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MAY 23 2011

Division of Workers Compensation

STATE OF COLORADO  
DIVISION OF WORKERS' COMPENSATION

WC No(s): [REDACTED]

Carrier No(s): [REDACTED]

RECEIVED  
MAY 25 2011  
RITSEMA & LYON, P.C.

**WORKERS' COMPENSATION CLAIM(S) SETTLEMENT AGREEMENT:  
REPRESENTED CLAIMANT**

IN THE MATTER OF THE WORKERS' COMPENSATION CLAIMS:

[REDACTED]

v.

Hydro Conduit Corporation, d/b/a Rinker Materials Concrete Division, Employer,

and

Liberty Mutual, Insurer/Respondents.

The parties named above have disputes regarding the amount of Workers' Compensation Benefits, if any, to which Claimant may be entitled. Because they wish to avoid the expense and uncertainty of litigation, the parties wish to FOREVER settle this matter and therefore state and agree as follows:

1. Claimant sustained or alleges injuries or occupational diseases arising out of and in the course of employment with the employer on or about February 7, 2006 including, but not limited, the left knee, DVT, psychological, and back. Other disabilities, impairments and conditions that may be the result of these injuries or diseases but that are not listed here are, nevertheless, intended by all parties to be included in and resolved FOREVER by this settlement.

2. In **full and final** settlement of all benefits, compensation, penalties and interest to which Claimant is or might be entitled as a result of these alleged injuries or occupational diseases, Respondents agree to pay and Claimant agrees to accept the following TWO HUNDRED EIGHTY TWO THOUSAND, EIGHT HUNDRED SEVENTY SIX DOLLARS AND NO CENTS (**\$282,876.00**), in addition to all benefits that have been previously paid to or on behalf of the Claimant. This amount will be reduced by the total amount owed by Claimant as indicated in any Writ of Garnishment, Notice of Administrative Lien and Attachment or any other legally authorized procedure served upon Respondent(s) for court-ordered support pursuant to §8-42-124 C.R.S. All parties agree that this settlement is not an admission of liability by the Respondents.

3. As consideration for the amount paid under the terms of this settlement, Claimant rejects, waives, and forever gives up the right to claim all compensation and benefits to which Claimant might be entitled for each injury or occupational disease claimed here, including but not limited to the following, unless specifically provided otherwise in paragraph 9A of this agreement:

- a. Temporary total and temporary partial disability benefits to compensate the Claimant for time missed from work and

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- b. Permanent total disability benefits payable to the Claimant for life if the Claimant is totally incapable of earning any wages and
- c. Permanent impairment (also known as vocational impairment, medical impairment or permanent partial disability) benefits, payable up to a maximum amount of \$150,000 and
- d. A lump sum payment of up to \$60,000 against an award of permanent impairment or permanent total disability and
- e. Vocational rehabilitation benefits, including job training, income maintenance or any other benefits payable as vocational rehabilitation and
- f. Benefits for disfigurement, scarring, discoloration, and/ or a limp, and
- g. All penalties, interest, costs, and attorneys' fees up to the date this settlement is approved by the Division. The parties do not waive the right to seek post-approval penalties should either side fail to comply with the terms of the approved settlement agreement.
- h. Medical, surgical, hospital, and all other health care benefits, including chiropractic care and mileage reimbursement incurred after the date of the approval of this settlement agreement by the Division of Workers' Compensation or by an administrative law judge from the Office of Administrative Courts.

4. **The parties stipulate and agree that this claim will never be reopened except on the grounds of fraud or mutual mistake of material fact.**

5. Respondents specifically ~~retain~~ **waive** their subrogation rights.

6. Claimant realizes that there may be unknown injuries, conditions, diseases or disabilities as a consequence of these alleged injuries or occupational diseases, including the possibility of a worsening of the conditions. In return for the money paid or other consideration provided in this settlement, Claimant rejects, waives and FOREVER gives up the right to make any kind of claim for workers' compensation benefits against Respondents for any such unknown injuries, conditions, diseases, or disabilities resulting from the injuries or occupational diseases, whether or not admitted, that are the subject of this settlement. The Claimant and Respondents agree that this settlement, when approved by the Division of Workers' Compensation or by an administrative law judge from the Office of Administrative Courts, ends FOREVER the Claimant's right to receive any further workers' compensation money and benefits even if the Claimant later feels that Claimant made a mistake in settling this matter or later regrets having settled.

7. Claimant understands that **this is a final settlement** and that approval of this settlement by the Division of Workers' Compensation or by an administrative law judge from the Office of Administrative Courts dismisses this matter with prejudice and FOREVER closes all issues relating to this matter. Claimant is agreeing to this settlement of Claimant's own free will, without force, pressure or coercion from anyone. ~~Claimant is not relying upon any promises, guarantees, or predictions made by anyone as to Claimant's physical or mental condition; the nature, extent, and duration of the injuries or occupational diseases or as to any other aspect of this matter.~~

8. Neither Claimant nor Respondents intend to waive or give up any available rights, claims, privileges or defenses by signing this Settlement Agreement **unless and until** it is approved by the Division of Workers'

Compensation or by an administrative law judge from the Office of Administrative Courts. The parties acknowledge and agree that approval by the Division of Workers' Compensation or by an administrative law judge from the Office of Administrative Courts applies only to those matters set forth in this agreement that are subject to the Workers' Compensation Act and that the approval by the Division or by an administrative law judge from the Office of Administrative Courts has no effect on any separate or contingent agreement(s) that the parties may have reached.

