

ORIGINAL
IN THE COURT OF CLAIMS OF OHIO

FILED
COURT OF CLAIMS
OF OHIO

2014 AUG -8 PM 3:41

GRAND VALLEY LOCAL SCHOOL
DISTRICT BOARD OF EDUCATION,
et al.

Plaintiffs,

v.

BUEHRER GROUP ARCHITECTURE
& ENGINEERING, INC., et al.

Defendants.

Judge Patrick M. McGrath

Case No. 2014-00469 PR

SETTLEMENT AGREEMENT

1. This Agreement is made between Grand Valley Local School District Board of Education, Ohio School Facilities Commission, and the State of Ohio ("Plaintiffs") and Merchants Bonding Company ("Merchants").
2. Plaintiffs have asserted claims against Merchants in Case No. 2014 CV 0161 in the Ashtabula County Court of Common Pleas relating to Merchants' issuance of a surety bond to McMillan Construction Limited ("McMillan"). That case has been removed pursuant to Ohio Revised Code §2743.03(E)(1) and is an action now pending in the Court of Claims, State of Ohio, entitled, *Grand Valley Local School District Board of Education, et al. v. Buehrer Group Architecture & Engineering, Inc., et al.*, and identified as Ohio Court of Claims Case No. 2014-00469 PR.
3. This Agreement is made as a compromise between the parties for the complete and final settlement of their claims, counterclaims, differences, and causes of action with respect to the dispute described above.

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4. It is understood by Plaintiffs and Merchants that the facts upon which this Agreement is made may hereafter prove to be other than or different from the facts now known by either of them or believed by either of them to be true. Each of the parties hereto expressly accepts and assumes the risk of the facts proving to be so different, and each of the parties hereto agrees that all the terms of this Agreement shall be in all respects effective and not subject to termination or rescission by any such difference in facts.
5. The parties agree that the terms of this compromise and Settlement Agreement bind the parties hereto, and their assigns and successors in interest.
6. Plaintiffs understand that this settlement is a compromise of a disputed claim and payment thereof is not to be construed as an admission of liability on the part of Merchants.
7. In consideration of the mutual covenants set forth herein, the parties agree as follows:
 - A. Merchants agrees to pay Plaintiffs a sum of Two Hundred Thousand Dollars (\$200,000.00). No interest on this amount shall be paid. No representation is made by Merchants as to the tax consequences of payment of the amount specified in this paragraph.
 - B. Plaintiffs, hereby discharge Merchants, its agents, servants, employees, and officers, personally and in any other capacity, from any and all claims, actions, causes of action, demands, costs, loss of services, expenses, and any and all other damages that the undersigned ever had, now has, or may have, or claim to have, against Merchants, its agents, servants, employees or officers, on account of or in any way arising out of the incidents, claims, and/or causes of action that were or could have been alleged in Court of Claims Case No. 2014-00469 PR and agrees to fully release, settle,

and dismiss any claims, causes of action, demands, costs, loss of services, expenses, and any and all other damages that the undersigned ever had, now has, or may have, or claim to have, against Merchants relating Merchants' bond with McMillan at issue in Court of Claims Case No. 2014-00469 PR, including, but not limited to, any further warranty or performance claims. Additionally, Plaintiffs hereby discharge McMillan, its agents, servants, employees, and officers, personally and in any other capacity, from any and all claims, actions, causes of action, demands, costs, loss of services, expenses, and any and all other damages that the undersigned ever had, now has, or may have, or claim to have, against McMillan, its agents, servants, employees or officers, on account of or in any way arising out of the incidents, claims, and/or causes of action that were or could have been alleged in Court of Claims Case No. 2014-00469 PR and Plaintiffs hereby assign any claims Plaintiffs have, or may have, or claim to have, against McMillan, its agents, servants, employees or officers, on account of or in any way arising out of the incidents, claims, and/or causes of action that were or could have been alleged in Court of Claims Case No. 2014-00469 PR to Merchants. Plaintiffs hereby agree that they will not seek any claims for indemnity, contribution or other third party claims arising from the claims by others against McMillan.

C. It is expressly understood and agreed that this release is not intended to and shall not be construed as a release of (1) claims against any other contractors, architects or entities who provided defective work or design on or in conjunction with the Projects, and (2) claims against Jack Gibson Construction Company and Buehrer which are unrelated to the Released Work, which claims are expressly reserved.

8. Plaintiffs agree to be bound by a journal entry dismissing with prejudice Merchants and McMillan from the above described claim known as Ohio Court of Claims Case No. 2014-00469 PR.
9. The parties acknowledge and agree that this Agreement shall not be binding on any of the parties until it has been duly presented to the Ohio Attorney General, as required by Ohio Revised Code §2743.15(A) and Rule 7(A) of the Rules of the Court of Claims, for the Attorney General's approval, and the Ohio Attorney General has approved the Agreement. The parties further acknowledge that the signature of the Assistant Attorney General on this Agreement is on behalf of the Plaintiffs and is not to be construed as the approval of the Attorney General. If the Attorney General shall fail or refuse to approve the Agreement, it shall be null and void and without any force or effect, and none of the parties shall be bound by it.
10. The parties acknowledge and agree that this Agreement shall not be binding on any of the parties until it has been duly presented to the Ohio Court of Claims as required by Ohio Revised Code §2743.15(A) and Rules 7(A) and (B) of the Rules of the Court of Claims, for the Court's approval, and the Court has approved the Agreement. If the Court shall fail or refuse to approve the Agreement, it shall be null and void and without any force or effect, and none of the parties shall be bound by it.
11. The undersigned have read this Agreement, understand all its terms, if signing on behalf of a principal, have authority to sign settlement documents on its behalf, and have executed this Agreement voluntarily.

