

April 5, 2022

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SC Court of Appeals

SENT VIA EMAIL

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
ctappfilings@sccourts.org

RE: Candace Dowell, Et al. V. Benton Concrete & Utilities, LLC
Appellate Case No. 2021-000899
Our File No.: 1295-0251

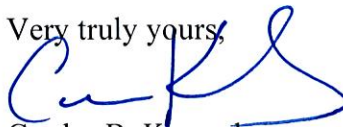
Dear Ms. Kitchings:

I hope this letter finds you well. Pursuant to the Court's Order dated January 18, 2022, please accept this letter as notice that the settlement of Appellant's wrongful death/survival claims, which are the subject of this appeal, was approved on March 31, 2022, by the Honorable D. Craig Brown in the Florence County Court of Common Pleas. As requested by the Court, this letter is intended to serve as a status update regarding the approval of the settlement by the lower court.

For your reference, I have included a clogged copy of Judge Brown's Order Approving Settlement entered by Judge Brown on April 4, 2022.

Thank you for your attention to this matter. Please let me know if the parties can provide the Court with any additional information.

Very truly yours,



Cordes B. Kennedy

CBK

Enclosure

cc: Kenneth Barfield (*sent via email*)
Heath Stewart (*sent via email*)
Nina Britt (*sent via email*)
George Hanna (*sent via email*)
Andrew Lindemann (*sent via email*)

Trippet Boineau (*sent via email*)
Michael Brickman (*sent via email*)
Dawes Cooke (*sent via email*)
Caleb Hodge (*sent via email*)
Roopal Ruparelia (*sent via email*)

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

CIVIL ACTION NO: 2020-CP-21-02831

Candace Dowell, Individually and as the PR of
the Estate of Roger Alan Dowell,

Plaintiff,

v.

Putzmeister America, Inc.; Concrete &
Materials Placement, LLC; RE Goodson
Construction Co., Inc; Mead & Hunt, Inc.;
Benton Concrete & Utilities, LLC; and
Thomas Concrete, Inc.,

Defendants.

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ORDER APPROVING SETTLEMENT

THIS MATTER comes before the Court on the verified Petition of Plaintiff Candace Dowell, individually and as Personal Representative for the Estate of Roger Alan Dowell, for approval of the proposed settlement of Plaintiff's claims against Defendants Benton Concrete & Utilities, LLC, (sometimes referred to herein as "Benton Concrete") and R.E. Goodson Construction Co., Inc. (sometimes referred to herein as "R.E. Goodson") (collectively, "Settling Defendants") in the above-captioned Lawsuit.

It appears that on or about August 28, 2018, Roger Alan Dowell (sometimes referred to as the "Decedent") was fatally injured in a work accident in Florence County while operating a concrete pump truck at a construction site on South Pamplico Highway, near Pamplico, South Carolina (hereinafter, the "Incident"), the facts of the Incident being more fully set forth in the Complaint titled *Candace Dowell, Individually and as the PR of the Estate of Roger Alan Dowell v. Putzmeister America, Inc., Concrete & Materials Placement, LLC, R.E. Goodson Construction Co., Inc, Mead & Hunt, Inc., Benton Concrete & Utilities, LLC, and Thomas Concrete, Inc.*, filed

on December 8, 2020, in the Florence County Court of Common Pleas and assigned Case No. 2020-CP-21-02831 (the “Lawsuit”).

Plaintiff is represented by attorneys Michael J. Brickman, Nina Fields Britt, and Caleb M. Hodge of the law firm of Rogers, Patrick, Westbrook & Brickman, LLC, of Mt. Pleasant, South Carolina and Timothy C. Bailey of the law firm of Bailey Javins & Carter, LC, of Charleston, WV.

Plaintiff has alleged in the Lawsuit a cause of action under the survival statute, §15-5-90, Code of Laws of South Carolina, 1976, as amended, a cause of action for wrongful death under § 15-51-10, Code of Laws of South Carolina, 1976, as amended, and individual cause of action for loss of consortium.

While the Settling Defendants admit that an accident occurred, they deny that the Decedent’s injuries and subsequent death were the result of the Settling Defendants’ negligence or recklessness.

On March 5, 2021, Defendant Benton Concrete moved to dismiss the Complaint for lack of subject matter jurisdiction and pursuant to the workers’ compensation exclusivity doctrine. On July 23, 2021, the Court granted Defendant Benton Concrete’s Motion, thereby dismissing it from the Lawsuit. Plaintiff continued to litigate the Lawsuit against the remaining defendants, including Defendant R.E. Goodson.

On August 19, 2021, Plaintiff filed a notice of appeal in the South Carolina Court of Appeals, assigned Appellate Case No. 2020-000899, appealing the lower court’s dismissal of Defendant Benton Concrete.

During the pendency of the appeal, Plaintiff and the Settling Defendants engaged in negotiations to resolve this matter and reached a good faith settlement of all disputes pending

between and among them, and on January 18, 2022, the South Carolina Court of Appeals entered an Order remanding the Appellate Case to the lower court for purposes of approving this settlement.

