**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF SOUTH CAROLINA**

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| IN RE:<br>Southeastern Steel Company,<br>Debtor. | C/A No. 00-09225-W<br>Adv. Pro. No. 01-80295-W |
| Arthur D. Willis, Sr.,<br>Plaintiff,<br>v.<br>Southeastern Steel Company,<br>Defendant. | **JUDGMENT**<br>Chapter 11 |

Based upon the Findings of the Court as recited in the attached Order, the Court grants Southeastern Steel Company's ("Defendant" or "Southeastern") Motion to Compel and orders the settlement terms announced on the record on March 26, 2002 as the settlement agreement between Southeastern and Arthur D. Willis, Sr. ("Plaintiff").

John E Waites
UNITED STATES BANKRUPTCY JUDGE

Columbia, South Carolina,
July 9, 2002.



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CERTIFICATE OF MAILING

The undersigned deputy clerk of the United States Bankruptcy Court for the District of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

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DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE

CONNIE H. BROOKS

Deputy Clerk

Pls atty - Shelboure

Ofs atty - Erwin Barton

**IN THE UNITED STATES BANKRUPTCY COURT**

**FOR THE DISTRICT OF SOUTH CAROLINA**

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| IN RE: | CHAPTER 11 |
| Southeastern Steel Company, Debtor. | Case No. 00-09225-W |
| Arthur D. Willis, Sr., Plaintiff, vs. Southeastern Steel Company, Defendant. | Adv. Proceeding No. 01-80295-W |



**ORDER COMPELLING SETTLEMENT**

THIS MATTER came before the Court for hearing on May 21, 2002, on Southeastern Steel Company's ("Defendant" or "Southeastern") Motion to Compel (the "Motion"). Defendant seeks to compel a settlement agreement the parties reached on March 26, 2002, that resolved the above-captioned adversary proceeding. Arthur D. Willis, Sr. ("Plaintiff") filed a Memorandum in Opposition to the Motion on May 20, 2002, and although it was not filed timely, it is considered herein.

This adversary proceeding was initiated by the filing of a complaint on October 26, 2001. In response, Defendant answered and counterclaimed, asserting, among other things, fraud and misrepresentation by Plaintiff. Plaintiff replied. After discovery, Defendant filed a Motion for Summary Judgment, which was scheduled for March 26, 2002. At the time of the hearing, the parties requested additional time to discuss settlement, and the Court allowed them to continue discussions while other matters were being heard. At the conclusion of their settlement discussions and after Plaintiff's attorney apparently consulted with Plaintiff, the parties appeared and announced that they had reached settlement. Counsel for Defendant announced the settlement terms on the record, and counsel for Plaintiff agreed that those terms constituted the parties' agreement. Thereafter, Defendant's attorney prepared a Notice and Motion for Settlement and Compromise Pursuant to Rule 9019 as well as a Settlement Agreement and Mutual Release (the "Proposed

Drafted Settlement"); however, Plaintiff refused to execute the Proposed Drafted Settlement. Plaintiff argued that the Proposed Drafted Settlement differed materially in several respects from the terms that Defendant's counsel recited into the record at the March 26, 2002 hearing.

In the Fourth Circuit, courts have the inherent authority to enforce settlement agreements. When there is no doubt as to the existence of a settlement agreement or the authority of an attorney to enter into a settlement agreement, courts possess the inherent authority to enforce the settlement summarily and to enter a judgment based on the agreement. See Young v. Fed. Deposit Ins. Corp., 103 F.3d 1180, 1194 (4th Cir. 1997) (citing Petty v. Timken Corp., 849 F.2d 130, 132 (4th Cir. 1988)). If, however, there is a factual dispute over the existence of an agreement, the authority of attorneys to enter into the agreement, or the agreement's terms, courts must conduct a plenary hearing to resolve the dispute and make findings on the issues in dispute. See Hensley v. Alcon Lab., Inc., 277 F.3d 535, 541 (4th Cir. 2002).

In this case, both parties agree that they settled the adversary proceeding, and both parties wish to enforce the settlement as represented by the terms announced at the March 26, 2002 hearing. The Court concurs that a settlement was reached as the parties announced they resolved the adversary proceeding and read the terms of the settlement into the record. The parties' actions taken also indicate a settlement occurred as Southeastern determined its motion for summary judgment was unnecessary in light of the settlement and its counsel prepared a notice of settlement pursuant to Federal Rule of Bankruptcy Procedure 9019 as well as the Proposed Drafted Settlement. Cf. Power Serv., Inc. v. MCI Contractors, Inc., No. 01-2163, 2002 WL 1211088, at *3 (4th Cir.) (finding a settlement where evidence indicated an offer and acceptance to settle, the attorney had the authority to settle the case, and the parties called off the depositions of key witnesses four days prior to the discovery cutoff). Moreover, neither side argues that an attorney lacked the authority to settle the matter, and both parties admit the settlement's terms are on record.

