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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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Appellate Case No. 2017-001-001483

WCC File No. 1516896

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Herbert Randall, Employee/Claimant

Respondent/Appellant

v.

Palmetto State Transportation, Employer  
Cherokee Insurance Company, Carrier.

Appellant/Respondents

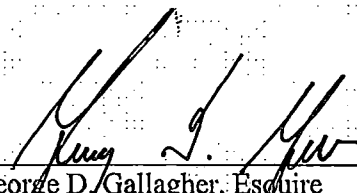
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**MOTION TO DISMISS APPEALS**

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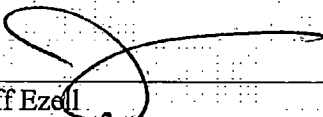
The parties, by and through the undersigned counsel, hereby moves before this Honorable Court for a dismissal pursuant to Rule 260(b), SCACR, of all actions related to these matters. The parties have reached an amicable settlement agreement and no longer wish to pursue their appeals.

Respectfully Submitted,



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George D. Gallagher, Esquire  
Speed, Seta, Martin, Trivett & Stublely  
PO Box 11669  
Columbia, SC 29211  
(803) 748-2919  
SC Bar # 12149  
Attorney for Appellant/Respondent



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Jeff Ezell  
Ezell Law Firm  
15 N. Irvine Street  
Greenville, SC 29601  
(864) 421-0015  
Attorney for Respondent/Appellant

Columbia, SC  
January 29, 2018

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF GREENVILLE )  
 )  
 Herbert Randall, )  
 )  
 Claimant, )  
 )  
 vs. )  
 )  
 Palmetto State Transportation, )  
 )  
 Employer, )  
 )  
 and )  
 )  
 Cherokee Insurance Company )  
 )  
Defendants. )

BEFORE THE SOUTH CAROLINA  
 WORKERS' COMPENSATION  
 COMMISSION

WCC FILE NO: 1516896

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SC Court of Appeals

**AGREEMENT AND FINAL RELEASE**

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STATEMENT OF THE CASE

Herbert Randall ("Claimant") has brought the above-referenced workers' compensation claim secondary to injuries sustained to his neck, lower back, head, and psychological overlay arising out of and in the course of his employment as an over the road truck driver for Palmetto State Transportation ("Palmetto") on or about October 31, 2015. Specifically, Claimant's 18-wheeler truck was rear-ended by another vehicle while he was driving in Texas. Compensation and medical benefits have been paid and/or otherwise provided by Palmetto's insurance carrier ("Cherokee") under the South Carolina Workers Compensation Act ("Act") as shown on the WCC Form 19 attached hereto. Claimant is represented by Jeffrey D. Ezell, of Greenville, South Carolina. Palmetto and Cherokee (collectively "Defendants") are represented by George D. Gallagher of Columbia, South Carolina. Claimant's Average Weekly Wage and Compensation Rate are \$1495.78 and \$784.03, respectively. The issues currently presented in this claim are as follows: whether Claimant has reached maximum medical improvement; the extent of his

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permanent disability for specific loss of use of the back and/or permanent and total disability; Claimant's entitlement to ongoing and/or future medical benefits, if any; AND all other issues arising under the Act secondary to the accident and injuries described herein.

With these issues in controversy, counsel for the parties have negotiated the following compromise settlement agreement ("Agreement"), which upon filing with the South Carolina Workers' Compensation Commission ("Commission"), is intended to bring this matter to a full and final conclusion.

#### AGREEMENT AND RELEASE

Defendants agree to pay, and Claimant agrees to accept, the compromised sum of two hundred thirty-five thousand and 00/100 Dollars (\$235,000.00), as consideration for a full and final settlement and satisfaction of all claims for further compensation and medical benefits under the Act due as the result of the accident and injuries described herein, reported or unreported, known or unknown. It is understood and agreed that upon tendering of the consideration recited herein, and the execution of this Agreement, Claimant hereby releases and forever discharges Defendants from any and all further liabilities and responsibilities under the Act, and waives all further causes of action, claims, demands, and entitlements that may result from the accident and injuries described herein, including, but not limited to, the following: payment of temporary compensation; provision of medical evaluations and treatments for all accepted and alleged injuries/conditions; prescription medications and diagnostic testing; all permanent disability compensation for physical impairment and/or functional or specific loss of use of any scheduled or non-scheduled member(s); compensation for total and/or partial destruction of earning capacity or wage loss; all psychological or emotional injuries or impairments; changes of condition or death; reimbursement for out of pocket expenses; and

payment of any ongoing and/or future medical expenses that may result from the injuries described herein. Claimant also agrees to release Defendants from liability under the Act for all expenses for medical services already rendered, except any bills for treatments rendered prior to the date of this Agreement that were authorized by Defendants and which are causally related to the accident and injuries described herein. The parties specifically agree that Defendants are not waiving any subrogation rights or liens pursuant to S.C. Code § 42-1-560 on any recovery Claimant secures from a third-party secondary to the accident described herein as consideration for this Agreement.

