

STATE OF FLORIDA
OFFICE OF THE JUDGES OF COMPENSATION CLAIMS
ORLANDO DISTRICT

EMPLOYEE:
Craig Kimmel
Alleged to be exempt under Chapter
119

REPRESENTED BY:
Adam R. Littman, Esquire
1801 Lee Road
Suite 320
Winter Park, Florida 32789

EMPLOYER:
Seminole County, Florida
1101 East First Street
Sanford, Florida 32771

REPRESENTED BY:
Michael Broussard, Esquire
Broussard, Cullen & Eldridge, P.A.
800 North Magnolia Avenue
Suite 1301
Orlando, Florida 32803

CARRIER/SERVICING AGENT:
Johns Eastern Company, Inc.
Post Office Box 110279
Lakewood Ranch, Florida 34211-0004

GENERAL RELEASE OF ALL CLAIMS

The parties have reached a contingent settlement of all claims, the terms of which are set forth below. The settlement is contingent on Employer approval. Should that approval be given the terms of settlement are as follows:

KNOW ALL PERSONS BY THESE PRESENTS:

That Craig Kimmel, hereinafter referred to as Employee, Social Security Number XXX-XX-4516, for and in consideration of the items listed below and for other good and valuable consideration to be received from or on behalf of Seminole County, Florida, hereinafter referred to as Employer, the receipt and adequacy of which is hereby acknowledged, hereby covenants and agrees to the following; and in exchange for the promises of the Employer and Employee contained in this General Release of all Claims, the parties mutually agree as follows:

1. This is intended to be a complete, entire, and final release and waiver of any and all benefits – past, present, and future – that Employee is, or may be, entitled to under Chapter 440, Florida Statutes, and any other claims, causes of action or rights that the Employee may have against the

Employer/Carrier/Servicing Agent. Employee's entitlement to medical and indemnity benefits will cease upon Employer approval of the settlement.

2. The term "Employee" includes Craig Kimmel and all his heirs, estate, executors, administrators, successors, and assigns. The term "Employer" includes Seminole County, Florida, its affiliated entities, present and former employees, officers, directors, and agents, as well as their successors and assigns.

3. The Employer, through its workers' compensation insurance carrier, will pay to the Employee the sum of \$249,400.00, as consideration of the Employee's release of the Employer for the industrial accident(s) which occurred on 2/24/2019, 11/20/2007, 9/29/2020, 9/30/2020, 10/13/2020, 6/11/2021, 11/25/2022, and any and all other injuries, whether now known or unknown, present or future, arising out of his employment with the Employer. Said payment shall be made and completed by the Employer within thirty (30) days from the date that the Judge mails the Order approving the attorney's fee and allocation of child support arrearage. Employee will pay his attorney the sum of \$62,375.00 as attorney's fee out of the above settlement. The Employee will pay \$7,125.00 to his attorney as costs out of the above settlement.

4. Employee is responsible for satisfying any and all outstanding attorney's fee liens.

5. The Employee expressly acknowledges that this settlement incorporates all known or unknown accidents, diseases or injuries, and that valuable consideration was received for releasing the Employer from any and all claims arising from the Employee/Employer relationship that existed between the parties.

6. To procure payment of said sum, the Employee hereby declares that he is more than eighteen (18) years of age; that no representations about the nature and extent of said injuries, disabilities, or damages by a physician, attorney, or agent of any party hereby released, nor any representations regarding the nature and extent of legal liability or financial responsibility of any of the parties released, has induced the Employee to make this settlement; that in determining said settlement there has been taken into consideration, not only the ascertained injuries, disabilities and damages, but also the possibility that the injuries sustained may be permanent and progressive and recovery therefrom uncertain and indefinite, so that consequences not now anticipated may result from said accidents and the Employee's employment with the Employer.

7. The Employee understands that the parties hereby released admit no liability of any sort by reason of the Employee's employment or said accident(s), and that said payment and settlement in compromise is made to terminate further controversy regarding all claims, including damages that the Employee has heretofore asserted or that the Employee or the Employee's personal representatives might hereafter assert because of said accident(s) and the Employee's employment with the Employer.

