

2015 OCT 28 PM 3:12

ORIGINAL

THE COURT OF CLAIMS OF OHIO

OHIO DEPARTMENT OF
TRANSPORTATION,

Plaintiff/Counterclaim-Defendant,

v.

Case No. 2014-00405-PR

E.J. WARD, INC.,

Defendant/Counterclaim-Plaintiff.

SETTLEMENT AGREEMENT AND RELEASE OF ALL CLAIMS

1. This agreement is made between the Ohio Department of Transportation, hereinafter the Plaintiff, and E.J. Ward, Inc., hereinafter the Defendant (the "parties").
2. The Plaintiff has asserted a claim against the Defendant in an action now pending in the Court of Claims, entitled Ohio Department of Transportation v. E.J. Ward, Inc. and identified as Ohio Court of Claims Case No. 2014-00405-PR.
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 Court of Claims Case No. 2014-00405-PR.
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 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 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. The Plaintiff understands that this agreement 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 the Defendant.

7. 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.
8. In consideration of the mutual covenants set forth herein, the parties agree as follows:
- A. The Defendant, E.J. Ward, Inc. agrees to pay the Plaintiff, Ohio Department of Transportation, the sum of One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00), according to the following terms:
1. \$500,000.00 within 30 days of the filing of the Court's Entry approving this settlement;
 2. \$250,000.00 within 60 days after the 1st payment;
 3. \$250,000.00 within 60 days of the 2nd payment; and
 4. \$250,000.00 within 60 days of the 3rd payment.
- a. Defendant shall secure future payments with an Irrevocable Letter of Credit. (See sample at Exh. A).
 - b. On complete performance of the requirements in this settlement, ODOT will agree to withdraw the termination letter of April 10, 2013 and replace it with mutual termination in writing. (See sample at Exh. B).
 - c. E.J. Ward will pick up all remaining equipment/hardware stored by ODOT in Columbus within 30 days of the filing of the Court's Entry approving this settlement.
- B. The Plaintiff and Defendant do hereby release, hold harmless from any liability, and forever discharge each other mutually, their 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 which the undersigned ever had, now has or may have, or claims to have, against each other, or their 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. 2014-00405-PR.
9. The Plaintiff agrees to be bound by a journal entry dismissing with prejudice the above described claim known as Ohio Court of Claims Case No. 2014-00405-PR.

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COURT OF CLAIMS
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10. 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.
11. 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.
12. 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.

8.19.15
DATE

Jerry Wray
Sign Name
Jerry Wray
Print Name

Ohio Department of Transportation
Plaintiff

Sworn to and subscribed in my presence by Jerry Wray this 19 day of August, 2015,
through Chief Legal Counsel

Patricia D. Mobley
NOTARY PUBLIC
PATRICIA D. MOBLEY
NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires
October 21, 2019



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OF OHIO

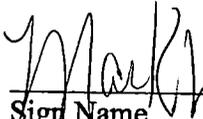
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DATE

9/13/15

DATE

William C. Becker
Assistant Attorney General
Counsel for Plaintiff



Sign Name

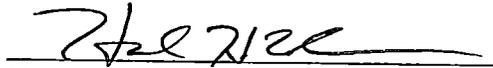
Mark Ward

Print Name

E.J. Ward, Inc.
Defendant

10/13/15

DATE



Hansel H. Rhee
Counsel for Defendant

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COURT OF CLAIMS
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10/23/15

DATE



William C. Becker
Assistant Attorney General
Counsel for Plaintiff

DATE

Sign Name

Print Name

E.J. Ward, Inc.
Defendant

DATE

Hansel H. Rhee
Counsel for Defendant

Date: _____
Irrevocable Standby Letter of Credit No: _____
Amount: \$ _____
Expiration Date: _____

Beneficiary Name
Beneficiary Address

Dear Gentleman:

We hereby establish our Irrevocable Letter of Credit in favor of _____ (“Beneficiary”) to draw on the Broadway National Bank (“Bank/Issuer”) for the account of E.J. Ward, Inc. (Applicant”) for a sum or sums not exceeding Seven Hundred Fifty Dollars and No Cents (\$750,000.00) or the Adjusted Amount, as wet out below; available by your drafts presented in the following manner at Broadway National Bank, 1177 NE Loop 410, San Antonio, Texas 78209 accompanied with the following:

1. The original of this letter of credit, including any original amendments, must be presented for payment.
2. A draft stating the amount being drawn marked on the face: “Drawn under Broadway National Bank Irrevocable Letter of Credit No. _____”.
3. The draft to be accompanied by a signed statement by a representative of Beneficiary stating the following:

“We certify that E.J. Ward, Inc. failed to perform under that certain Contract/Agreement dated _____ between _____ (Insert Beneficiary) and E.J. Ward, Inc. and the amount drawn under the Broadway National Bank Irrevocable Standby Letter of Credit No. _____ is due and payable under said Agreement/Contract.”