The Claimant hereby requests that the settlement proceeds of Two Hundred Thirty-Five Thousand Dollars and No Cents (\$235,000.00) be allocated as follows:

- (a) the sum of Seventy-Eight Thousand Three Hundred Thirty-Three Dollars and Thirty- three Cents (\$73,333.33) as attorney's fees and costs;
- (b) the sum of Two Thousand Eight-five Dollars and Thirty-five cents (\$2,085.35) as litigation costs and expenses;
- (c) the sum of sum of Ten Thousand Dollars and no cents (\$10,000) in consideration of Medicare's interest in any future medical (See July 2005 CMS Memorandum; 42 U.S.C. 1395y(b)(2); 42 C.F.R. 411 et seq.; AND
- (d) the remaining balance of One Hundred Fifty-Four Thousand Five Hundred Eighty-One Dollars and Thirty-two cents (\$149,581.32) to be paid to the Claimant in settlement of future disability benefits at the weekly compensation rate of One Hundred Eighty-Eight Dollars and Seventy-seven cents (\$188.77) per week for a period of 1,244.88 weeks (23.94 years) representing the Claimant's life expectancy, as stated in the S.C. Code Section 19-1-150. This allocation is further made pursuant to S.C. Ann. Sec. 19-1-150; POMS DI 52100.000 *et seq.* including POMS DI 52150.060 and pursuant to the provisions of the South Carolina Supreme Court decision of Utica Mohawk Mills vs. Orr, 227 S.C. 226, 87 S.E. 2d 587. See also Sciarotta v. Bowen, 837 F. 2d 135 (3d Cir. 1988) and James v. Anne's Inc., 701 S.E.2d 730 (SC 2010).

By settling Claimant's entitlement to further medical benefits under the Act, it is not the intention of the parties to improperly shift the burden for Claimant's further medical care, if any, to the federal Medicare program. Claimant represents that he has applied for Social Security Disability benefits ("SSD"), but his application has not been accepted and he is not otherwise enrolled in, or eligible for, Medicare. Claimant may have a reasonable expectation of being enrolled in Medicare within the next 30 months via his application for SSD. However, since the consideration being paid and accepted for this Agreement is less than \$250,000.00, the parties understand that, in accordance with all Medicare rules, regulations and policy memoranda, submission of this Agreement to the Centers for Medicare Services ("CMS") for approval is not required. Based upon information and belief, Claimant is not currently undergoing active treatment for his work-related injuries and no definitive future treatment has been recommended by the authorized treating physicians. As such, the parties do not believe Medicare's interests have been implicated by this Agreement. Nevertheless, in an abundance of caution, the parties are specifically allocating the sum of Ten Thousand Dollars (\$10,000.00) out of the total \$235,000.00 settlement amount as reasonable consideration of Medicare's interests in this Agreement, if any, and for Claimant to fund future causally related medical costs that would otherwise be covered by Medicare, if any. In allocating the sum of \$10,000.00 in this Agreement as a reasonable consideration for future medical benefits relative to this claim, the parties have considered the following factors: the total sum of medical expenses paid to date under the Act, Claimant's justifiable skepticism and reluctance to rely on pain medications as an ongoing/future modality, the fact that Claimant is not a good surgical candidate, and the reasonable belief that Claimant's ongoing/future medical needs, if any, will be relatively nominal.


Claimant agrees to set aside the \$10,000.00 amount allocated herein in an interest-bearing account separate from any other accounts servicing his other financial obligations. Claimant agrees to expend funds from this medical set aside account for the sole purpose of paying future work injury related medical costs, if any, and shall keep a proper accounting of same. Defendants agree to hold Claimant and his attorney, Jeffrey D. Ezell and/or the Ezell Law Firm, LLC harmless and indemnify him, pursuant to all available legal and administrative means and remedies, from any causes of action, claims, demands, liens, or denial of benefits instituted by Medicare relative to matters subject to this Agreement, except that no such right to indemnify and/or hold Claimant and his attorney, Jeffrey D. Ezell and/or the Ezell Law Firm, LLC, harmless shall ensue until the \$10,000.00 amount allocated herein as reasonable consideration for Claimant's future medical costs has been properly exhausted as evidenced by a proper accounting of all causally related medical expenses.

