

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

2014 DEC -8 PM 3:34

IN THE COURT OF CLAIMS OF OHIO

JAMES DANIEL HUGHES, et. al., :
 :
 Plaintiffs, : Case No. 2012-09059
 :
 vs. : Judge Patrick M. McGrath
 :
 THE OHIO STATE UNIVERSITY :
 :
 Defendant. :

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

1. This agreement is made between James Daniel Hughes, James David Hughes and Kelley Dawn Hughes, hereinafter the "Claimants" and The Ohio State University, hereinafter "Ohio State".
2. The Claimants have asserted a claim against Ohio State in an action now pending in the Court of Claims, entitled *James Daniel Hughes, et al. v. The Ohio State University* and identified as Ohio Court of Claims Case No. 2012-09059.
3. This agreement and release is made as a compromise between the parties for the complete and final settlement of the accident, claims, and/or causes of action that were, could have been or should have been, alleged in Court of Claims Case No. 2012-09059, or any claims or causes of action related in any way to the accident.
4. It is understood by the parties that the facts upon which this agreement and release is made may prove to be other than or different from the facts now known by any of them or believed by any of them to be true. Each of the parties expressly accepts and assumes the risk of the facts proving to be so different, and each of the parties agree that all the terms of this agreement and release shall be in all respects effective and not subject to termination or rescission by reason of any such difference in facts.
5. The parties agree that the terms of this agreement and release bind the parties and their assigns and successors in interest.
6. This agreement and release contains the entire agreement between the parties with regard to the matters set forth herein. There are no other understandings or agreements between the parties except as set forth herein.
7. In consideration of the mutual covenants set forth herein, the parties agree as follows:

ON COMPUTER

- A. Ohio State agrees to pay the Claimants, collectively, the sum of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (the "Payment"), pursuant to Ohio Revised Code Chapter 2743. No interest on this amount shall be paid. No representation is made by Ohio State as to the tax consequences of payment of the amount specified in this paragraph.
- B. The Claimants do hereby release, hold harmless from any liability, and forever discharge the State of Ohio and Ohio State, and their agents, servants, employees, officers and counsel, including but not limited to, in-house counsel, Carpenter, Lipps & Leland LLP, the Ohio Attorney General's Office, and their respective principals, employees and/or agents,, personally and in any other capacity, from any and all claims, actions, causes of action, demands, damages, costs, expenses, liabilities, compensation, loss of services, expenses, and any and all other damages which the undersigned ever had, now has, may have in the future, or may claim to have, against the State of Ohio or Ohio State, or their agents, servants, employees, officers or counsel, whether presently known or unknown, or, whether developed in the future or now in existence, which in any way arise from or grow out of acts, omissions, events, transactions, or circumstances related to, among other things (i) the claims, and/or causes of action that were, could have been or should have been alleged in Court of Claims Case No. 2012-09059; (ii) any facts, allegations, damages or injuries which were, could have been or should have been, asserted related to the accident which occurred on or about September 5, 2012, on the main campus of The Ohio State University in the vicinity of Woodruff Avenue, in Columbus, Ohio (collectively, the "Occurrence"); (iii) any events or circumstances related to the Occurrence, and (iv) any and all personal injuries, deaths, or property damage arising from, claimed to arise from or which may arise in the future, related to the Occurrence. (Collectively, the "Claims").
8. The Claimants understand that this agreement and release is a compromise of disputed claims; that this agreement and release is in compromise of all past, present or future claims between the parties; that this Agreement is a complete and final release of all known and unknown or unanticipated Claims against Ohio State; that such Claims are expressly disputed; that nothing contained in or related to this Agreement is to be construed as an admission of liability on the part of Ohio State; and that nothing in, referred to, or related to this Agreement is to be admissible in any proceedings other than proceedings necessary to effectuate or to enforce this Agreement.
9. The Claimants agree to be bound by a journal entry dismissing with prejudice the above described action known as Ohio Court of Claims Case No. 2012-09059.

