

ORIGINAL

IN THE COURT OF CLAIMS OF OHIO

2015 OCT 15 PM 3:10

FILED
COURT OF CLAIMS
OF OHIO

BRYAN A. HUFF,

Plaintiff,

v.

THE OHIO STATE UNIVERSITY
MEDICAL CENTER,

Defendant.

Case No. 2014-00486-⁴⁶⁸

Judge Patrick M. McGrath

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

1. This agreement is made between Bryan A. Huff, hereinafter Plaintiff, and The Ohio State University Medical Center, hereinafter Defendant (both of whom are designated herein as the "parties").
2. Plaintiff has asserted claims against Defendant in an action now pending in the Court of Claims, entitled *Bryan A. Huff v. The Ohio State University Medical Center*, and identified as Ohio Court of Claims Case No. 2014-00486-⁴⁶⁸.
3. This agreement and release is made as a compromise between the parties for the complete and final settlement of the incidents, claims and/or causes of action that were or could have been alleged in Ohio Court of Claims Case No. 2014-00486-⁴⁶⁸.
4. It is understood by the parties that the facts upon which this agreement and release 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 expressly accepts and assumes the risk of the facts proving to be so different, and each of the parties agrees 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 settlement agreement and release bind the parties hereto, and their assigns and successors in interest.
6. Plaintiff understands that this settlement and release is a compromise of disputed claims and payment thereof is not to be construed as an admission

of liability on the part of Defendant.

7. This Settlement Agreement and Release of All Claims 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.
8. In consideration of the mutual covenants set forth herein, the parties agree as follows:
 - A. Defendant agrees to pay Plaintiff, the sum of One Million Seven Hundred Fifty Thousand and No/100 Dollars (\$1,750,000.00), pursuant to Ohio Revised Code Section 2743.19. No interest on this amount shall be paid. No representation is made by Defendant as to the tax consequences of payment of the amount specified in this paragraph.
 - B. Consistent with R.C. Section 2743.02(D), no portion of the settlement amount represents reimbursement for medical bills that were paid, or payable by, any private insurers.
9. Plaintiff understands that the Medicare Secondary Payer Act as set forth in 42 U.S.C. Section 1395y(b) applies to any personal injury settlement involving a Medicare beneficiary and requires that Medicare be reimbursed for any of its conditional payments made on behalf of the Medicare beneficiary.
 - A. As part of the Medicare Secondary Payer Act, Plaintiff has an obligation to verify his status as a Medicare beneficiary and to resolve conditional payments made on his behalf by Medicare, if any.
 - B. Further, Plaintiff understands and acknowledges that Defendant has or will report this settlement as per the Medicare Secondary Payer Act and all applicable reporting guidelines provided by the Centers for Medicare and Medicaid Services (CMS).
 - C. Plaintiff and counsel for Plaintiff agree that counsel will (1) hold a sufficient amount from the settlement proceeds in a client trust account or similar account to be used to reimburse Medicare, if necessary, for conditional payments made by Medicare on Plaintiff's behalf; (2) provide Defendant with a copy of the final demand letter,

waiver letter or no-conditional payment letter issued by Medicare or CMS; and (3) provide Defendant with proof of full payment of the final demand or other evidence that Plaintiff has in fact satisfied all Medicare claims or liens in full prior to distributing the remaining funds in the trust account to Plaintiff.

10. As part of this settlement, and in addition to the other releases and indemnification clauses set forth in this Settlement Agreement and Release of All Claims, Plaintiff agrees to indemnify, defend, and hold Defendant harmless against and from any cause of action brought by any federal or state department, agency, contractor or other entity including, but not limited to, any subrogation claim or any action to recover or recoup Medicare or Medicaid benefits or loss of Medicare or Medicaid benefits. Plaintiff further shall be responsible for and hold Defendant harmless from any claim, past, present or future, for conditional payments made by Medicare or Medicaid with regard to or on behalf of Plaintiff.
11. In consideration of the payment set forth in this Settlement Agreement and Release of All Claims, Plaintiff waives his 42 U.S.C. 1395y(b)(3)(A) causes of action, and releases and forever discharges Defendant and Defendant's insurer from any obligation for any claim, known or unknown, arising out of the failure of Defendant to provide for a primary payment or appropriate reimbursement pursuant to 42 U.S.C. 1395y(b)(3)(A).
12. In reaching this settlement agreement, Plaintiff and Defendant have paid considerable attention to Plaintiff's entitlement to Medicare or Medicaid benefits under 42 U.S.C. 1395y, as well as Social Security disability benefits pursuant to 42 U.S.C. 423, as well as entitlement of CMS to subrogation and intervention pursuant to 42 U.S.C. 1395y(b)(2) to recover any overpayment by Medicare. It is not the purpose of this settlement agreement to shift to Medicare or Medicaid the responsibility for payment of medical expenses for the treatment of injury related conditions. Instead, this Settlement Agreement and Release of All Claims is intended to provide Plaintiff a lump sum which will foreclose Defendant's responsibility for future payments of all medical expenses related to the injuries set forth and described in the Complaint filed in Ohio Court of Claims Case No. 2014-00486.
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13. Plaintiff acknowledges that any decision regarding entitlement to Social Security, Medicare, or Medicaid benefits, including the amount and duration of payments and offset reimbursement for prior payments, is determined by federal law and regulations. As such, the United States Government is not

bound by any of the terms of this Settlement Agreement and Release of All Claims.