Plaintiff disputes the meaning of a term in the Proposed Drafted Settlement and argues that it differs from the settlement terms read into the record. The Proposed Drafted Settlement provides that "Defendant shall establish for Plaintiff an annuity that will result in payment of $100,000.00 to Plaintiff or his estate at the end of ten (10) years. . . . Ernest Willis hereby guarantees to make the annual payment in each year it is required to be made if Defendant does not make the payment in the

time and manner required." Plaintiff argues, however, that the payment should be made at his death in the event he dies before the ten year period expires. Plaintiff argues that the "payment at the end of ten years" language is not included among the terms recited into the record on March 26, 2002 and that it should not be included in the Proposed Drafted Settlement or any other writing that memorializes the parties' agreement. To support his position, Plaintiff relies on a transcript of the hearing as well as his attorney's argument that he assumed the annuity would be immediately payable to Plaintiff's estate in the event of his death before the ten year funding period ends. Southeastern argues that the parties agreed that the annuity would be worth $100,000.00 or funded in this amount at the end of ten years and that this principle is accurately reflected in the Proposed Drafted Settlement. Because Southeastern believes the Proposed Drafted Settlement is accurate and because it has incurred additional costs in attempting to compel Plaintiff to execute the agreement, Southeastern seeks the attorneys' fees it incurred in attempting to execute the settlement agreement with Plaintiff.

From the bench, the Court ruled that it would enforce the settlement terms that were read into the record. The Court also ruled that if the Proposed Drafted Settlement contains the terms that were read into the record, then Southeastern would be entitled to its attorneys' fees from Plaintiff. If the Proposed Drafted Settlement and the terms read into the record differ, then Southeastern would not be entitled to its attorneys' fees.

The Court has reviewed the transcript from the March 26, 2002 hearing and concludes that Defendant's counsel stated that Southeastern would establish an annuity for Mr. Willis that will pay him or his estate $100,000.00. The annuity would be established so its $100,000.00 value becomes effective in five years or, alternatively, in ten years if Ernest "Wood" Willis guarantees the establishment of the annuity. The Proposed Drafted Settlement provides that Southeastern will establish an annuity that will pay Plaintiff or his estate $100,000.00 at the end of ten years. Southeastern will fund the annuity over a ten year period according to an attached payment schedule. The Proposed Drafted Settlement also provides that Ernest "Wood" Willis will personally guarantee the payments.

From this review, it appears that the language recited in the record on March 26, 2002 and the Proposed Drafted Settlement reconcile. The parties agreed on the record to a ten year funding

period if Ernest "Wood" Willis agreed to guarantee the payments personally. Apparently, this contingency occurred, and the Proposed Drafted Settlement reflects it accordingly. Indeed, the settlement terms stated on the record deal with the creation of the annuity and its becoming effective in either five or ten years. Although the record indicates that Plaintiff's estate could receive the annuity payment, nothing in these terms indicates any agreement to pay Plaintiff's estate immediately in the event of his death before the end of the ten year funding period. Although this term may be one that, after further reflection following the hearing, Plaintiff believes is important and would like to include in the parties' agreement, the Court cannot set aside an otherwise valid agreement just because one party has second thoughts. See Young v. Fed. Deposit Ins. Corp., 103 F.3d 1180, 1195 (4th Cir. 1997). Further, the Court may only enforce a settlement in its entirety and not such selected parts as it considers appropriate. See Columbus-Am. Discovery Group v. Atl. Mut. Ins. Co., 203 F.3d 291, 302 (4th Cir. 2000). The parties reached a settlement and documented it accurately, and the Court will now enforce it as their agreement to settle the adversary proceeding.

In addition, Plaintiff argues that the Proposed Drafted Settlement should include a provision for payment of interest on the health insurance premiums paid by Plaintiff postpetition. Upon review of the transcript, while Southeastern did agree to reimburse Plaintiff for all legitimate health insurance premiums paid postpetition upon presentation by Plaintiff of appropriate information, the parties did not announce that interest would be paid on those amounts. For the reasons indicated above, the Court will not include a provision that was not a part of the settlement agreement. See id.