10. Claimants declare and represent that the injuries sustained by Daniel Hughes are, or may be, permanent and progressive, that recovery therefrom is uncertain, indefinite, or not occur, and, that in executing this Agreement it is understood and agreed Claimants rely wholly upon their own judgment, belief and knowledge of the nature, extent, affect and duration of said injuries, including the potential for death, and any liability therefore, and this Agreement is made without reliance upon any statement or representation of Ohio State, or their representatives, or by any physician or surgeon employed by Ohio State. Related to this, Daniel Hughes releases any wrongful death or survivorship claim against Ohio State arising from the Occurrence or the injuries he sustained therein, which could be raised by his Estate upon his death.
11. Claimants agree to assume responsibility for, satisfaction of, and to indemnify and hold harmless Ohio State and its counsel, including but not limited to, in-house counsel, Carpenter, Lipps & Leland LLP, the Ohio Attorney General's Office, and their respective principals, employees and/or agents, with regard to all claims or liens arising from the Claims, the Occurrence, and/or any injuries arising from or claimed to arise from the Occurrence, including any subrogation, medical, or other claims or liens asserted by, or which could be asserted by, other entities, individuals, or parties, including, but not limited to, by Joshua Michael Hughes, currently a minor, Kaitlyn Elizabeth Hughes, currently a minor, and Krysten Marie Hughes, currently a minor.
12. Claimants hereby represent and warrant that they have not previously assigned or transferred, or purported to assign or transfer, to any person or entity any Claim released by this Agreement.
13. Claimants and their counsel, Stephen S. Crandall, agree to assume responsibility for satisfaction of, and to indemnify and hold harmless, Ohio State and its counsel, including but not limited to, in-house counsel, Carpenter, Lipps & Leland LLP, the Ohio Attorney General's Office, and their respective principals, employees and/or agents, with regard to all claims, liens, liability, damages, costs, expense or compensation arising from the payment of Medicare conditional payments, Medicaid payments, and/or insurance payments including, but not limited to, any statutory, subrogation, contribution, common law indemnification, and/or contractual indemnification claims, asserted by, or which could be asserted by, Medicare, Medicaid, other entities, insurers, individuals, medical providers, medical facilities, or parties, as well as actual damages, actual attorneys fees and all other costs arising out of such claims brought against Ohio State. Claimants and their counsel, Stephen S. Crandall warrant and represent they have informed the appropriate Medicare agency or entity, Medicaid agency or entity and/or insurance company of the settlement of the Action.

14. Claimants and their counsel, Stephen S. Crandall, acknowledge, warrant and represent that plaintiffs were first eligible to receive Medicare conditional payments starting in and around 2012, and to date, such payments total approximately \$25,000.00. Plaintiffs and their counsel, Stephen S. Crandall, understand and agree that satisfaction of all outstanding Medicare, Medicaid and/or insurance payments and obligations is a material condition of this settlement. Claimants and their counsel, Stephen S. Crandall, further acknowledge and agree that Payment is being made contingent upon the promise to satisfy outstanding Medicare, Medicaid or insurance payments and obligations related to the Accident. Thus, Claimants and their counsel, Stephen S. Crandall, agree that \$25,000.00 shall be "held in trust" by Crandall Law LLC until all Medicare, Medicaid or insurance payments made on behalf of plaintiffs related to the Accident have been reimbursed as deemed sufficient by Medicare, Medicaid or any private insurers, and, written proof of payment and satisfaction from Medicare has been provided to Ohio State and its counsel. Such a deposit may be used only and solely for satisfaction of all outstanding Medicare, Medicaid or insurance payments and obligations related to the Accident until such time as written proof of payment and satisfaction has been provided to Ohio State and their attorney(s).
15. If a Medicare, Medicaid or insurance lien or reimbursement right is asserted against the proceeds herein, or against Ohio State or its counsel, then, in consideration of the Payment, Claimants covenant to pay and satisfy such asserted lien or reimbursement right, or to satisfy the same on a compromise basis, and to release, INDEMNIFY, DEFEND AND HOLD HARMLESS Ohio State and its counsel, including but not limited to, in-house counsel, Carpenter, Lipps & Leland LLP, the Ohio Attorney General's Office, and their respective principals, employees and/or agents, or any other persons, firms, or corporations making the Payment herein, from any costs, expenses, attorney fees, claims, actions, judgments, or settlements resulting from the assertion or enforcement of such lien or reimbursement right by any entity having such a lien or reimbursement right. This indemnification provision specifically includes, but is not limited to, any costs, expenses, attorney fees, claims, actions, administrative proceedings, judgments, or settlements arising under the Medicare Secondary Payer Act as contemplated under Section 1862(b) of the Social Security Act {42 USC Section 1395y(b)(5)} and applicable regulations found at 42 CFR Part 411.
16. Claimants further agree to defend and indemnify Ohio State and its counsel, including but not limited to, in-house counsel, Carpenter, Lipps & Leland LLP, the Ohio Attorney General's Office, and their respective principals, employees and/or agents, from and against any fine, penalty, suit, regulatory proceeding, or administrative proceeding resulting from the false or incorrect reporting of information required by Section 111 of the Medicare, Medicaid, and SCHIP Extension