8. The persons whose signatures are below acknowledge that they have full authority to execute this General Release on behalf of the parties for whom they are signing.

~~9. Employee acknowledges that this General Release and its terms are strictly confidential, and that Employee shall not disclose it or any part of it to anyone except his immediate family, attorney or tax advisor without the prior written consent of the Employer, or except as compelled by law. Failure to comply with the confidentiality provision can result in forfeiture of half of the settlement proceeds.~~

10. In executing this General Release, the Employee further represents and attests that this General Release was signed by the Employee knowingly, voluntarily, freely, and of his own volition after advice and consultation with counsel.

11. Should any portion, word, clause, phrase, sentence, paragraph or subparagraph of this General Release be declared void or unenforceable, such portion, word, clause, phrase, sentence, paragraph or sub-paragraph shall be modified, severed and/or deleted in such a manner as to make this General Release as modified legal or enforceable to the fullest extent permitted under law.

12. CONSIDERATION OF FUTURE MEDICARE-COVERED EXPENSES RELATED TO WORK ACCIDENT:

Of the total sum of \$249,400.00 to be paid, the sum of \$ 160,000 is in consideration for payment of all future medical care related to the work accident(s). This amount has been carefully determined based on factors including, but not limited to, the Claimant's date of entitlement to Medicare, the basis of Medicare entitlement, the type and severity of the injury or illness, the age of the Claimant, the prior medical expenses related to the work accident, and the projected amount for Medicare-covered expenses from the Claimant's treating physicians. Considerable attention has been given to the Claimant's

DDAH has reported this & respect fully

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entitlement to Social Security disability benefits pursuant to 42 U.S.C. S423, and receipt of Medicare benefits under 42 U.S.C. Section 1395Y, as well as the entitlement of the Centers for Medicare and Medicaid Services to subrogation and intervention, pursuant to 42 C.F.R. Subpart C Section 441.46, to recover any overpayment made by Medicare. It is not the purpose of this settlement agreement to shift to Medicare the responsibility for payment of medical expenses for the treatment of work-related conditions. Instead, this settlement agreement is intended to provide to Claimant with a lump sum and Periodic Payments, which will foreclose the Employer/Carrier's responsibility for future payments of all work-related medical expenses. In accepting this, the Claimant realizes, understands, and agrees that Medicare may not pay for any Medicare-covered expenses related to such injuries or disease until the Medicare-covered expenses equal the amount of the lump sum and Periodic Payments specifically designed for settlement of Medicare-covered expenses related to the work accident.

Further, the Claimant realizes, understands, and agrees that Claimant is solely responsible for proving an annual accounting of all Medicare-covered expenses related to the work accident until such time as the lump sum and Periodic Payments specifically designated for settlement of Medicare-covered expenses related to the work accident has been entirely and properly exhausted.

In reaching this agreement the parties have considered the present value of all future payments of monetary compensation, including permanent total disability and impairment benefits pursuant to Section 440.15, F.S., and medical benefits pursuant to Section 440.13 F.S. that are potentially payable to the claimant on account of the accident referenced herein. The Claimant's average weekly wage at the time of his accident was \$2,617.92 which allowed for a weekly maximum compensation rate of \$939.00. This settlement represents a compromise of disputed entitlement to all benefits under the Florida Workers' Compensation Law. Included among the disputed benefits is entitlement to indemnity benefits pursuant to Section 440.15, F.S. and medical care pursuant to Section 440.13, F.S.

