

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F500868

STEVE EFURD	CLAIMANT
COCA COLA BOTTLING CO. OF FORT SMITH	RESPONDENT
US FIDELITY & GUARANTY CO. INSURANCE CARRIER	RESPONDENT

OPINION FILED MARCH 8, 2006

Hearing before ADMINISTRATIVE LAW JUDGE ELIZABETH DANIELSON in Fort Smith, Sebastian County, Arkansas.

Claimant represented by JAMES DUNN, Attorney, Fort Smith, Arkansas.

Respondents represented by ROBERT HONEA, Attorney, Fort Smith, Arkansas.

STATEMENT OF THE CASE

A hearing was held on February 16, 2006, in Fort Smith, Arkansas on the motion from the claimant for approval of a Third Party Settlement claim and to determine if the claimant had been made whole.

A pre-hearing conference was held in this claim, and as a result a pre-hearing order was entered on November 16, 2005. This pre-hearing order set forth the stipulations offered by the parties, the issues to litigate and the contentions thereto.

The following stipulations were submitted by the parties and are hereby accepted:

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his left leg on January 12, 2005.

4. All medical expenses have been paid.

By agreement of the parties the issues to litigate are limited to the following:

1. whether the claimant has been made whole.

2. whether the claimant's Motion for Approval of Third Party Settlement be granted.

In regard to the foregoing issues the claimant contends that he had not been made whole and that his Motion should be granted.

In regard to the foregoing issues the respondents contend that they are entitled to subrogate their interest in the Third Party Settlement.

The documentary evidence submitted in this matter consists of the Commission's pre-hearing order marked Commission's Exhibit No. 1 and the claimant submitted medical reports marked Claimant's Exhibit No. 1 and the petition for Third Party Settlement claim and approval of attorney's fees marked Claimant's Exhibit No. 2. All these exhibits were admitted without objection.

DISCUSSION

The claimant's attorney acknowledged that a pre-hearing order had been entered in this matter setting forth the issues to be determined. One of which was if the claimant had been made whole or would be made whole by a settlement of \$50,000.00 from the Third Party claim. The claimant's attorney indicated that the claimant has approximately \$43,000.00 in discounted medical expenses and has

at least one additional surgery perhaps two which would exceed the \$50,000.00 Third Party Settlement. The claimant requested that the respondents waive their subrogation interest so that the Third Party Settlement could move forward.

The respondents' attorney acknowledged that the claimant was injured in an automobile accident while acting in the course and scope of his employment and that the responsible party, the Third Party Tortfeasor, has insurance limits of \$50,000.00. The respondents acknowledged that under the circumstances in this case the \$50,000.00 from the Third Party Settlement would not make the claimant whole. The respondents' attorney stated that in terms of the lien issue, the issue had been investigated and in light of current Arkansas law the respondents waives their lien claim in this matter. The respondents' attorney acknowledged that the workers' compensation claim is still open.

Based on the contentions and agreements of the parties as well as the claimant's Petition for Approval of Third Party Settlement and Attorney's Fees, I find that the claimant has not been made whole and that the Third Party Settlement proceeds of \$50,000.00 shall be subject to the cost of collection in the amount of \$16,815.60. Since the claimant has not been made whole and the respondents have acknowledged and waived their right to any subrogation interest in this Third Party Settlement, the claimant is entitled to the balance of \$33,184.40.

FINDINGS & CONCLUSIONS

1. The Arkansas workers' Compensation Commission has jurisdiction of this claim.

2. On all pertinent dates, the relationship of employee-employer-carrier existed between the parties.

3. The claimant sustained a compensable injury to his left leg on January 12, 2005.

4. All medical expenses have been paid.

5. The claimant has filed a Petition for Approval of Third Party Settlement in the total amount of \$50,000.00 subject to the cost of collection.

6. The respondents waive their right to any subrogation interest in the Third Party settlement.

7. The claimant's attorney is entitled to the cost of collection in the amount of \$16,815.60 from the \$50,000.00 settlement amount.

8. The claimant is entitled to the balance of the settlement proceeds in the amount of \$33,184.40.

ORDER

The claimant's Petition for Approval of Third Party Settlement and Attorney's Fees is hereby approved.

The respondents have waived their right to any subrogation interest in this third party settlement.

The claimant's attorney is entitled to recover the cost of collection in the amount of \$16,815.60.

The claimant is entitled to the balance of the proceeds from the Third Party Settlement agreement in the amount of \$33,184.40.

IT IS SO ORDERED.

ELIZABETH DANIELSON
ADMINISTRATIVE LAW JUDGE