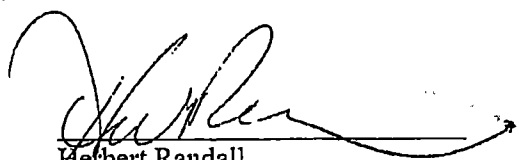
Claimant hereby represents that he has been fully advised of his rights and remedies under the Act and that he agrees that this Agreement and Final Release is reasonable and fair. Claimant agrees and understands that this Agreement and Final Release constitutes a final resolution of his entitlement to all benefits, and Defendants' liabilities, under the Act secondary to the October 31, 2015 accident, and that following its execution he shall have no further recourse before the Commission secondary to his injuries described herein. Claimant's attorney represents that he concurs in the opinion that this settlement Agreement and Final Release is reasonable and fair. The parties acknowledge that the Commission relies upon the representations of the parties that Claimant has been fully apprised of his rights and remedies under the Act.

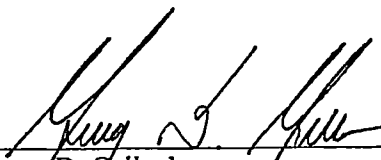
Finally, Claimant waives any further hearing before the Commission in this matter, and binds himself, his heirs, executors, administrators, assigns, next-of-kin and dependents, for a full and complete settlement, satisfaction and termination of all claims related to the accident and injuries referenced herein. Claimant understands that this Agreement resolves all issues between the parties relative to this claim and upon filing with the South Carolina Workers' Compensation Commission it will not be subject to further review.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this Agreement and Final Release 10<sup>th</sup> day of JANUARY, 2018.

WE SO MOVE AND CONSENT TO THIS AGREEMENT AND RELEASE:

  
\_\_\_\_\_  
Jeffrey Ezell, Esquire  
Attorney for Claimant

  
\_\_\_\_\_  
Herbert Randall  
Claimant

  
\_\_\_\_\_  
George D. Gallagher  
Attorney for Defendants

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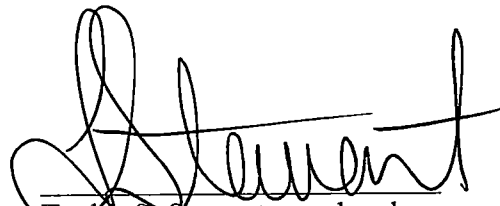
PROOF OF SERVICE

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I certify that I have served the Motion to Dismiss Appeals, certificate on the attorney of records for Herbert Randall by depositing a copy of it in the United States Mail, postage prepaid, on February 1, 2018. Addressed as follows:

Jeffrey Ezell, Esquire  
Ezell Law Firm  
15 N. Irvine Street  
Greenville, SC 29601  
Attorney for Respondent/Appellant

February 1, 2018



Taylor S. Stewart, paralegal  
Speed, Seta, Martin, Trivett & Stublely, LLC  
PO Box 11669  
Columbia, SC 29211  
(803) 748-2919  
Attorney for Appellants/Respondents

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC  
ATTORNEYS AT LAW

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SETH C. MARTIN (GA & FL)  
ERIC L. TRIVETT (GA)  
M. STEPHEN STUBLEY (SC)  
STEPHANIE A. ROCKWELL (GA & TN)  
JAMES E.L. FICKLING (SC & NC)

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C. BENTON HILBURN (GA)  
JASON A. LANAHAN (GA)  
ERICA LOUDIN (SC)  
ANDREA S. OWEN (GA)  
BRITTANY SCHWANITZ (GA)  
HANNAH H. STOKES (AL)  
DANIELLE TAYLOR (GA)  
BRITTANY BELL TURNER (GA & FL)  
LILY D. WILKERSON (GA)

February 1, 2018

GEORGE D. GALLAGHER (SC), of counsel  
ROBERT E. HORNER (SC & NC), of counsel

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street, Suite 200  
Columbia, SC 29201

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**RE: *Herbert Randall v. Palmetto State Transportation***

*WCC No.: 1516896*

*Appellate Case No.: 2017-001483*

*Claim No.: WC41487*

*DOA: 10/31/15*

*Our File No.: 1800-0107*

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SC Court of Appeals

Dear Ms. Kitchings:

The above referenced file has been settled. We would like to withdraw all of the appeals regarding this matter. Enclosed, please find the executed copy of the Agreement and Final Release.

Please accept my highest regards.

Sincerely,



George D. Gallagher.

GDG/tss

Enclosures

cc: Jeffrey D. Ezell, Esquire

SPEED, SETA, MARTIN, TRIVETT & STUBLEY, LLC  
ATTORNEYS AT LAW

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COLUMBIA, SOUTH CAROLINA 29211

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