This proposed settlement takes into consideration my present and future receipt of social security benefits pursuant to 42 U.S.C. Section 423 and the Social Security Administration's right to offset such benefits pursuant to U.S.C. Section 424a and Florida's own offset provision in Section 440.15(9), F.S. Due consideration has been given to Section 440.20 F.S. in reaching a compromise of these issues. However, pursuant to 20 C.F.R., Section 404.408, out of the total lump sum settlement, the sum of \$62,375.00 is to be paid as attorney's fees for

services rendered in litigating this disputed workers' compensation claim and the sum of \$7,125.00 or more is being paid as reimbursement of costs and expenses incurred in prosecuting this claim. The Claimant is to receive, after attorney's fees and costs are subtracted, a net settlement of \$ 180,000. As outlined below, this net settlement is allocated as follows: \$ 150,000 for past and future medical expenses that are not covered by Medicare, \$ 10,000 for Medicare reimbursable medical expenses that would otherwise be covered by the Employer/Carrier (The recent change in the law (2006 effective date) to include prescription drugs as a reimbursable Medicare expense has been taken into consideration by the parties), and \$ 19,900 is allocated for past and future indemnity benefits and \$100 is for a general release

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The future non-Medicare medical expense allocation includes those medical expenses that are not paid or reimbursable under certain group health or disability policies, or the Federal Medicare and/or Medicaid Programs but would be the responsibility of the Workers' Compensation carrier had the parties not settled the medical portion of this claim. These expenses include attendant care, travel expenses, certain medications not presently covered by Medicare, routine follow-up visits, supportive devices, medical comfort services, Medicare hospital deductible and Medicare Part B co-payments, emergency room treatment and hospitalizations not covered by Medicare and/or Medicaid but necessary in the ongoing treatment of the Workers' Compensation injury.

The sum of \$ 150,000 is allocated toward these non-Medicare related medical expenses. When the lump sum payment herein is prorated on a weekly basis over my life expectancy, the lump sum is equal to payment of future benefits at a rate of \$ 97.62 per week (assuming 1536.6 weeks of life expectancy) representing those services not covered by Medicare and/or Medicaid brought forward in one lump sum. Future medical expenses in the amount of \$ 10,000 shall be utilized by me for covered services. It is my understanding that pursuant to the Social Security Administration's Program Operations Manual System, using the Hartman Method, the remaining \$ 19,900 represents a fair calculation of lost wage earning capacity over my lifetime. The entire \$ 19,900 is allocated as past and future permanent total disability benefits. In arriving at the stipulated settlement amount, consideration was given to my age of 50, and life expectancy of ~~35.60~~ years as established by the United States Life Tables published by the U.S. Department of Health. Consideration was given to the possible loss of supplemental benefits due under Section 440.15, F.S. and to the right of the Social Security Administration to offset disability benefits due under Federal law for workers' compensation benefits

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payable under Florida State law. The present value of the future compensation benefits potentially payable on account of the accident referenced herein was discounted sufficiently to take into consideration the employer/carrier's right to offset compensation benefits due under the Florida Workers' Compensation Act against benefits payable on account of total disability under Chapter 42 of the United States Code. Specifically, in arriving at the amount of the lump-sum settlement, my weekly compensation rate was recalculated to be \$ 12.95 per week.

This amount was arrived at by dividing the net workers' compensation indemnity settlement of \$ 19,900 by my life expectancy of 1,536.6 weeks. The prior workers' compensation rate was \$ 939 per week. This periodic repayment schedule results in a substantial loss to me on a consistent basis. Taking that into consideration, those weekly payments are the same as if the lump sum would have been paid to me at a rate of \$ 12.95 per week over my expected lifetime.

Employee affirmatively states that as of the time of this settlement he is not receiving Medicare or Medicare Advantage Plan benefits. The Centers for Medicare and Medicaid Services have stated in a memorandum circulated to its regional offices that only those workers' compensation settlements wherein the Employee is (1) already a Medicare beneficiary, and the settlement amount is greater than \$25,000.00 or (2) has a reasonable expectation of Medicare enrollment within thirty months of the settlement date, and the anticipated total settlement amount is greater than \$250,000.00 over the life of the Employee, require Medicare's approval. The parties agree that this settlement does not meet either threshold criteria for Medicare approval. Even so, the parties have taken Medicare's interests into account. Employee has been informed and is aware that it is not the purpose of this settlement agreement to shift responsibility of medical care in the matter to the Medicare program.