DATE

Plaintiff Grand Valley Local School
District Board of Education

DATE

Plaintiff Ohio School Facilities
Commission

DATE

David A. Beals
Assistant Attorney General
Counsel for Plaintiffs

DATE

Jerry K. Kasai
Assistant Attorney General
Counsel for Plaintiffs

DATE

David J. Riley
Counsel for Grand Valley Local
School District Board of Education

7-2-14
DATE

Stephanie Ger
Merchants Bonding Company

7/3/14
DATE

[Signature]
Stephen P. Withee
Counsel for Merchants Bonding
Company

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DATE

William R. [Signature]
Plaintiff Grand Valley Local School
District Board of Education

DATE

Plaintiff Ohio School Facilities
Commission

7/8/14
DATE

David A. Beals
David A. Beals
Assistant Attorney General
Counsel for Plaintiffs

7/8/14
DATE

Jerry K. Kasai
Jerry K. Kasai
Assistant Attorney General
Counsel for Plaintiffs

7/8/14
DATE

By electronic authority of David A. Beals
David J. Riley
Counsel for Grand Valley Local
School District Board of Education

DATE

Merchants Bonding Company

DATE

Stephen P. Withee
Counsel for Merchants Bonding
Company

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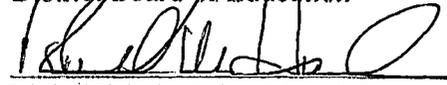
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7-2-14

DATE

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Plaintiff Grand Valley Local School
District Board of Education



Plaintiff Ohio School Facilities
Commission

David A. Beals
Assistant Attorney General
Counsel for Plaintiffs

Jerry K. Kasai
Assistant Attorney General
Counsel for Plaintiffs

David J. Riley
Counsel for Grand Valley Local
School District Board of Education

Stephanie Geer
Merchants Bonding Company

Stephen P. Withee
Counsel for Merchants Bonding
Company

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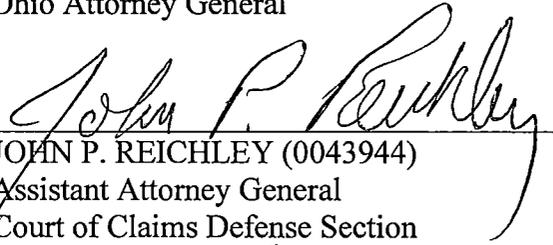
Judge Patrick M. McGrath

Case No. 2014-00469 PR

ATTORNEY GENERAL'S APPROVAL OF SETTLEMENT AGREEMENT

Pursuant to Ohio Revised Code §2743.15(A), the undersigned designee of the Ohio Attorney General has reviewed the Settlement Agreement in the above-captioned action and hereby approves it this 7th day of August, 2014.

MICHAEL DEWINE
Ohio Attorney General


JOHN P. REICHLEY (0043944)
Assistant Attorney General
Court of Claims Defense Section
150 E. Gay Street, 18th Floor
Columbus, Ohio 43215
Telephone: (614) 466-7447
Facsimile: (614) 644-9185
John.Reichley@OhioAttorneyGeneral.gov

Case No. 2014-00469 PR

Entry cc:

David A. Beals
Jerry K. Kasai
Assistant Attorneys General
Court of Claims Defense
150 E. Gay Street, 18th Floor
Columbus, OH 43215
Counsel for Plaintiffs

David J. Riley
The Riley Law Firm
24502 Cornerstone
Westlake, OH 44145
Counsel for Grand Valley Local School District

Stephen P. Withee
Ashley L. Oliker
FROST BROWN TODD LLC
10 West Broad Street, Suite 2300
Columbus, Ohio 43215
Counsel for Merchants Bonding Company

Joseph Gerling
Scott Fenton
Lane Alton Horst
Two Miranova Place, Ste. 500
Columbus, OH 43215
Counsel for Defendant Jack Gibson Construction Co.

Brian Buzby
Porter, Wright, Morris & Arthur LLP
41 South High Street
Columbus, OH 43215
Counsel for Defendant Hartford First Insurance Co.

Brian C. Lee
Jason D. Winter
Riannon A. Ziegler
REMINGER CO., LPA
101 West Prospect Avenue, Ste 1400
Cleveland, OH 44115
Counsel for Buehrer Group Architecture & Engineering, Inc.

Patrick F. Roche
DAVIS & YOUNG
1200 Fifth Third Center
600 Superior Avenue East
Cleveland, OH 44114
Counsel for Boak & Sons, Inc.

Brian McMillan
26457 State Route 58
Wellington, OH 44090
*McMillan Construction Ltd aka
McMillan Construction Co.*

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