

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
WEST PALM BEACH DISTRICT OFFICE

Jean A. Salomon,)	
Employee/Claimant,)	
)	
vs.)	OJCC Case No. 09-017791MAD
)	
Source Broadband Services, LLC,)	Accident date: 5/29/2008
Employer,)	
)	
and)	Judge: Mary A. D'Ambrosio
)	
Crum & Forster/U.S. Fire Insurance)	
Company,)	
Carrier/Servicing Agent.)	

FINAL EVIDENTIARY ORDER ON EMPLOYER/CARRIER'S MOTION TO ENFORCE
SETTLEMENT FILED ON JANUARY 18, 2011

THIS CAUSE came before me for an Evidentiary Hearing on March 25, 2011 on the Employer/Carrier's Motion to Enforce Settlement filed on January 18, 2011. Claimant's Response was filed on February 4, 2011.

EXHIBITS

1. Employer/Carrier's Motion to Enforce Settlement filed on January 18, 2011 with attachments-Employer/Carrier Exhibit #1;
2. Claimant's Response filed on February 4, 2011-Claimant's Exhibit #1;
3. Claimant's Notice of Filing Exhibits – Claimant's Composite Exhibit #2.

FINDINGS OF FACT

1. The parties attended private mediation on November 11, 2010. The Claimant was present with his counsel and a translator.
2. The parties reached a settlement as outlined in the Mediation Settlement Agreement in evidence.

3. The Mediation Settlement Agreement, paragraph 3, set forth a contingency to be met by the close of business on November 16, 2010 for the agreement to become final – that, should CMS require it, the Employer/Carrier would have to agree to guarantee and fund any additional monies above a \$52,767.00 MSA.

4. On November 18, 2010, the Employer/Carrier prepared the settlement documents and, as outlined in paragraph 12 entitled “Consideration of Medicare’s Interests”, agreed to fund any amounts, determined by CMS to be necessary, above \$52,767.00. The papers were forwarded to Claimant’s counsel on November 18, 2010.

CONCLUSIONS OF LAW

1. The Claimant argues that execution of the settlement documents is premature until CMS determines the amount of the Medicare Set Aside. I reject this argument and find that the amount of the Claimant’s responsibility for a Medicare Set Aside was known to the Claimant as of November 18, 2010 to be a sum not to exceed \$52,767.00.

2. I reject the Claimant’s argument of fairness and ripeness as all contingencies in the Agreement were met and there existed a “meeting of the minds” at least as of November 18, 2010. The Employer/Carrier argues this contingency was timely met. There is no argument from the Claimant that the contingency was not timely met as of November 16, 2010.

3. The parties reached a valid, binding settlement agreement as of November 18, 2010 when the Employer/Carrier drafted and forwarded the settlement documents to the Claimant. I find that the contingency was satisfied as of November 18, 2010. I find that the 2 day delay between November 16 and November 18, 2010 is insignificant as to whether the contingency as outlined in paragraph 3 of the Mediation Settlement Agreement was met.

WHEREFORE, it is

ORDERED AND ADJUDGED:

1. The Employer/Carrier's Motion to Enforce Settlement filed on January 18, 2011 is hereby granted.
2. The Claimant shall execute and forward the settlement documents to the Employer/Carrier within ten (10) days.
3. Counsel shall be responsible for providing a copy of this Order to their respective clients.

DONE AND ORDERED this 29 day of March 2011, in West Palm Beach, Palm Beach County, Florida.



Handwritten signature of Mary A. D'Ambrosio in black ink.

Mary A. D'Ambrosio
Judge of Compensation Claims
Division of Administrative Hearings
Office of the Judges of Compensation Claims
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Final Evidentiary Order was entered on the 29 day of March, 2011, and that a copy thereof was electronically furnished to counsel.

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Secretary to Judge of Compensation Claims