

6

Copies: Bruce E. Rende, Esq.; John M. Smith, Esq.; Kendra Smith, Esq.; Kimberly A. Brown, Esq.

IN THE COURT OF COMMON PLEAS OF WASHINGTON COUNTY, PENNSYLVANIA
CIVIL COURT DIVISION

STACEY HANEY, et al,

Plaintiffs,

vs.

RANGE RESOURCES – APPALACHIA, LLC.,
et al

Defendants.

)
)
)
)
)
)
)
)
)
)

No. 2012-3534

PROTHONOTARY
WASHINGTON CO. PA.

2018 AUG 31 PM 2:07

FILED

MEMORANDUM ORDER

Before the Court are two Motions to Enforce Settlement Agreement presented by the Plaintiffs and by the Defendant Range Resources – Appalachia, LLC.¹ The Defendant's Motion was joined by the following Defendants: Highland Environmental, LLC, Solmax International, Inc., Red Oak Water Transfer NE, LLC, Microbac Laboratories, Inc., EAP Industries, Inc., Terrafix Environmental Technology, Inc., PBR, Inc. d/b/a SKAPS Industries, Engineering Synthetic Products, Inc., New Dominion Construction, Inc., and Multi-Chem Group, LLC.

After years of contentious litigation, including appeals filed by both Defendants and Plaintiffs, the parties engaged in mediation and a global, comprehensive settlement was reached on January 19, 2018. All of the parties executed a document entitled "Mediation Settlement

¹ The motions and briefs in support thereof were presented to the Court but not filed as the documents contained details of a settlement agreement which is to remain confidential. With this Order, all motions and submissions related to the Motions to Enforce Settlement will be filed with the Prothonotary under seal.

General Terms;" this document is hereinafter referred to as the Term Sheet. The introductory paragraph of the Term Sheet states:

"The following general terms were agreed upon by the parties, to resolve the disputes listed below. The parties further agree to draft, finalize and execute a mutually acceptable release and settlement agreement that is consistent with the terms below. The general terms of the release and settlement are outlined below."

Not surprisingly, the parties, after seven (7) months, have not been able to agree to the language to be in the Release and Settlement Agreement that was contemplated in the Term Sheet. For that reason, both sides have filed a Motion to Enforce Settlement Agreement.

The threshold question the Court must address is whether an enforceable agreement exists. The Court finds unequivocally an agreement does exist and the terms of the agreement are contained in the Term Sheet. All of the parties agree that the Term Sheet is an enforceable settlement agreement. The Court must also determine whether the agreement is conditional upon the execution of a "Mutually acceptable release and settlement agreement." The Court finds that it was not. While a written comprehensive release and settlement agreement was contemplated, the failure of the parties to execute one does not vitiate the enforceability of the agreement itself as represented in the Term Sheet. Therefore, the Term Sheet is the agreement between the parties.

When a dispute arises between parties concerning a contract, it is the duty of the Court to interpret the contract. The basic rule in contract interpretation is to ascertain the intent of the contracting parties and when the terms of a contract are clear and unambiguous, the intent of the parties is to be ascertained from the writing. Insurance Adjustment Bureau, Inc. v. Allstate Ins. Co., 905 A.2d 462, 588 Pa. 470 (2006). The parties have the right to make their own contract

and it is not the province of the Court to rewrite or alter the contract. Steuart v. McChesney, 444 A.2d 659, 496 Pa. 45 (1982). "The Court may not rewrite the contract for the purposes of accomplishing that which, in its opinion, may appear proper, or, on general principles of abstracts justice...make for (the parties) a better contract that they chose, or saw fit, to make for themselves, or remake a contract, under the guise of construction because it later appears that a different agreement should have been consummated in the first instance..."

Id. @ 662, 51 quoting the C.J.S. Contracts §296(3).

In consideration of these motions this Court must analyze the contract in order to enforce it. The Court will consider each of the nine delineated terms and if germane to the enforcement of the settlement, set forth an appropriate Order.

1.) Total settlement amount: \$3,000,000 broken down as follows:

(The Term Sheet also contains a recitation of the contributions between the Defendants.)

The Court finds that term is clear and unambiguous and not in dispute.

2.) Broad Release of ALL Claims against Defendants:

"Any and all claims for liability, actions, causes of actions, and damages arising out of or related to past, current, and/or future claims for past, current, and/or future activities related to Defendants' operations, products, services, and/or any and all related activities, including a release of future claims related to Defendants' operations and inconvenience or nuisance of future operations. ("Released Claims")."

"The settlement and release includes consideration provided by Defendants for Plaintiffs' future claims, injuries, damages, and causes of action related to future operations at the Yeager Site and nearby sites. Plaintiffs enter into this settlement and release in recognition of and with full knowledge that Range intends to continue to expand natural gas operations at the Yeager Site and other nearby sites in the future."

Final settlement and release will include a mutual release.

The Court finds that this is a broad mutual release in which ALL parties are releasing each other.

3.) *Broad Covenant Not to Sue for any of the Released Claims, indemnity for breach of Covenant Not to Sue with recovery of attorney fees; No assignment of claims.*

The Court finds that this is clear and unambiguous.

