STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
SEBASTIAN/MELBOURNE DISTRICT OFFICE

Tamico Harden,
Employee/Claimant,

OJCC Case No. 14-014998RLD

vs.

Accident date: 11/11/2010

Kolb Enterprises, Inc., d/b/a Subway/Hartford Insurance of the Southeast,
Employer/Carrier/Servicing Agent.

Judge: Robert L. Dietz

_____/

EVIDENTIARY ORDER ON MOTION TO ENFORCE

THIS CAUSE was heard before the undersigned at Sebastian, Indian River County, Florida on January 7, 2015, upon the Employer/Carrier's Motion to Enforce Settlement filed on November 13, 2014 (Docket Number (DN) 6). A Response was filed by the Claimant on November 13, 2014 (DN 7). Glen D. Wieland, Esq. was present on behalf of the Claimant. Bruce A.Epple, Esq. was present on behalf of the Employer/Carrier.

The following documentary items were received into evidence:

Judge Exhibits:

Exhibit #1: All documents required under Fla. R. App.P. 9.180.

Claimant's Exhibits:

Exhibit #1: Letter to Employer/Carrier dated August 13, 2014 (DN 15).

Exhibit #3: Proposed Edited Language of Settlement Papers (DN 16).

Employer/Carrier's Exhibits:

Exhibit #1: Payout Ledger filed on December 30, 2014 (DN 11).

Exhibit #2: Email Confirming Settlement filed on January 6, 2015 (DN 12).

Exhibit #3: Proposed Settlement Papers Submitted to Claimant (DN 14).

At the hearing, Tamico Harden (the Claimant), Glen Wieland, Esq. (the Claimant's Counsel) and Bruce Epple, Esq. (the Employer/Carrier's Counsel), appeared and testified before me. In making my findings of fact and conclusions of law, I have carefully considered and weighed all the evidence presented to me. Although I will not recite in explicit detail the witnesses' testimony and may not refer to each piece of documentary evidence, I have attempted to resolve all of the conflicts in the testimony and evidence. Based on the foregoing and the applicable law, I make the following findings:

1. The undersigned has jurisdiction over the parties and the subject matter.

2. The parties stipulated that the Claimant suffered an industrial accident arising out of and in the course and scope of her employment on November 11, 2010.

3. In June 2014, the Claimant's Counsel and the adjuster conducted negotiations to settle this case. On July 1, 2014, the Claimant's Counsel advised the Employer/Carrier's Counsel via e-mail that the Claimant agreed to settle this matter for $30,000.00 inclusive of attorney fees and costs (Employer/Carrier Exhibit #2, DN 12).

4. The settlement documents were forwarded to the Claimant's counsel on July 8, 2014 (Employer/Carrier Exhibit #3, DN 14). Proposed changes to the language in the settlement documents were raised (Claimant's Exhibit #2, DN 16).

5. On August 13, 2014, the Claimant's Counsel advised the Employer/Carrier's Counsel by letter that his client had chosen not to settle her claim and was refusing to sign the settlement paperwork (Claimant's Exhibit #1, DN 15). At the hearing, the Claimant testified that she was not aware of any of four objectionable provisions in the settlement document language in question, that she would not have settled her case if she had been aware of these terms, and didn't understand what "hold harmless" and "indemnification" meant. It is clear that sometime between July 1, 2014, and August 11, 2014, the Claimant changed her mind

about settling her case. The only explanation for this change of mind provided at the hearing by the Claimant was that she wanted to get additional medical treatment. As a result, she did not sign and return the settlement papers to the Employer/Carrier.

6. At the hearing, the Claimant took the position that no meeting of the minds had occurred because the following terms and conditions in the settlement papers were not agreed to at the time the $30,000.00 figure was accepted on July 1, 2014: 1) that all past and present medical benefits were being resolved, 2) that the right to medical care and treatment terminated upon execution of the settlement papers, 3) that the Claimant indemnified and held the Employer/Carrier harmless from any medical bills, hospital charges, liens or subrogated claims of whatever nature, cost or expense, including but not limited to costs of defense and attorney's fees for any such action or actions, including any liens, arising out of the injuries or damages sustained by the Claimant, and 4) that the Employer/Carrier had 30 days to make payment on the settlement proceeds.

7. Glen Wieland, Esq. testified that there was no discussion of settlement language in discussions with the adjuster, and that therefore no meeting of the minds was reached. Bruce Epple, Esq. testified that the language in settlement papers forwarded to the Claimant's Counsel for review and the Claimant's signature is often challenged, and that the language is changed if requested. All changes proposed by the Claimant's attorney were acceptable to the Employer/ Carrier.

8. Under Florida law, settlements are highly favored as a means to conserve judicial resources and will be enforced whenever it is possible to do so. Long-Term Management, Inc. v. University Nursing Care Center, Inc., 704 So.2d 669 (Fla. 1st DCA 1997). Settlements are construed consistent with the rules applicable to interpretation of contracts. See Robbie v. City of Miami, 469 So.2d 1384, 1385 (Fla. 1985). A contract should not be voided unless there is no

other alternative. See Woodfield Plaza by and through Straub Capital Corp. v. Stiles Constr., 687 So.2d 856 (Fla. 4th DCA 1997).

