



## AlaFile E-Notice

63-CV-2016-900818.00

Judge: JOHN HENRY ENGLAND JR

To: JEFFREY G. BLACKWELL MR.  
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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

MARTHA WALLACE V. ROTORWORKS, LLC  
63-CV-2016-900818.00

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**C001 WALLACE MARTHA**  
RESPONSE TO MOTION FOR SUMMARY JUDGMENT PURSUANT TO RULE 56  
[Filer: BLACKWELL JEFFREY GLENN]

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**IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY**

**MARTHA WALLACE, as surviving spouse  
and dependent of MATTHEW WALLACE;**

**Plaintiff,**

v.

**CIVIL ACTION NO.: CV2016-900818**

**ROTORWORKS, LLC,**

**Defendants.**

**PLAINTIFF'S OPPOSITION TO  
MOTION FOR SUMMARY JUDGMENT**

COMES NOW the Plaintiff, by and through undersigned counsel, and submits the following in opposition to defendant's motion for summary judgment. As grounds in opposition thereto, Plaintiff states as follows:

**ARGUMENT**

**I. Introduction**

For purposes of this opposition, Plaintiff accepts the factual assertions of defendant that her decedent was killed within the line and scope of his employment in Alabama. (Complaint). After his death, the defendant provided some benefits pursuant to Georgia law and obtained release paperwork. (Defendant's Motion, Pars. 2 and 3). Because those benefits were inadequate and far less than properly owed for a work-related death in Alabama, Plaintiff's decedent filed the present claim.

**II. Standard**

A summary judgment is only appropriate where no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. Here, Alabama law is absolutely clear. Plaintiffs are entitled to present this claim. Moreover, genuine material facts are in dispute. The specific amount of benefits owed due to the work-related death which occurred in Tuscaloosa County, Alabama, is at issue.

### III. Plaintiff Is Entitled To A Proper Award of Benefits Under Alabama Law

Defendant argues the sole issue is whether or not a document executed by Plaintiff as part of a Georgia settlement bars her recovery in this case. It does not. Alabama law is clear on that point.

Alabama's Workers' Compensation Act contains the following express statutory language:

The payment or award of benefits under the workers' compensation law of another state, territory, province, or foreign nation to an employee or his dependents otherwise entitled on account of such injury or death to the benefits of this article and Article 3 of this chapter shall not be a bar to a claim for benefits under this article and Article 3 of this chapter;

Ala. Code §25-5-35(e). Here, Plaintiff's receipt of benefits pursuant to *either* a settlement or judgment in Georgia is *no* bar to this claim.

Our appellate courts have previously addressed the provision of benefits by a settlement in another state. In *Sager v. Royce Kershaw Company, Inc.*, 359 So.2<sup>nd</sup> 398 (Ala.Civ.App. 1978), an injured worker accepted a settlement of his workers' compensation claim in Illinois and then, later, filed suit in Alabama on that same claim. Our appellate court concluded the Illinois settlement and release was *no* bar to Plaintiff's later claim in Alabama.

In analyzing the issue, the Court of Civil Appeals first noted:

Section 25-5-35[e], Code of Alabama (1975) provides that the payment or award of benefits under the law of another state is no bar to an action in Alabama if brought within the statute of limitations.

*Id.* at 400. After stating Section 25-5-35(e), the Court of Civil Appeals then noted a second provision, Section 25-5-56. This second section expressly provides that no settlement under Alabama law is valid for less than the full amount provided by the Act unless an Alabama

Circuit Judge determines it is in the best interest of the employee. *Id.* In other words:

Section 25-5-56 clearly removed settlement of the workmen's compensation claims from the ambit of the principles applicable to the settlement and release of ordinary personal injury claims.

**Defendant in his motion for summary judgment has relied on the principles of contract applicable to settlement and release. A workmen's compensation claim may not be settled and released in that way.**

*Id.* (*Emphasis added*). Finally, the Court concluded "if an award of benefits in Illinois is no bar to an action in Alabama, it can only logically follow that a settlement in Illinois can be no bar to an action in Alabama." Again, regardless of the form or terminology of a putative release, our Act removes the settlement of workers' compensation claims from the contract principles applicable to other settlements or releases.

Our Court of Civil Appeals again reiterated this important principle in *Kendrick v. Carl's Incorporated*, 987 So.2d 589 (Ala.Civ.App. 2007). In addition to expressly citing *Sager*, *supra*, the Court again stated:

Alabama law is well-settled: a workers' compensation claim may not be released in the same manner as a typical tort claim. *Sager v. Royce Kershaw Co.*, 359 So.2d 398, 400 (Ala. Civ. App. 1978). Under §25-5-56, a settlement of an employee's workers' compensation claim *is not binding* unless it is either (1) for the amount of compensation to which the employee is entitled under the Act or (2) approved by a circuit court.

*Id.* at 596

The terminology or form of release document is completely irrelevant. Whether termed as release, settlement, covenant, agreement, or other form, Alabama law is exactly the same. A settlement and release in another jurisdiction is not binding.

As the present defendant states in its motion, "[a] covenant not to sue operates as a

release.” (Defendant’s motion, p.3 quoting *Flinn v. Carter*, 59 Ala.364 (1877)). This principle is well settled under Alabama law. *See also, State of Alabama v. Gulf Oil Corporation*, 256 So.2d 179 (ala. 1971); 45 Am. Jur., Release §3, p. 676; 76 C.J.S. Release §44, p. 675.

In the case at bar, Alabama law is well-settled. A settlement in another jurisdiction regardless of payments or release documents executed is *no* bar to this claim.

Although unnecessary to the present decision that Defendant’s motion should be denied, our law on purported releases serves a valuable purpose. The Alabama Act is intended to be liberally construed so that injured workers and their families are provided the full statutory benefits. If employers were allowed simply to pay lesser benefits in another jurisdiction and obtain release covenants, then the liberal purposes of our Act would be thwarted. Because of that, normal contractual rules related to settlements do not apply. Our appellate courts are uniform on that issue. And, the defendant’s motion must be denied.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests this Honorable Court deny the defendant’s motion for summary judgment.

/s/ Jeffrey G. Blackwell  
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**CERTIFICATE OF SERVICE**

I hereby certify that on 12th day of December, 2016, I electronically filed the foregoing with the Clerk of the Court using the Alafile system which will send notification of such filing to:

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/s/ Jeffrey G. Blackwell  
OF COUNSEL