4.) *Plaintiffs' agreement to Non-Disparagement of Defendants.*

The Court finds that this is clear and unambiguous.

5.) *Right of First Refusal for Range to purchase Voyles and Haney properties, except in the event that Stacey Haney wishes to sell 1049 McAdams Road to Ashley Voyles or the Voyles wish to sell or transfer 1085 McAdams Road to their children.*

The Court finds that this is clear and unambiguous.

6.) *Medicaid (sic) Secondary Payer Act Release and Set Aside provision.*

It is this term over which the parties strongly disagree. The Plaintiffs propose that the Defendants execute two separate releases for each Plaintiff, one indicating a settlement of \$500 for any personal injury claim and the balance of the settlement for property damage. Counsel for Plaintiffs have indicated that four of the eight Plaintiffs have received benefits or are receiving benefits that trigger reporting requirements pursuant to the Act, (provided that the threshold settlement of \$750 is met). Plaintiffs' counsel also represented that the settlement proceeds were to be distributed in thirds but did not indicate the specific allocation between all eight Plaintiffs.

The Defendants contend that Term 6 requires the Defendants to report the entire settlement to Medicare/Medicaid for each Plaintiff and that the Plaintiffs have a duty to hold the Defendants harmless from any liability under the Medicare Secondary Payer Act.

Neither position is correct. The Term is not descriptive; duties are not allocated, details are not set forth. The clear and unequivocal intent of the parties is to comply with this federal act. Neither side can force the other in the manner they desire. The Plaintiffs' structure was not

discussed prior to the settlement and clearly the Defendants did not agree to their proposed two-tier structure. What the parties did agree to was compliance with the Medicare Secondary Payer Act and a Release and Set Aside provision.

The Medicare Secondary Payer Act (MSP) provides that when a person is injured by a third party and Medicare pays for the medical treatment of that injury, Medicare can recoup all payments from the party responsible for the injury. The Medicare program is administrated by the Centers for Medicare and Medicaid Services (CMS). The MSP gives CMS the right to recover proceeds for payments it made on behalf of its covered individuals from settlement proceeds that individual received for certain personal injury compensation. The MSP and the Medicare, Medicaid and SCHIP Extension Act (MMSEA) Section 111 contains reporting requirements which require a primary payer to submit a report to CMS and/or Pa. Department of Health Services once a claim is resolved through a settlement judgment or award. The primary payers in this case are the Defendants. Substantial penalties may be imposed on primary payers for failure to timely report payments. The beneficiary also has a duty to report and may be subjected to penalties and fines for failing to comply with the reporting requirements. When CMS is not notified of a claim until after a settlement, CMS/Pa. Department of Health Services will conduct a search of health care claims and then issue a Conditional Payment Notice identifying the medical costs believed to be related to this injury. The parties then provide further information and beneficiaries and payers have administrative remedies available to challenge CMS's determinations. Settlements with specific allocation between personal injury and non-reporting claims are not binding upon CMS/Medicare.

The Court finds that to effectuate Term #6, to comply with the MSP/MMSEA, as intended by the parties, Plaintiffs' counsel must provide to the Defendants the specific amount or

proportion that each Plaintiff will receive and the social security numbers of each Plaintiff. Counsel must also provide to the Defendants which four Plaintiffs have not received any Medicare qualifying benefits and verified as no reporting will be necessary as to those Plaintiffs. The parties shall cooperate with each other not only as between the parties but in assistance with any party in resolution of any dispute with CMS.

7.) Dismissal of all actions, including but not limited to:

- *Haney, et al v. Range Resources – Appalachia, LLC, et al (Washington County Court of Common Pleas); including any and all related appeals.*
- *Voyles matter (Commonwealth Court)*

The Court finds that this is clear and unambiguous.

8.) Certification from Plaintiffs and Plaintiffs' Counsel of Compliance related to return or destruction of discovery.

In light of the letter the parties received from the Pennsylvania Attorney General's Office, this provision is presently moot. Should the Pennsylvania Attorney General end the investigation, this provision is clear and unambiguous.

9.) Settlement to be confidential at the option of each defendant.

The Court finds that this is clear and unambiguous.

THEREFORE, it is hereby ORDERED and DECREED that, because a final Release and Settlement Agreement has not been executed, the Mediation Settlement General Terms (Term Sheet) shall constitute the settlement contract among the parties and all parties shall take such action as required by the Settlement, including that Plaintiffs' counsel shall provide the information directed in Paragraph 6 above and shall dismiss all actions pursuant to Paragraph 7 and Defendants shall tender the payment as required in Paragraph 1 with said monies being held

in escrow by Plaintiffs' counsel, if appropriate, pending compliance with Paragraph 6 as to each Plaintiff.

BY THE COURT:

Aug 30, 2018
DATE

Katherine B. Emery
KATHERINE B. EMERY, PRESIDENT JUDGE

SECRET

FILED 8-31-18

8-31-18

B. Rende, Esq.

J. Smith, Esq.

K. Smith, Esq.

K. Brown, Esq.