STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
PENSACOLA DISTRICT OFFICE

John T. O'Neill
Employee/Claimant,

OJCC Case No. 13-011571NSW

vs.

Accident date: 8/20/2012

Columbia Staffing/Broadspire
Employer/Carrier/Servicing Agent.

Judge: Nolan S. Winn

_____/

FINAL EVIDENTIARY ORDER ENFORCING SETTLEMENT

THIS CAUSE came on to be heard in Pensacola, Florida on 01-11-16 upon E/C's Motion to Enforce Settlement Agreement. The Motion was filed 09-08-15 and Final Hearing occurred one hundred twenty-five (125) days thereafter. This Order was entered one (1) day following such hearing. Matthew Bennett, Esq. was present in Pensacola on behalf of the E/C. Lyle Masnikoff, Esq. appeared via telephone on behalf of Claimant.

Submitted into evidence at the Final Hearing were the following documents, each accepted, identified and placed into evidence without objection except where noted, as Judge's Exhibits, Joint Exhibits, Claimant's Exhibits, or E/C Exhibits, as follows:

JUDGE'S EXHIBITS MARKED FOR THE RECORD:

#1. Pre-Trial Stipulation filed 10-29-15.

#2. E/C's Motion to Enforce Settlement Agreement filed 09-08-15 with attached exhibits.

#3. Claimant's Response to Motion to Enforce filed 09-16-15 with attached exhibits.

#4. Mediation Report dated 12-15-14.

JOINT EXHIBITS:

None.

E/C's EXHIBITS:

None.

CLAIMANT'S EXHIBITS:

#1. Judicial notice of dockets in OJCC Case #'s 13-011533DAL, 13-011568RH and 13-011571NSW.

In making the determinations set forth below, I have attempted to distill the salient facts together with the findings and conclusions necessary to resolve this claim. I have not attempted to painstakingly summarize the substance of the parties' arguments, nor the support given to my conclusions by the various documents submitted and accepted into evidence; nor have I attempted to state nonessential facts. Because I have not done so does not mean that I have failed to consider all of the evidence. In making my findings of fact and conclusions of law in this claim, I have carefully considered and weighed all evidence submitted to me. I have considered arguments of counsel for the respective parties, and analyzed statutory and decisional law of Florida.

Based upon the parties' stipulations and the evidence and testimony presented, I find:

1. The Judge of Compensation Claims has jurisdiction of the parties and the subject matter of this claim.

2. The parties' stipulations and agreements, set forth in the pretrial compliance questionnaire are accepted, adopted and made an order of the Office of the Judge of Compensation Claims.

3. Claimant was a nurse who traveled across the State. During such travels he suffered three (3) compensable industrial accidents:

06-25-2012 in Alachua County OJCC Case #13-011568MRH
08-20-2012 in Okaloosa County OJCC Case #13-011571NSW
04-29-2013 in Broward County OJCC Case #13-011533DAL

4. At State Mediation conducted on 12-15-14 the parties agreed to settle all three (3) claims. In relevant part, the parties agreed to settle each case as follows:

06-25-2012 DOA for $10,000.00 inclusive;

08-20-2012 DOA for $10,000.00 inclusive;

04-29-2013 DOA for $20,500.00 inclusive;

E/C agreed to pay the ER visit to Lower Keys Medical Center at fee schedule when received on proper form so long as it was causally related;

E/C agreed to advance Claimant $2,000.00 within 36 hours; and

Claimant agreed to dismiss all pending petitions in each of the three (3) claims and execute a general release and resignation.

5. Following mediation E/C forwarded settlement documents to Claimant for execution. Claimant added language to such documentation to the effect that E/C would pay not only the Lower Keys Medical Center bill, but would pay all outstanding medical bills which were causally related to any of the three (3) accidents. E/C contends Claimant's additional language is contrary to and was not part and parcel of the agreement reached at Mediation and therefore filed the instant Motion to Enforce.

