Supreme Court decision of James v. Anne's Inc., 390 S.C. 188, 701 S.E.2d 730 (2010); Cf. Utica Mohawk Mills v. Orr 227 S.C. 226, 87 S.E.2d 587 (1955) and Sciarotta v. Bowen, 837 F.2d 135 (3d Cir. 1988).

By their signature hereon, the Claimant and Claimant's attorney acknowledge and warrant that the Claimant has been fully advised of all rights under the laws of the State of South Carolina, and the Claimant specifically warrants herein that he is of the opinion that the proposed settlement is reasonable and fair. In this opinion, the Claimant's attorney concurs and, together with Claimant, respectfully requests this Commission approve the Settlement as set forth above. Both the Claimant and Claimant's attorney acknowledge that the Commission relies on these representations and assurances by the Claimant and his Counsel that the Claimant has had the opportunity to be and has been fully advised of his rights under the laws of the State of South Carolina. The Claimant further acknowledges and warrants consent to, and the approval of, this Order as a final determination and adjudication of all benefits and claims for damages to which the Employee might be entitled from the Defendants and a complete release of all liabilities of the Defendants under the laws of the State of South Carolina growing out of, or in any way connected with, the aforesaid accident.

This Commission is of the opinion that the Settlement between the parties, the terms of which are set forth herein, is both reasonable and proper and should be approved.

NOW, THEREFORE, IT IS ORDERED that the terms of the settlement as set forth herein are hereby approved and confirmed, and the Defendants shall make payment as provided hereunder, and the Defendants are hereby fully and forever released and discharged of all liabilities of whatever kind and nature under the laws of the State of South Carolina growing out of, or in any way connected with, the aforesaid accident, so that this matter is res judicata and not subject to review under any conditions.

Nothing herein shall be construed to prevent Claimant from proceeding on any third-party claim; nor shall any provision hereof affect the rights of the Defendants under South Carolina Code §42-1-560, and any other provisions under the Act or at law or equity relating to the viability and enforceability of the Carrier's lien on proceeds of recoveries from third parties.



George A. Taylor
Callison Tighe & Robinson, LLC
Counsel for Defendant Builders Mutual Ins.

Horace L. Adell, Jr.

Daniel E. Peagler
Michael Johnson, P.C. & Associates
Counsel for Claimant

Mikell Wyman
Gallivan White & Boyd, PA
Counsel for Defendant Clean Streak, Inc.

December _____, 2017



Claimant's Name: Horace L Adell JR SSN: 2 Employer's Name: Clean Streak Inc
 Address: c/o Michael Johnson & Associates, P.C. 2001 Lincoln Street Address: 235 Old Turnpike Rd
 City: Columbia State: SC Zip: 29201 City: Mills River State: NC Zip: 28759
 Home Phone: (828) 891-9682 Work Phone: (828) 891-8800 Insurance Carrier: Builders Mutual Insurance Company
 Preparer's Name: Christie Gardner Law Firm: _____ Preparer's Phone #: (919) 227-0231 Ext:231

Compensation Paid:	Number of Weeks	From (m/d/yyyy)	To (m/d/yyyy)	Amount
1 Number of Weeks T.T.	<u>52 1/7</u>	<u>12/16/2016</u>	<u>12/15/2017</u>	<u>\$39,834.60</u>
2 Number of Weeks T.P.	-----	-----	-----	<u>\$0.00</u>
3 Number of Weeks P.P.	-----	-----	-----	<u>\$0.00</u>
4 Disfigurement	-----	-----	-----	<u>\$0.00</u>
5 Agreement and Final Release	-----	-----	-----	<u>\$240,000.00</u>
Total Compensation Paid				<u>\$279,834.60</u>
6 Total Medical Benefits* Paid	-----	-----	-----	<u>\$6,749.98</u>
7 Funeral Benefits	-----	-----	-----	<u>\$0.00</u>

Case Denied Date of Injury: 03/24/2015
 (m/d/yyyy)

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

By: _____ By: Christie Gardner Date: 12/15/17
 Claimant Employer's Representative 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	-----	<u>\$0.00</u>
B. Attorney's Fee Paid by Employer	-----	<u>\$0.00</u>
C. Attorney's Fee Paid by Claimant (Non-contingent fees only)	-----	<u>\$0.00</u>

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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.

George A. Taylor - Member
803-404-6900
GeorgeTaylor@callisontighe.com

CALLISON  TIGHE

December 20, 2017

Via Hand-Delivery

Daniel E. Peagler, Esquire
Michael Johnson & Associates, PC
2001 Lincoln Street
Columbia, SC 29201

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RE: Horace L. Adell, Jr. v. Clean Streak, Inc., et al
Claim No. WCV001022567 - Matter ID: 1254
SCWCC No. 1504993
Appellate Case No. 2017-000084
Our File No. 3399.495

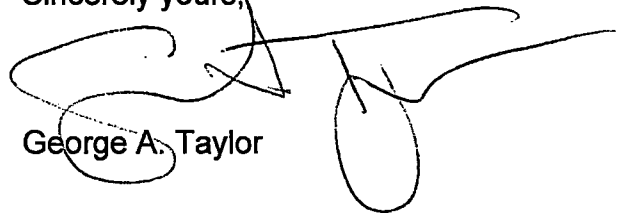
Dear Mr. Peagler:

Enclosed are the original and two copies of the Settlement Agreement and Release ("Clincher") and the Form 19's for the above-referenced claim. Please have the Settlement Agreements and Form 19's properly executed and return the originals and one copy of each to us in the self-addressed stamped envelope provided. We will forward the originals to the commission for filing, along with our check for the filing fee.

Also enclosed is the settlement check. Please hold the settlement check in trust until such time as we receive a clocked copy of the settlement agreement back from the South Carolina Workers' Compensation Commission.

Thank you for your assistance.

Sincerely yours,



George A. Taylor

GAT/mce
Enclosures

cc: ~~SC~~ Court of Appeals (w/enclosures)
Mikell Wyman, Esquire (w/enclosures)
Christie Gardner, Builders Mutual Insurance Company (w/enclosures)

CALLISON  TIGHE

Hasler

FIRST-CLASS MAIL

12/20/2017

US POSTAGE

\$001.19⁰⁰



ZIP 29210
011D10648809

The Honorable Jenny Abbott Kitchings
Clerk, Court of Appeals
1015 Sumter Street
Columbia, SC 29211

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