Employee acknowledges that he has not relied on any representations or advice of counsel of the Employer/Carrier/Servicing Agent, their attorneys, agents or adjusters, or any advice or representatives of his attorney regarding the Employee's entitlement to Social Security Medicare, Medicare Advantage Plan or Medicaid benefits and the impact the terms of this Agreement may have on such benefits. The Employee further acknowledges that any decision regarding entitlement to Social Security Medicare, Medicare Advantage Plan or Medicaid benefits including the amount and duration of payments and offset reimbursement for prior payments, is exclusively within the jurisdiction of the Social Security Administration, the United State Government, and the United

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States Federal courts and is determined by federal law. As such, the United States Government is not bound by any of the terms of this Agreement.

The Employee has been apprised of his right to seek assistance from legal counsel of his choosing or directly from the Social Security Administration, Medicare Advantage Plan or other governmental agencies regarding the impact that this Agreement may have on the Employee's present or future entitlement to Social Security, Medicare Advantage Plan or other government benefits. Notwithstanding the foregoing, the Employee desires to enter into the terms of this Agreement.

The Employee has been advised and fully understands that conditional payment information (any benefits paid by Medicare or Medicare Advantage Plan up to the date of settlement) has been requested from CMS or the Medicare Advantage Plan and that said conditional payments, if any, are the responsibility of the Employee and must be satisfied out of these settlement proceeds.

13. The Employee stipulated that he is: **(Check the applicable sentence below)**

Not currently receiving Social Security Disability or Retirement benefits and is not otherwise Medicare eligible. Employee has not applied for Social Security benefits.

Not currently receiving Social Security Disability or Retirement benefits but has applied for benefits and is not otherwise Medicare eligible.

Not currently receiving Social Security Disability or Retirement benefits but has applied for benefits and has been denied benefits and is not otherwise Medicare eligible. Employee is not appealing the decision and is not reapplying for benefits.

Deemed disabled by Social Security. Is not currently a Medicare beneficiary but has reasonable expectation that ___ will have Medicare coverage in the next 30 months.

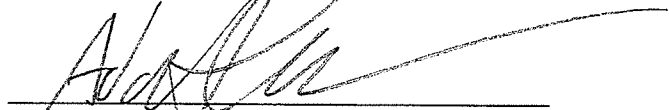
14. Additional terms of this General Release of All Claims are contained *in the* *Special Terms - Addendum to Mediation Agreement* which is attached hereto as Exhibit "A" and incorporated herein by reference. *in the*

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals to this instrument on the dates written below. *AK*

This General Release of All Claims was signed by the Employer/Carrier/Service Agent on the 23 day of December, 2022, and by the Employee on the ~~21st~~ day of December, 2022.



Craig Kimmel, Employee



Adam R. Littman, Esquire
Attorney for Employee/Claimant



Michael Broussard, Esquire
Attorney for Employer/Carrier/Service Agent

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

Craig Kimmel,
Claimant,

OJCC NO.: 21-003767MES
21-003769MES
21-005822MES
21-022651MES

JUDGE: Margaret E. Sojourner
D/Accident: February 24, 2019
September 29, 2020
September 30, 2020
June 11, 2021

v.

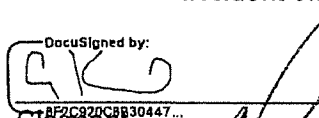
Seminole County Board of County
Commissioners/Johns Eastern Company, Inc.,
Employer/Carrier.


SPECIAL TERMS - ADDENDUM TO MEDIATION AGREEMENT


1. This settlement will not affect any vested benefits including but not limited to pension, FRS, health insurance or any other vested benefit.
2. E/C will either not pursue subrogation or will waive subrogation as to employer-provided health insurance claims stemming from disputed workers' compensation claims and is responsible to negotiate and/or pay employer-provided health insurance lien if employer-provided health insurance ever seeks to subrogate against Claimant for disputed workers' compensation claims incurred prior to the effective date of settlement.
3. All releases shall contain language mutually agreeable to all parties as well as the Hartman language to protect Medicare.
4. MVA case. The E/C retains its statutory WC lien for payments on the MVA case only. It is specifically agreed that this settlement, this release, and this agreement do not represent an election of remedies and do not contemplate the release of any claims that may exist against persons or entities (or their insurers or self-insurers) other than this workers' compensation claim. Claimant reserves the right to make any and all non-workers' compensation claims against all persons or entities (or their insurers or self-insurers) including, but not limited to, any claims or suits in tort, equity, common law, by statute or otherwise against those persons or entities responsible for Claimant's accident and injuries occurring on or about June 11, 2021.