6. A JCC has the authority to determine whether a valid, binding settlement agreement was reached and, if so, to give it effect. See, Chubb Group Ins. Co. v. Easthagen, 889 So.2d 112 (Fla. 1st DCA 2004) and Jacobsen v. Ross Stores, 882 So. 2d 431 (Fla. 1st DCA 2004). Settlement agreements, such as the one purportedly entered into by the parties, are governed by contract law, are highly favored and will be enforced whenever possible. See, Robbie v. City of Miami, 469 So.2d 1384 (Fla.1985). Construction of a settlement agreement is 'a matter clearly within the province of the JCC. Czopek v. Great Chemicals & GAB, 778 So. 2d 996, 997 (Fla. 1st DCA 2000). Contracts, including settlement agreements, are to be construed according to the parties' intent, as demonstrated by the words used. See, Gendzier v. Bielecki, 97 So.2d 604, 608 (Fla. 1957) and Ross v. Savage, 66 Fla. 106, 63 So. 148, 155 (Fla. 1913). A party seeking to enforce an alleged settlement agreement has the burden of establishing, by competent substantial evidence, a meeting of the minds, or mutual or reciprocal assent to a certain and definite proposition. See, Carroll v. Carroll, 532 So.2d 1109 (Fla. 4th DCA 1988), rev. denied, 542 So.2d 1332 (Fla. 1989) and Goff v. Indian Lake Estates, Inc., 178 So.2d 910 (Fla. 2d DCA 1965). If any of the essential terms remain open, subject to future negotiation, there is no enforceable contract. Hale v. Shear Express, Inc., 932 So. 2d 514 (Fla. 1st DCA 2006) citing Suggs v. DeFranco's, Inc., 626 So.2d 1100, 1100-01 (Fla. 1st DCA 1993). While uncertainty in an agreement as to nonessential or small items will not preclude a finding there is an enforceable settlement, the agreement must be sufficiently specific and mutually agreeable as to every essential element. Don L. Tullis and Associates, Inc. v. Benge, 473 So.2d 1384 (Fla. 1st DCA 1985) and Blackhawk Heating and Plumbing Co. v. Data Lease Financial Corp., 302 So.2d 404 (Fla. 1974). An objective test is to be used to determine whether one party accepted the other party's offer and whether there is an enforceable settlement agreement. See, Robbie, 469 So.2d at 1385; King v. Bray, 867 So.2d 1224, 1227 (Fla. 5th DCA 2004). A finding by the Judge of Compensation Claims as to the parties' intent, if supported by competent substantial evidence, is sufficient. Quinlan v. Ross Stores, 932 So.2d 428 (Fla. 1st DCA 2006). And where terms of the settlement agreement susceptible to more than one construction, an issue of fact is presented and the JCC is to determine the parties' intended effect. Barefoot v. Sears, Roebuck & Co., 650 So.2d 1036 (Fla. 1st DCA 1995).

7. The docket in the instant matter reveals on 01-08-15 that Claimant filed a Motion to Enforce Settlement Agreement alleging therein "[t]he parties reached a settlement agreement on 12-15-14" in which E/C agreed to advance Claimant $2,000.00 within 36 hours but failed to do so. Claimant testified at Final Hearing he did ultimately

receive the advance from E/C and the docket reveals Claimant withdrew his Motion to Enforce on 03-02-15.

8. Claimant testified attending the 12-15-14 Mediation by telephone and that he did not actually sign the Mediation Agreement. Claimant presented no evidence either his appearance by telephone or his not personally signing the agreement render the same void or voidable.

9. With regards to Claimant's appearance at Mediation by telephone, all parties appeared by telephone at the mediation as at that time there was no State Mediator in Pensacola and all Pensacola claims were being mediated by telephone with the Panama City District Mediator. Furthermore, the docket in each of these three claims in three separate districts indicates when a mediation was scheduled Claimant requested he be allowed to appear by telephone and did appear by telephone for any mediation actually conducted.

10. With regards to Claimant's contention he did not actually sign the Mediation Agreement on 12-15-14, it is clear from review of the Agreement he did not. Rather, the agreement was signed on his behalf by his attorney. As Claimant did not personally sign the agreement, such would be sufficient grounds to find the agreement unenforceable only if Claimant's attorney lacked the authority to sign on Claimant's behalf. However, Claimant did not assert such to be an issue in his response to E/C's Motion to Enforce or in the Pre-Trial Stipulation nor did he testify at Final Hearing his attorney lack the authority or consent to execute the agreement on his behalf. No issue has thus been raised that Claimant's attorney lacked "clear and unequivocal authority to settle... (or sign)... on the client's behalf." Sharick v. Southeastern University of the Health Sciences, Inc., 891 So.2d 562, 565 (Fla. 3rd DCA 2004); Spiegel v. H. Allen Holmes, Inc., 834 So.2d 295, 297 (Fla. 4th DCA 2002); Vantage Broad. Co. v. WINT Radio, Inc., 476 So.2d 796, 797 (Fla. 1st DCA 1985); Dixie Operating Co. v. Exxon Co., 493 So.2d 61, 63 (Fla.1st DCA 1986).