9. A. The parties agree to each of these additional terms as part of this settlement.
  - (1) Claimant acknowledges that he has disclosed to Respondents in writing any and all known job-related accidents, injuries or occupational diseases sustained in the course and scope of his employment with Respondent Employer, and hereby waives his right to receive workers' compensation benefits from either of the Respondents resulting from any and all known job-related accidents, injuries or occupational diseases sustained by Claimant through the date of Claimant's signature on this agreement.
  - (2) In entering into this settlement agreement, the parties have taken into account that the Claimant may need present and future medical care and that the settlement proceeds include consideration for present and future medical care. The parties agree that the Respondents will not be responsible for any medical care needed by the Claimant, even if Claimant's future medical expenses are greater than, equal to, or less than the amount of the settlement. The parties also agree that this settlement is binding regardless of whether the Claimant receives medical or other benefits from any other source.
  - (3) In the event of a reopening of the Settlement by any party, it is agreed that Respondents shall be entitled to the repayment of any payments made pursuant to this settlement agreement and to all defenses, credits, and offsets.
  - (4) The Claimant has been rated for 60% permanent impairment for his left lower extremity; 8% whole person permanent impairment for his spine; and 3% for mental impairment by Dr. Thomas Higgenbotham. The parties agree that Claimant has been compensated for this rating.
  - (5) CONSIDERATION OF MEDICARE'S INTERESTS IN SETTLEMENT PURSUANT TO 42 USC §1395, 42 C.F.R. §411.46 AND §411.47. The parties agree that they must take into account the interests of the Centers for Medicare and Medicaid Services (CMS) with regard to this settlement. Claimant is not a current Medicare beneficiary and there is no reasonable expectation of Medicare enrollment within 30 months of settlement. Therefore, CMS will not formally review [REDACTED] settlement for adequate coverage of Medicare's interests. However, the parties understand that Medicare's interests must still be considered under 42 U.S.C. §1395. Therefore, the parties believe that the \$100,000.00 for full and final settlement in this matter should cover all future medical expenses related to the claimant's injury. The possibility that claimant's Medicare and/or non-Medicare covered medical expenses related to the injuries referred to in this settlement may differ from any allocated amounts in this settlement, or the possibility that Medicare might not pay for any of claimant's future medical expenses related to the injuries referred to in this settlement, shall not constitute fraud or a mutual mistake of material fact that would allow claimant to reopen this settlement.

W.C. No. [REDACTED]

9. B. The parties attach the following agreement(s) to this settlement:

- (1) Attached as Exhibit A is a Mutual Release and Waiver of Non-Workers' Compensation Claims.

10. This settlement agreement contains the entire agreement between the parties and shall be binding upon the parties when approved by the Division of Workers' Compensation or by an administrative law judge from the Office of Administrative Courts.

11. The Claimant has reviewed and discussed the terms of this settlement with Claimant's attorney, has been fully advised, and understands the rights that are being given up in this settlement. The parties agree to the terms of the settlement as contained in this agreement and waive a personal appearance of Claimant before the Director of the Division of Workers' Compensation or an Administrative Law Judge. Claimant authorizes Respondents to send the settlement check directly to Claimant's attorney.

*When applicable, the statement below is to be completed by the interpreter and the interpreter is to sign where appropriate and include the interpreter's PRINTED name and complete address.*

I, \_\_\_\_\_ (interpreter) affirm that on this \_\_\_\_\_ day of \_\_\_\_\_, 2011, I read this document in its entirety to the individual whose name appears below as the Claimant in this settlement in that person's native language and that the person indicated to me that that person understood each and every term of the settlement and, by signing this agreement, consents to and accepts the settlement as written.

\_\_\_\_\_  
Interpreter

\_\_\_\_\_  
(Print name)  
(Address)

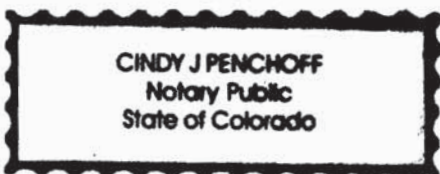
\_\_\_\_\_  
Claimant's Signature

\_\_\_\_\_  
Claimant

STATE OF COLORADO

COUNTY OF EL PASO

Subscribed and sworn before me this 12 day of May 2011



\_\_\_\_\_  
Notary Public

My Commission Expires: 8-15-2012

W.C. No. [REDACTED]

I, the undersigned attorney for Claimant, acknowledge that I have reviewed and fully discussed the terms of this Settlement Agreement with Claimant.

Spencer & Spencer, P.C.

[REDACTED]

Patrick C.H. Spencer, II, Esq., Reg. No. 28935  
830 Tenderfoot Hill Road, Suite 320  
Colorado Springs, CO 80906  
Phone: 719.632.4808  
Attorney for Claimant

RITSEMA & LYON, P.C.