Act of 2007 and to fulfill whatever obligations are required of them under the Medicare Secondary Payer Act as contemplated under Section 1862(b) of the Social Security Act {42 USC Section 1395y(b)(5)} and applicable regulations found at 42 CFR Part 411 and Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007.

17. Claimants represent and warrant that they have read this Agreement and understand it; that they have consulted with their attorneys or other legal counsel regarding this Agreement; that all action necessary to execute this Agreement has been taken; and that they are executing the Agreement freely and voluntarily, upon their best judgment and for the consideration described herein.
18. The parties acknowledge and agree that this agreement and release 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 and release. The parties further acknowledge that the signature of the Assistant Attorney General on this agreement and release is on behalf of Defendant 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 and release, it shall be null and void and without any force or effect, and none of the parties shall be bound by it.
19. The parties acknowledge and agree that this agreement and release 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 and release. If the Court shall fail or refuse to approve the agreement and release, it shall be null and void and without any force or effect, and none of the parties shall be bound by it.
20. The undersigned have read this agreement and release, 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 and release voluntarily.
21. Although distinct from the resolution of the above captioned matter, Ohio State additionally agrees it will provide free tuition, as defined hereafter, to Daniel Hughes, for the hours necessary to obtain a bachelor or associate degree in his chosen field of study, provided that this benefit will extend not more than five (5) academic years from the date Daniel enrolls at Ohio State after execution of this agreement and release (the "scholarship").
 - As used in this paragraph, "tuition" includes a non-cash credit to Daniel Hughes' Ohio State account which may be applied toward general

tuition and other administrative fees for course registration for up to 20 credit hours per semesters. "Tuition" does not include room, board, health care, living expenses, education supplies and/or optional fees, and no cash monies will be disbursed at any time to Daniel Hughes or any other person. "Tuition may not be used for graduate studies or programs.

- Daniel Hughes will be required to meet all Ohio State admissions and other requirements for his selected program. This includes maintaining the minimum grade point average for the selected degree program and making satisfactory progress towards completing the selected degree program. Whether Daniel Hughes is making satisfactory progress is solely at the discretion of Ohio State.
- Should Daniel Hughes drop a course, receive an incomplete or otherwise fail to complete a course for which the scholarship or a portion of the scholarship has been used to pay the tuition, any refund due shall be only applied to his Ohio State account as a non-cash credit. In no event will a cash refund be given at any time. Daniel Hughes is permitted only two (2) dropped courses or incompletes per semester. If Daniel Hughes exceeds the drop courses or incompletes limit, Daniel Hughes agrees that he will be financially responsible for the tuition fees and costs for the dropped or incomplete courses, as well as retaking the dropped or incomplete courses. Daniel Hughes acknowledges that the scholarship award shall not pay tuition and fees for excess dropped or incomplete courses.
- Daniel Hughes will relinquish all unused portions of the scholarship should he fail to meet any of the above terms and conditions for any reason. Determinations of failure to meet the stated terms will be made by Ohio State in its sole discretion. Any unused portion of the scholarship will be returned to Ohio State and is non-transferable.
- These terms and conditions are in addition to any other terms and conditions set forth in any other part of this document or any documents necessary to create or receive the scholarship. Any necessary determination or clarification as to the interpretation or to the application of a particular term shall be made by Ohio State in its sole discretion. Furthermore, Ohio State reserves the right in its sole discretion to make any changes or modifications to the scholarship, including but not limited to, the criteria, the selection process, the deadline dates, and the terms and conditions.

Assuming a scholarship is awarded, Daniel Hughes agrees to release Ohio State, and its affiliates, as well as each of its officer, agents, employees, shareholders, servants, directors from damages, losses (including, but not limited to, loss of earnings, loss of profits, loss of business, loss of wages), costs, expenses and liabilities of every kind and nature, without limitation, including claims of damages or injury to personal property and further agree to release the released parties from any third party claims of any kind whatsoever whether known or unknown, suspected or unsuspected, and whether or not concealed or hidden, which he may now have or may hereinafter have against the released parties resulting from, or arising out of or in connection with, directly or indirectly, from the scholarship itself or its administration.