11. However, even had Claimant properly asserted there were an issue concerning whether his attorney had Claimant's authority to sign the Mediation Agreement on his behalf, I find the evidence would establish he did. Not only did Claimant file his own Motion to Enforce the Agreement on 01-08-15 indicating his belief the 12-15-14 Mediation Agreement signed on his behalf by his attorney was valid and enforceable, on 06-06-14 when the parties entered into a Mediation Agreement regarding payment of Mayo Clinic medical bills (see Case# 13-011568MRH), Claimant appeared at that mediation by telephone and authorized his attorney to sign the agreement on his behalf.

12. I find the Settlement Agreement of 12-15-14 is clear, simple, concise, valid, enforceable and binding. While Claimant testified he believed the agreement contained terms other than clearly set forth therein, his personal belief and understanding is neither relevant nor material and does not render the agreement void or voidable. As the Court recently stated in Buie v. Bluebird Landing Owner's Ass'n, Inc., -- So.3d – (Fla. 1st DCA 08-07-2015), "[I]t is a well-established legal principle that if a written contract is ambiguous so that the intent of

the parties cannot be understood from an inspection of the instrument, extrinsic or parol evidence of the subject matter of the contract, of the relation of the parties, and of the circumstances surrounding them when they entered into the contract may be received in order to properly interpret the instrument." On the other hand, a complete and unambiguous written agreement may not be contradicted or modified by extrinsic evidence. See, Polk v. Crittenden, 537 So.2d 156, 159 (Fla. 5th DCA 1989).

13. The 12-15-14 Mediation Agreement is clear, simple, concise and in no manner ambiguous. Claimant is bound by his agreement as set forth in the agreement and is not entitled to add terms or conditions to the agreement or settlement documents which terms and conditions were not bargained for and agreed upon at Mediation. While Claimant may wish the 12-15-14 agreement contained different terms and conditions than it does and while Claimant may now believe the agreement is unfair and no longer in his best interest, "[P]arties have . . . the right to make, what is apparent in hindsight, a bad bargain -- especially when represented by counsel." Cordovez v. High-Rise Installation, Inc., 46 So. 3d 1120, 1123 (Fla. 1st DCA 2010). Claimant testified that since the 12-15-14 mediation he has incurred significant medical expenses as a result of his industrial injuries and would not have settled if he had known such would be incurred and he would be responsible for such. As noted in Cordovez, "'[A] release of a claim for personal injuries may not be set aside based on a mistake of fact when the claimant's known injury proves to be more serious than was anticipated by the parties at the execution of the release.' Sponga v. Warro, 698 So.2d 621, 624 (Fla. 5th DCA 1997)." A settlement reached by the parties "can not be voided merely because the injuries have proved more serious that the releasor, at the time of executing the release, believed them to be." Cordovez, 46 So.3d at 1123, citing Swilley v. Long, 215 So.2d 340, 342 (Fla. 1st DCA 1974). As the First District explained and cautioned in Cordovez, 46 So.3d at 1123, "cases settled in mediation are especially unsuited for the liberal application of a rule allowing rescission of a settlement agreement based on a unilateral mistake... The time to ascertain the full implication of Claimant's injury was before the mediation."

14. In other words, while Claimant may be of the opinion E/C should be held responsible to satisfy any and all of his outstanding medical bills whether incurred prior to or after the 12-15-14 mediation, such was not the agreement reached at Mediation and set forth in the Mediation Agreement. The sole outstanding medical bill E/C agreed it may be responsible to pay was Claimant's ER visit to Lower Keys Medical Center when such bill is submitted on proper form by the provider and then only if determined to be causally related to one of Claimant's three industrial accidents. If Lower Keys Medical Center ever does submit such bill, E/C may pay the same or refuse payment if it determines the same is not causally related. Should E/C refuse payment on such basis, Claimant would be entitled to file a motion to enforce challenging such determination by E/C. Likewise, despite the 12-15-14 Settlement Agreement, Claimant retains the right to file a motion seeking to enforce the parties 06-06-14 agreement in which E/C agreed to pay Mayo Clinic bills if E/C has failed to do so. As regards the 12-15-14 Mediation Agreement, E/C has carried its burden and has established such is binding and enforceable and it is,

ORDERED AND ADJUDGED that:

1. E/C's Motion to Enforce Settlement Agreement is **GRANTED**.

DONE AND SERVED this 12th day of January, 2016, in Pensacola, Escambia County, Florida.

Nolan S. Winn
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
Pensacola District Office
700 South Palafox Street, Suite 305
Pensacola, Florida 32502
(850)595-6310 **www.jcc.state.fl.us**

Copies Furnished:

Lyle B. Masnikoff, Esquire
(lmasnikoff@workerscompfl.net)

Matthew W. Bennett, Esquire
(mbennett@hrmcw.com)
(aboulineau@hrmcw.com)