[REDACTED]

Ronda K. Cordova, Esq., Reg. No. 24567  
2629 Redwing Road, Suite 330  
Fort Collins, CO 80526  
Phone: 970.204.9053  
Attorneys for Respondents

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EXHIBIT A

MUTUAL RELEASE AND WAIVER OF NON-WORKERS' COMPENSATION CLAIMS

A settlement agreement has been entered into with respect to workers' compensation claim(s) W.C. No(s) 4-676-549. This agreement is entered into between Claimant, [REDACTED] and Respondents, Liberty Mutual and Hydro Conduit Corporation, d/b/a Rinker Materials Concrete Division, Employer, to mutually waive and release any claims arising out of or in relation to the workers' compensation claims(s).

The parties hereby waive, release and relinquish any and all potential causes of action, known or unknown, against each other arising out of or in relation to the workers' compensation claim(s). These claims include, but are not limited to, outrageous conduct, bad faith, negligence, intentional acts, civil rights violations or breach of any duty by any party, and include any claim for damages including attorney fees and costs. This agreement releases all employees, officers, agents, and representatives of Respondents. This release does not apply to fraudulent acts. This settlement pertains only to matters related to the workers' compensation claim(s) being settled herein and is not intended to settle any other non-workers' compensation matters between Claimant and the employer.

The parties stipulate and agree the consideration for the claims waived by this agreement includes the mutual waiver and release of claims and each party bearing its own attorney fees and costs. The parties stipulate and agree this constitutes good and fair consideration for the rights waiver.

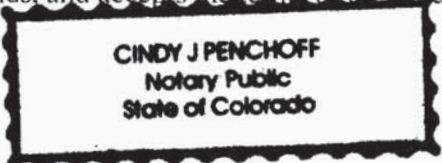
The parties to this Release expressly agree that this agreement binds the heirs, personal representatives, successors and assignees of Claimant and shall bind the administrators, successors, assigns, officers, directors, agents, and representatives of the Respondents.

I UNDERSTAND AND VOLUNTARILY AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT.

[REDACTED]

State of Colorado )  
 ) ss.  
County of EL PASO )

Subscribed and sworn to before me, a Notary Public, by [REDACTED] who states that [REDACTED] acknowledges, understands, and accepts the terms of this release this 12 day of March 2011



NOTARY PUBLIC  
My Commission expires: 8-15-2012

I, the undersigned attorney for [REDACTED] state that I have reviewed each of the terms of this Mutual Release and Waiver of Non-Workers' Compensation Claims with Claimant.

[REDACTED]  
Patrick C.H. Spencer, II, Esq., Reg. No. 28935  
Spencer & Spencer, P.C.  
830 Tenderfoot Hill Road, Suite 320  
Colorado Springs, CO 80906  
Phone No. 719.632.4808  
Attorney for Claimant

[REDACTED]  
Ronda K. Cordova, Esq., Reg. No. 24567  
Ritsema & Lyon, P.C.  
2629 Redwing Road, Suite 330  
Fort Collins, CO 80526  
Phone No. 970.204.9053  
Attorneys for Respondents

STATE OF COLORADO  
Division of Workers' Compensation

Workers' Compensation Number (s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

IN THE MATTER OF THE CLAIM OF

\_\_\_\_\_  
Claimant

VS

Hydro Conduit Corporation,  
d/b/a Rinker Materials Concrete Division  
Employer.

and  
Liberty Mutual  
Insurer,  
Respondents.

**SETTLEMENT  
ORDER**

The parties filed a settlement agreement, with the claimant's notarized signature dated:

May month 12 day 2011 year

IT IS ORDERED: that the parties' settlement agreement is approved.

IT IS FURTHER ORDERED: that payments to the claimant shall be made in accordance with the settlement agreement.

Dated this 23 day of May, 2011

DIVISION OF WORKERS' COMPENSATION

By [Signature]

Director or Administrative Law Judge



**DIVISION CERTIFICATE OF MAILING**

I hereby certify that a true and correct copy of the foregoing Order was served upon the following party by:

- hand delivered on \_\_\_\_\_.
- placing the same order in the United States mail, postage prepaid, on 5-23-11
- placing for pick up at 633 17<sup>th</sup> Street, Suite 1300 – front desk on \_\_\_\_\_.

**This party is responsible for the timely distribution of the conformed order to all parties, pursuant to OACRP 16 G.**

Ronda K. Cordova, Esq.  
Ritsema & Lyon, P.C.  
2629 Redwing Road, Suite 330  
Fort Collins, CO 80526

    RW    

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**COUNSEL CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the above and foregoing: SETTLEMENT ORDER were served upon the parties by facsimile/placing the same in the United States mail, postage prepaid, this 20<sup>th</sup> day of May 2011, properly addressed to the following:

Patrick C.H. Spencer, II, Esq.  
Spencer & Spencer, P.C.  
830 Tenderfoot Hill Road, Suite 320  
Colorado Springs, CO 80906

    Patrick C.H. Spencer, II    

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