- 5. No provision in this Release shall affect any of the Claimant's potential first party claims (such as PIP, Med pay, health insurance, UM (even if it is Employer's UM) or third-party claims against any other person or entity (or their carriers) that in any way contributed to the Claimant's accident of June 11, 2021.

- 6. Notwithstanding this workers' compensation settlement, Claimant additionally preserves his rights to pursue any other first or third-party claim, including, but not limited to, bodily injury claims, medical payment claims, health insurance claims, long or short term disability insurance claims, pension benefit claims, life insurance claims and any and all vested employment benefit claims and/or claims against any third party or parties responsible in any way for the injuries Claimant sustained in the accident on or about June 11, 2021.

DocuSigned by:

DEC 02 2022
Claimant


DEC 02 2022
Claimant's Counsel


for
E/C Representative

12-2-2022
Date

E/C Counsel

STATE OF FLORIDA
OFFICE OF THE JUDGE OF COMPENSATION CLAIMS
ORLANDO DISTRICT
Judge Assigned: SOJOURNER

OJCC NO.: 21-003767MES; 21-003769; 21-005822 D/A: 2/24/2019; 9/29/20; 9/30/22; 6/11/21
21-022651

EMPLOYEE : Craig Kimmel

REPRESENTED BY: Adam Littman, Esquire

EMPLOYER : Seminole County, Florida

REPRESENTED BY: Michael Broussard, Esquire

CARRIER : Johns Eastern Co., Inc.

REPRESENTED BY: Michael Broussard, Esquire

MEDIATION REPORT AND MEMORANDUM OF SETTLEMENT

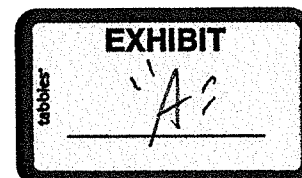
1. A Private Mediation Conference was conducted by Michael E. Nebel on December 1, 2022.
2. At the Mediation Conference, the parties:
 - Completely resolved all issues, as set forth below in the Memorandum of Settlement.
 - Resolved only some of the issues as set forth in the attached Memorandum of Settlement. The unresolved issues require court action.
 - Did not resolve any issues and reached an Impasse. Additional court action is necessary.
 - Have recessed and will reconvene as soon as is mutually agreeable.

CONTINGENT
MEMORANDUM OF SETTLEMENT

Pursuant to the Mediation Report, the parties have reached an agreement, as set forth below:

1. The employer/carrier shall pay to the employee the sum of \$ 249,500.00 in full settlement of all workers' compensation claims: MEDICAL OPEN * MEDICAL CLOSED
 - a. Employee to receive \$ 180,000.00 . *No less
 - b. Attorney's Fees of \$ 62,375.00 .
 - c. Costs of \$ 7,125.00 .
2. The employer/carrier * employee shall pay employee's attorney a fee of \$ _____ for benefits obtained and costs in the amount of \$ _____, Claimant to receive \$ _____ for past benefits.
3. Mediation Fee of \$ _____.
 - a. To be paid by Employee.
 - b. To be paid by Employer/Carrier.

Filed December 2, 2022 3:13 PM ET Office of the Judges of Compensation Claims.