9. The party seeking enforcement of the settlement bears the burden of proving that there was indeed an underlying meeting of the minds or mutual reciprocal assent sufficient to bind the parties. See Long-term Management, Inc. v. University Nursing Care Center, Inc., *supra.* Judges of Compensation Claims (JCC) have authority to determine whether a valid, binding settlement agreement was reached and give effect to such settlement agreements. Jacobsen v. Ross Stores, 882 So.2d 431 (Fla. 1st DCA 2004); Gerow v. Yesterday's, 881 So.2d 94 (Fla. 1st DCA 2004); Divosta Building Corp. v. Rienzi, 892 So.2d 1212 (Fla. 1st DCA 2005).

10. The Claimant has not raised the argument that the Claimant's Counsel did not have authority to settle the matter on behalf of the Claimant. As a result, it is not necessary for the Employer/Carrier to meet its burden of proof that Claimant's Counsel had clear and unequivocal authority to settle the matter on behalf of the Claimant (see Fivecoat v. Publix Super Markets, Inc., 928 So.2d 402 (Fla. 1st DCA 2006).

11. Courts will interpret settlement agreements consistent with trade customs and "fill in the blanks" accordingly. See, Fred S. Conrad Constr. Co. v. Exchange Bank of St. Augustine, 178 So.2d 217 (Fla. 1st DCA 1965). Thus, where all terms were not painstakingly detailed, a binding agreement may nevertheless be found where it is clear that the parties agreed on essential terms and intended to be bound by them. See, Blackhawk Heating & Plumbing Co. v. Data Lease Fin. Corp., 302 So.2d 404, 408 (Fla. 1974). The attorneys agree in their testimony that parties frequently disagree with the terms initially put into proposed settlement papers drafted by Employer/Carrier attorneys after an agreement is reached to settle a workers' compensation case. The parties then amend the settlement papers until everyone is agreeable with the language. The Claimant's refusal to sign settlement papers without further discussing

any language to which she may disagree evidences "buyer's remorse" caused by subsequent issues or decisions, herein explained only as the desire to receive additional medical care, which is not a basis for refusing to enforce a valid settlement. See generally Tanner v. Tanner, 975 So.2d 1190 (Fla. 1st DCA 2008).

12. The parties intended for the settlement to be full, final, and enforceable on July 1, 2014. Confirmation of the agreement was then put in written documentation form first via e-mail and then by preparation of settlement papers. This is in compliance with Quinlan v. Ross Stores, 932 So.2d 428 (Fla. 1st DCA 2006).

13. The case of Bonagura v. Home Depot, 991 So.2d 902 (Fla. 1st DCA 2008) provides the most direction in interpreting the actions of the parties in our case and applying it to the determination of the finality of the July 1, 2014, Order. In Bonagura, the settlement paperwork sent to the Claimant after the negotiations included material matters that were not discussed and agreed upon during the oral settlement negotiations. The settlement papers included a general release that had not been orally discussed. The Court in Bonagura held that "because no release was negotiated and settled, his release is not a part of the parties' settlement or 'necessary paperwork' to be executed."

14. Bonagura also addressed the issue of whether the written paperwork constituted a counter-offer (which would then be the basis for finding that there had not been a meeting of the minds), and held that this was not so because there was already a valid offer and acceptance:

> "[I]nstead, the additional language in the written documents is in the nature of a new offer to settle additional matters, *to the extent that it exceeded the scope of the oral settlement terms.* This new offer did not have to be accepted, and Claimant did not do so." *Id* at 905.

Importantly, the case also held that:

> "The fact that Claimant subsequently refused to sign the written documents did not nullify the more limited terms of the binding oral settlement agreement to which he had agreed, through counsel. *See Calderon*, 933 So.2d at 554. As no other matters were discussed during the oral settlement negotiations and Claimant did not sign the broader written documents, he is not required by law to execute any document significantly broadening the scope of the settlement beyond the payout and the attorney's fee, where there was no meeting of the minds regarding the additional terms." Bonagura at 905.

The First District Court of Appeal remanded with directions to the JCC to order the parties to redraft a written settlement agreement according to the limited scope of their oral agreement.

15. Finally, the Claimant argues that Taylor. v. CVS, --So.3d--, 1D14-2631 (Fla. 1st DCA October 27, 2014) does not allow the JCC to rewrite the parties' agreement or compel specific performance of the agreement. While this is an accurate restatement of the Court's holding, the First District Court of Appeal confirmed that the JCC had authority to determine whether the parties had entered into a settlement and to enter an order giving effect to that settlement. *Id.* I find that a full, final and enforceable settlement was reached on July 1, 2014, but that the written settlement agreement included the four provisions raised by the Claimant's Counsel which were not agreed to by the Claimant and to which she now objects. The parties are to redraft a written settlement agreement according to the limited scope of their prior agreement.

It is ORDERED and ADJUDGED that:

1. The parties reached a full, final and enforceable settlement on July 1, 2014.
2. The written settlement agreement includes provisions not agreed to by the Claimant.

3. The parties are ordered to redraft a written settlement agreement according to the limited scope of their oral agreement.

DONE AND ELECTRONICALLY SERVED ON COUNSEL AND THE CARRIER this 12th day of January, 2015, in Sebastian, Indian River County, Florida.

Robert L. Dietz
Judge of Compensation Claims
Sebastian/Melbourne District Office
1627 US-1, Suite 115
Sebastian, Florida 32958
(772)581-6800

COPIES FURNISHED:
Hartford Insurance of the Southeast
FLLegalSEWCCC.Claims@thehartford.com

Glen D. Wieland, Esquire
Glen@whdjustice.com,debbie@whdjustice.com

Bruce A. Epple, Esquire
Bruce.Epple@thehartford.com,donna.hinkley@thehartford.com