Draws under the terms of the Irrevocable Letter of Credit shall be unconditional in all respects. Partial draws under this Irrevocable Standby Letter of Credit are permitted. Upon such partial drawings and accompanied by the original Irrevocable Standby Letter of Credit and amendments, if any, Issuer will note the date and the amount of the partial draw on the back of the Irrevocable Standby Letter of Credit and return the original Irrevocable Standby Letter of Credit and amendments to the Beneficiary. Multiple drawings may be made hereunder, provided the drawings honored by Issuer hereunder shall not, in the aggregate exceed the Adjusted Amount. Each drawing shall automatically reduce the Adjusted Amount by an amount such drawing and such amount shall not be subject to reinstatement. **Issuer Agrees to issue 3 original Irrevocable Letters of Credit.**

The Irrevocable Standby Letter of Credit is not transferable.



Except as set out below, the Adjusted Amount shall be calculated based on the schedule below less any sums actually drawn under this Irrevocable Letter of Credit.

For the Period	Maximum Adjusted Amount
Insert Dates	\$250,000.00
Insert Dates	\$250,000.00
Insert Dates	\$250,000.00

Drafts must be presented to Bank/Issuer by Beneficiary on or before the Expiration Date. Drafts will be honored within 3 (three) business days of presentment. We hereby engage that drafts presented in accordance with this Irrevocable Standby Letter of Credit shall be unconditional and shall be duly honored regardless of acts or protests by any other persons.

This credit is subject to the 2006 Revision of the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce, ICC Publication No. 600, and to the extent not consistent with the above laws of the State of Texas. **In the event of default or disagreement, jurisdiction and venue lies in Ohio.**

Broadway National Bank

Title _____



OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

April 22, 2015

EJ Ward
Attn: Markay Ward, Vice President
8801 Tradeway
San Antonio, Texas 78217

Via email: mward@ejward.com
Via regular mail

Re: Contract: ODOT RFP #509-12
Commodity: Fuel Management System

Dear Ms. Ward:

Pursuant to a settlement between the Ohio Department of Transportation (ODOT) and the EJ Ward Company (Ward), ODOT and Ward hereby agree to a mutual termination of the above contract.

This letter creates no additional liability or damages between the parties.

Sincerely,

A handwritten signature in black ink, appearing to read "Jerry Wray", written over a horizontal line.

Jerry Wray
Director
OHIO DEPARTMENT OF TRANSPORTATION



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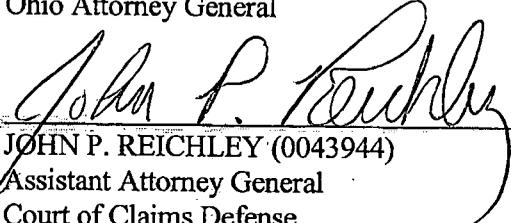
E.J. WARD, INC.,

Defendant/Counterclaim-Plaintiff.

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 22th day of October, 2015.

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

THE COURT OF CLAIMS OF OHIO

OHIO DEPARTMENT OF
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E.J. WARD, INC.,

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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 One Million Two Hundred Fifty Thousand and No/100 Dollars (\$1,250,000.00) be drawn on the account of E.J. Ward, Inc., made payable to the Plaintiff, Ohio Department of Transportation and sent to Plaintiff c/o Plaintiff's counsel William C. Becker and Richard J. Silk, Jr., Assistant Attorneys General, Court of Claims Defense Section, 150 E. Gay Street, 18th Floor, Columbus, Ohio 43215 in accordance with the following terms:

1. \$500,000.00 within 30 days of this Entry being filed;
2. \$250,000.00 within 60 days after the 1st payment;
3. \$250,000.00 within 60 days of the 2nd payment; and
4. \$250,000.00 within 60 days of the 3rd payment.

DATE: _____

JUDGE, COURT OF CLAIMS OF OHIO

Entry cc:

MICHAEL DEWINE
Ohio Attorney General

William C. Becker
Richard J. Silk, Jr.
Assistant Attorneys General
Court of Claims Defense
150 East Gay Street, 18th floor
Columbus, OH 43215
Counsel for Plaintiff

Hansel H. Rhee
John P. Gilligan
Nicole R. Woods
Ice Miller LLP
250 West Street, Suite 700
Columbus, Ohio 43215
Attorneys for Defendant