ONCE CONTINGENCY MET;
Mediation Resolution

4. Please check and write in the special terms that apply to this case (items that remain unchecked, do not apply):

- The claimant agrees to sign a general release and separation agreement.
- All previously authorized and related medical treatment, including mileage, that has not been paid will be paid by E/C in addition to the settlement, once submitted on proper form, specifically _____ Yes No ____.
- This mediation report and settlement agreement is final and binding on all parties and includes all dates of accidents while the Claimant was employed with the Employer (regardless of whether all accidents are listed above).
- The Attorney for the Employer/Carrier will provide the settlement documents to the Claimant's Attorney within 7 days. The Claimant will sign and return the settlement documents to the Attorney for the Employer/Carrier within 7 days of receipt. Contingent upon receipt of the necessary child support documentation, the attorney for the Employer/Carrier will file all necessary signed settlement documents with the designated JCC within 7 days of receipt of the signed, agreed upon settlement documentation.
- The claimant gives claimant's **attorney clear and unequivocal authority to resolve all** pending claims and settle the case in it's entirety, Claimant also grants claimant's attorney the power to execute this agreement on the claimant's behalf. Furthermore, the claimant has been read and/or explained all provisions in this agreement and consents to same.
- The parties to this agreement (including the mediator) stipulate the JCC has jurisdiction to enforce payment of the mediator's charges/fec herein as a taxable cost, if the charges/fees are not paid within 30 business days from the date of this agreement.

5. Special Terms, if any:

1. Contingency upon Employer approval.
2. Special terms see attached - Mr. Littman to provide to Mr. Broussard attached. All set
3. PFB 11/30/22 for DOA 9/29/22 will be dismissed once employer agrees to settlement.

The foregoing agreement is stipulated and agreed to by the undersigned parties.

12/1/2022
DATE 12/1/2022
Michael E. Nebel for
EMPLOYER

Michael E. Nebel
EMPLOYEE
Michael E. Nebel for
CARRIER

Michael E. Nebel
ATTORNEY FOR EMPLOYEE
Michael E. Nebel
ATTORNEY FOR EMPLOYER/CARRIER

Michael E. Nebel
MICHAEL E. NEBEL, MEDIATOR

INTERPRETER (IF APPLICABLE)

This is to certify that the original Mediation Report and Memorandum of Settlement was given to Claimant's Counsel to be filed with the Judge of Compensation Claims as required by law.

Michael E. Nebel
Michael E. Nebel, Mediator
Post Office Box 6428
Orlando, FL 32802-6428

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

Craig Kimmel,
Claimant,

OJCC NO.: 21-003767MES
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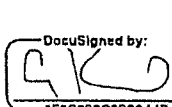
Seminole County Board of County
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Employer/Carrier.


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2. E/C will either not pursue subrogation or will waive subrogation as to employer-provided health insurance claims stemming from disputed workers' compensation claims and is responsible to negotiate and/or pay employer-provided health insurance lien if employer-provided health insurance ever seeks to subrogate against Claimant for disputed workers' compensation claims incurred prior to the effective date of settlement.
3. All releases shall contain language mutually agreeable to all parties as well as the Hartman language to protect Medicare.
4. MVA case. The E/C retains its statutory WC lien for payments on the MVA case only. It is specifically agreed that this settlement, this release, and this agreement do not represent an election of remedies and do not contemplate the release of any claims that may exist against persons or entities (or their insurers or self-insurers) other than this workers' compensation claim. Claimant reserves the right to make any and all non-workers' compensation claims against all persons or entities (or their insurers or self-insurers) including, but not limited to, any claims or suits in tort, equity, common law, by statute or otherwise against those persons or entities responsible for Claimant's accident and injuries occurring on or about June 11, 2021.


- 5. No provision in this Release shall affect any of the Claimant's potential first party claims (such as PIP, Med pay, health insurance, UM (even if it is Employer's UM) or third-party claims against any other person or entity (or their carriers) that in any way contributed to the Claimant's accident of June 11, 2021.

- 6. Notwithstanding this workers' compensation settlement, Claimant additionally preserves his rights to pursue any other first or third-party claim, including, but not limited to, bodily injury claims, medical payment claims, health insurance claims, long or short term disability insurance claims, pension benefit claims, life insurance claims and any and all vested employment benefit claims and/or claims against any third party or parties responsible in any way for the injuries Claimant sustained in the accident on or about June 11, 2021.

DocuSigned by:

DEC 0 2 2022
#F7C920C8830447...
Claimant


DEC 0 2 2022
Claimant's Counsel


for
E/C Representative

12-2-2022
Date

E/C Counsel