11/8/14
DATE

James Daniel Hughes
JAMES DANIEL HUGHES

Plaintiff

S.S. No.

Sworn to and subscribed in my presence by Stephen S. Crandall this 8th day of November 2014.

Stephen S. Crandall
NOTARY PUBLIC

STEPHEN S. CRANDALL, Attorney
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 R.C.



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FILED
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OF OHIO

11/8/14

DATE

James David Hughes

JAMES DAVID HUGHES

S.S. No. _____

Plaintiff

minor children, Joseph Michael Hughes,
Kaitlyn Elizabeth Hughes and Krysten
Marie Hughes

Sworn to and subscribed in my presence by Stephen S. Grandall this 8th day
of November 2014.

Stephen S. Grandall
NOTARY PUBLIC

STEPHEN S. GRANDALL, Attorney
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 R.C.

11/8/14

DATE

Kelley Dawn Hughes

KELLEY DAWN HUGHES

S.S. No. _____

Plaintiff

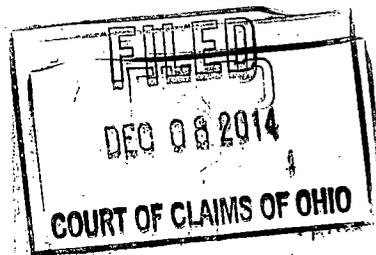
minor children, Joseph Michael Hughes,
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Marie Hughes

S.S. No. _____

Sworn to and subscribed in my presence by Stephen S. Grandall this 8th day
of November 2014.

Stephen S. Grandall
NOTARY PUBLIC

STEPHEN S. GRANDALL, Attorney
NOTARY PUBLIC - STATE OF OHIO
My Commission Has No Expiration Date
Section 147.03 R.C.



11/28/14
DATE

Stephen S. Crandall
STEPHEN S. CRANDALL
Counsel for Plaintiffs

12.2.14
DATE

Commonwealth
THE OHIO STATE UNIVERSITY
By: _____
Title: _____

12/2/14
DATE

Peter E. Demarco
PETER E. DEMARCO
Assistant Attorney General
Counsel for Defendant

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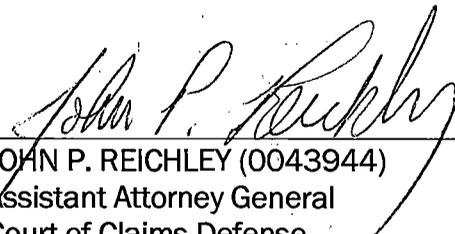
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ATTORNEY GENERAL'S APPROVAL
OF SETTLEMENT AGREEMENT AND RELEASE

Pursuant to Ohio Revised Code §2743.15(A), the undersigned designee of the Ohio Attorney General has reviewed the Settlement Agreement and Release in the above-captioned action and hereby approves it this 8th day of December, 2014.

MICHAEL DEWINE
Ohio Attorney General



JOHN P. REICHLEY (0043944)
Assistant Attorney General
Court of Claims Defense
150 East Gay Street, 18th floor
Columbus, OH 43215
Phone (614) 466-7447; Fax (614) 644-9185
John.Reichley@ohioattorneygeneral.gov

Entry cc:

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Chagrin Falls, OH 44022
Counsel for Plaintiffs

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Columbus, OH 43215
Counsel for Defendant

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JOURNAL ENTRY
APPROVING SETTLEMENT AGREEMENT AND RELEASE

The Court, being fully advised as to the premises, approves and confirms the settlement agreement and release entered into by and between the parties and ORDERS the cause be DISMISSED with prejudice to all parties. Court costs are assessed against defendant. No interest shall be paid on the amount of the settlement.

It is further ORDERED that the settlement warrant of Five Hundred Thousand Dollars (\$500,000.00) be drawn on the account of The Ohio State University, made payable to James Daniel Hughes and sent to the Plaintiff, c/o Stephan S. Crandall, Crandall Law, LLC, 539 E. Washington Street, Chagrin Falls, OH 44022, Counsel for Plaintiffs.

DATE: _____

JUDGE, COURT OF CLAIMS OF OHIO