14. Plaintiff understand that the receipt of these settlement funds may affect Plaintiff's right to government benefits, insurance benefits, disability benefits, or pension benefits. Despite this possibility, Plaintiff desires to enter into this Settlement Agreement and Release of All Claims to settle his injury claim as set forth in the Complaint filed in Ohio Court of Claims Case No. 2014-00486.
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15. Plaintiff agrees that all claims, demands, rights, causes of action, costs, loss of services, expenses, and any and all other damages on account of, or in any way arising out of the actions or inactions of Defendant, its officers, employees, servants, or agents, during or arising out of the incident described in the Complaint in Ohio Court of Claims Case No. 2014-00486 be released, settled, satisfied, discharged and compensated. 468
16. All sums set forth herein constitute damages on account of personal physical injuries or physical sickness, within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.
17. In the event of a claim, action or other proceeding is brought against Defendant as a result of, arising out of, or with reference to the incident described in the Complaint filed in Ohio Court of Claims Case No. 2014-00486, including, but not limited to, any subrogation claim or any claim, action or other proceeding for contribution, damages, indemnity or reparation in whole or in part, Plaintiff will indemnify Defendant and hold Defendant harmless from any and all claims, liability, judgments, damages, losses, costs and expenses of any nature whatsoever (including attorney fees and court costs) arising out of or relating to such claim, action or other proceeding brought against Defendant. Plaintiff's obligations to indemnify and hold harmless Defendant extend to, but are not limited to, any obligation arising out of any subrogation liens, government reimbursement rights or any claims made by an insurance carrier, state or federal government agency, health care provider, or attorney(s) pursuant to alleged common law, contractual or statutory subrogation rights. Other than the payment set forth above, it is the express intent of the parties that Defendant shall be relieved from any and all obligations whatsoever to pay any amount to any person or any entity in connection with, arising out of or relating in any matter whatsoever to the incident described in the Complaint filed in Ohio Court of Claims Case No. 2014-00486.
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18. Plaintiff agrees to be bound by a journal entry dismissing with prejudice the above-described claim known as Ohio Court of Claims Case No. 2014-00486. 468
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 Attorney General, as required by Section 2743.15(A), Ohio Revised Code, 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 should 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 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 Section 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 should 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 thereby.
21. 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.

8/21/15
DATE

Bryan A. Huff
Bryan A. Huff
Plaintiff

S:

8/27/15
DATE

Kenneth S. Blumenthal
Kenneth S. Blumenthal
Rourke & Blumenthal LLP
Counsel for Plaintiff

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THE OHIO STATE UNIVERSITY



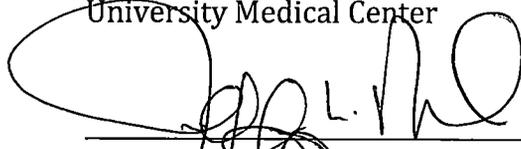
Christopher Culley
Senior Vice President and General Counsel
The Ohio State University

10.15.15
DATE



Theodore P. Mattis
Vorys, Sater, Seymour & Pease LLP
Special Counsel for Defendant The Ohio State
University Medical Center

DATE



Jeffrey L. Maloon
Principal Assistant Attorney General
Co-counsel for Defendant

10.15.15
DATE

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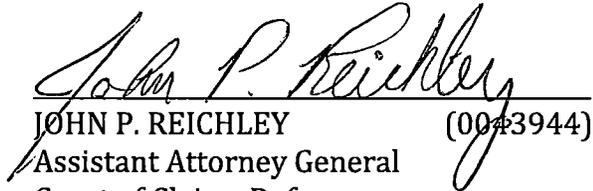
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ATTORNEY GENERAL'S APPROVAL OF SETTLEMENT

The Attorney General of Ohio, pursuant to Sections 2743.15(A) and 109.04 of the Ohio Revised Code, has reviewed the Settlement Agreement in the above-captioned action and hereby approves it this 15th day of October, 2015.

MICHAEL DeWINE
Ohio Attorney General


JOHN P. REICHLEY (00#3944)
Assistant Attorney General
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JOURNAL ENTRY APPROVING SETTLEMENT

The Court, being fully advised as to the premises, approves and confirms the settlement agreement heretofore entered into by and between the parties hereto and orders the case be dismissed with prejudice to all parties, all court costs to be paid by Defendant. No interest shall be paid on the amount of the settlement.

It is further ordered that the settlement warrant of One Million Seven Hundred Fifty Thousand and No/100 Dollars (\$1,750,000.00) shall be drawn on the account of The Ohio State University Medical Center made payable to Bryan A. Huff, and his attorneys, Rourke & Blumenthal LLP, and sent to the Plaintiff c/o Kenneth S. Blumenthal, Rourke & Blumenthal, 495 South High Street, Suite 450, Columbus, Ohio 43215.

DATE: _____

JUDGE, COURT OF CLAIMS OF OHIO

Entry cc:

Kenneth S. Blumenthal, Esquire
Rourke & Blumenthal LLP
495 South High Street
Suite 450
Columbus, Ohio 43215
Counsel for Plaintiff

Theodore P. Mattis, Esquire
Vorys, Sater, Seymour & Pease LLP
52 East Gay Street
Columbus, Ohio 43215
Outside Counsel for Defendant

and

Jeffrey L. Maloon, Esquire
Principal Assistant Attorney General
Court of Claims Defense Section
150 East Gay Street
18th Floor
Columbus, Ohio 43215-4220
Counsel for Defendant