Finally, the Court previously ruled that it would allow Southeastern to receive its attorneys' fees from Plaintiff if the announced settlement terms and the Proposed Drafted Settlement were substantially similar; however, the Court believes it must change this position. According to the recent Fourth Circuit opinion Hensley v. Alcon Lab., Inc. 277 F.3d 535, 543 (4th Cir. 2002), a case where a district court enforced a settlement and ordered the party who disputed the settlement to pay the other party's attorneys' fees, a court can shift attorneys' fees only in extraordinary circumstances where bad faith or abuse merit such action. See also Williams v. Prof'l Transp., Inc., No. 99-1011, 2002 WL 1402014, at *5 (4th Cir.) (affirming a district court's enforcement of a settlement but reversing an award of attorney's fees where the party disputing the settlement did not act in bad

faith). Where no findings of bad faith or abuse are included in the record, fee-shifting is inappropriate. See Hensley, 277 F.3d at 543. Guided by this principle, the Court concludes that it must hold a further hearing wherein it can consider the distinct issues of whether Plaintiff's actions were in bad faith or abusive and determine whether awarding Southeastern its attorneys' fees is appropriate. Southeastern has indicated that it does not choose to pursue recovery of attorneys' fees and expenses in light of the expense involved in another hearing. Therefore, the request for reimbursement of attorneys' fees and expenses has been withdrawn.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

1. Defendant will transfer the Keyman Life Insurance Policy with a present value of approximately $117,000.00 to Plaintiff.

2. The $40,000.00 policy that has already been transferred to Plaintiff will continue in effect, and Defendant will continue making the premium payments on that policy. Defendant will reimburse Plaintiff for premium payments upon the presentation by Plaintiff of appropriate information.

3. The $25,000.00 policy that has already been transferred to Plaintiff will continue in effect. The insurance company is using the value of the policy to pay the premium, so the policy will pay for itself.

4. Defendant will establish an annuity for Plaintiff that will result in payment to Plaintiff or his estate of $100,000.00 in either five or ten years. The annuity's value will be reached in five years, unless Ernest "Wood" Willis agrees to guarantee the payment for the annuity. If Ernest "Wood" Willis agrees to guarantee the payment for the annuity, then the annuity's value will be reached in ten years.

5. Plaintiff releases and is barred from asserting all existing health insurance claims against Defendant, but Defendant agrees to continue to be responsible for all obligations of the 1998 Agreement going forward.

6. Defendant will reimburse Plaintiff for all legitimate health insurance premiums paid postpetition upon presentation by Plaintiff of appropriate information.

7. The terms of settlement and consideration therein are deemed to resolve all issues that Plaintiff has with Defendant, including his claim in this case. In addition, this settlement resolves

the state court litigation in which Ernest "Wood" Willis and Jim Fenton ("Fenton") are named as defendants. Plaintiff is ordered to file a dismissal ending the state court litigation, and Plaintiff is barred from further prosecution of said state court litigation. Plaintiff has no further claims under the 1986 Agreement or any matters not resolved herein with regard to the 1998 agreement.

8. Plaintiff has no further claims against Defendant, Ernest "Wood" Willis, or Fenton, their heirs, personal representatives and assigns, partners, agents, property insurers, sureties, subcontractors, subsidiaries, servants and employees and all other persons, firms, corporations, associations or partnerships who with Defendant, Ernest "Wood" Willis, and Fenton may be liable to Plaintiff, and this Order acts as a complete release and bar from prosecution of any and all past, present, or future claims that Plaintiff has, known or unknown, in connection with the claims in this case, the state court litigation, the 1986 Agreement, the 1998 Agreement, any and all health insurance claims and any other claim whatsoever, that Plaintiff may attempt to assert against Defendant, Ernest "Wood" Willis or Fenton.

9. Defendant has no further claims against Plaintiff, his heirs, personal representatives and assigns, partners, agents, property insurers, sureties, subcontractors, subsidiaries, servants and employees and all other persons, firms, corporations, associations or partnerships who with Plaintiff may be liable to Defendant, and this Order acts as a complete release and bar from prosecution of any and all past, present, or future claims that Defendant has, known or unknown, in connection with this case or any other matter.

10. This Court retains jurisdiction to determine any issues which arise under or are related to this Order.

DONE AND ORDERED on this 9th day of July, 2002, in Columbia, South Carolina.

THE HONORABLE JOHN E. WAITES
United States Bankruptcy Judge

**CERTIFICATE OF MAILING**

The undersigned deputy clerk of the United States Bankruptcy Court for the district of South Carolina hereby certifies that a copy of the document on which this stamp appears was mailed on the date listed below to:

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~~DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE~~

CONNIE H. BROOKS
Deputy Clerk

P/s atty - Shelbourne

Ofs atty - Erwin

Barton