Despite this denial and in the interest of compromise, the parties have reached a proposed settlement of Plaintiff's claims against the Settling Defendants arising out of the Lawsuit. As set forth more fully in the Petition for Approval of Settlement filed by the Plaintiff, the insurer, Selective Insurance Company of America ("Selective"), provided Defendant Benton Concrete & Utilities, LLC with a commercial general liability coverage, pursuant to policy number S 2295233, with limits of \$1,000,000 per occurrence. Selective, on behalf of the Defendant Benton Concrete & Utilities, LLC, has offered to pay the total sum of **ONE HUNDRED FIFTY THOUSAND AND 00/100 (150,000.00) DOLLARS** to the Plaintiff for the benefit of the Estate of Roger Alan Dowell and the statutory beneficiaries of said Estate in exchange for a General Release with regard to any and all claims arising out of the wrongful death and/or survivorship of the Decedent or otherwise that were or could have been asserted by the Plaintiff on behalf of the Decedent's Estate or on behalf of the statutory beneficiaries of the Decedent against Defendant Benton Concrete & Utilities, LLC, Selective, and/or their agents, servants, employees, successors, heirs, executors, attorneys, administrators, and assigns arising out of the Incident alleged in the Lawsuit.

Similarly, Selective has agreed to pay on behalf of Defendant R.E. Goodson Construction Co., Inc., as its additional insured, the total sum of **FIFTY THOUSAND AND 00/100 (\$50,000.00) DOLLARS** to the Plaintiff for the benefit of the Estate of Roger Alan Dowell and the statutory beneficiaries of said Estate in exchange for a General Release with regard to any and all claims arising out of the wrongful death and/or survivorship of the Decedent or otherwise

that were or could have been asserted by the Plaintiff on behalf of the Decedent's Estate or on behalf of the statutory beneficiaries of the Decedent against Defendant R.E. Goodson Construction Co., Inc., Selective, and/or their agents, servants, employees, successors, heirs, executors, attorneys, administrators, and assigns arising out of the Incident alleged in the Lawsuit.

The net proceeds paid by or on behalf of the Settling Defendants are to be allocated between Plaintiff's wrongful death, survival, and loss of consortium claims as follows: ONE HUNDRED FORTY THOUSAND AND 00/100 (\$140,000.00) DOLLARS to Plaintiff's wrongful death claims, TWENTY THOUSAND AND 00/100 (\$20,000.00) DOLLARS to Plaintiff's survival claims, and FORTY THOUSAND AND 00/100 (\$40,000.00) DOLLARS to Plaintiff's loss of consortium claim.

The statutory beneficiaries of the Decedent are Candace Dowell (Wife), Katrina Dowell (Daughter), and Melissa Dowell (Daughter).

Plaintiff has incurred bills, costs, and expenses for and on behalf of the Decedent and his Estate, including attorneys' fees and costs as denoted in the Petition, which is hereby incorporated by reference. Plaintiff agrees that these bills, costs, and expenses shall be paid from the proceeds of this settlement.

Plaintiff has agreed that the Decedent's Estate shall be responsible for paying any and all outstanding bills of medical providers, funeral expenses, workers' compensation liens, or other providers on behalf of the Decedent and/or the Estate. Plaintiff further agrees that the Estate will be solely responsible for satisfying any and all medical, funeral, workers' compensation or other liens held by any and all third-party medical or other providers, whether statutory or contractual, including but not limited to Medicare, Medicaid, or ERISA, should they exist, and that these outstanding bills and liens will be satisfied out of the proceeds of this settlement, and that neither

the Settling Defendants, Selective, nor their agents, servants, employees, successors, heirs, executors, attorneys, administrators, and assigns, will be responsible for these bills, expenses or liens.

Plaintiff stated that she has carefully considered the facts and circumstances herein. Plaintiff and Plaintiff's counsel stated they are aware of the uncertainties of litigation and believe that the offers, under the circumstances, are fair and equitable and should be accepted without the additional delay and expense of further litigation.

Upon full consideration of this matter, it appears to the Court that the settlement proposals outlined hereinabove and in the Petition are fair and just and in the best interest of the parties. Accordingly, it is:

ORDERED, ADJUDGED AND DECREED that the settlement proposals set forth hereinabove and in Plaintiff's Petition are approved, and that upon payment of the amount set forth therein, Plaintiff is hereby authorized and directed to execute such documents as will effect a General Release in favor of Settling Defendants, Selective, and their agents, servants, employees, successors, heirs, executors, attorneys, administrators, and assigns from any and all claims or actions whatsoever arising out of the injury to and subsequent death of Decedent.

AND IT IS SO ORDERED, this the ___ day of _____, 2022, in _____, South Carolina.

[THE JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW]



Florence Common Pleas

Case Caption: Candace Dowell , plaintiff, et al VS Putzmeister America Inc ,
defendant, et al

Case Number: 2020CP2102831

Type: Order/Approval Of Settlement

IT IS SO ORDERED

s/D. Craig Brown (2160)