

ORIGINAL

FILED
COURT OF CLAIMS
OF OHIO

IN THE OHIO COURT OF CLAIMS

2016 JAN 13 PM 3:22

JACK DEMPSEY

Plaintiff

v.

STATE OF OHIO

Defendant

Case No. 2015-00909-WI

Judge Patrick M. McGrath
Magistrate Holly T. Shaver

SETTLEMENT AGREEMENT
AND RELEASE OF ALL CLAIMS

1. This agreement is made between Jack Dempsey, hereinafter Plaintiff, and the State of Ohio, hereinafter Defendant, who will be collectively referred to as the Parties.
2. Plaintiff has asserted a claim against Defendant in an action now pending in the Court of Claims, entitled *Dempsey v. State* and identified as Ohio Court of Claims Case No. 2015-00909-WI.
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. 2014-00989 WI.
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 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. 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 Defendant.
7. In addition to the terms and conditions set forth herein, the parties are also bound by the terms and conditions of the settlement of the action filed in the Court of Common Pleas of Cuyahoga County, Ohio styled *Jack M. Dempsey v. State*, CV13-800111, a copy of which is attached hereto and is incorporated herein.

8. In consideration of the mutual covenants set forth herein, the Parties agree as follows:
 - A. Defendant agrees to pay the Plaintiff the sum of \$337,433.98 pursuant to Ohio Revised Code Chapter 2743. 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. The sum referred to in this paragraph shall be paid as follows:
 - 1) Defendant shall pay Plaintiff's attorneys Robert T. Glickman, Susan C. Stone and Danielle G. Garson the sum of \$158,830.78 pursuant to R.C. 2743.48(E)(2)(a) and R.C. 2743.48(F)(2).
 - 2) Defendant shall pay Plaintiff the sum of \$178,603.20 pursuant to R.C. 2743.48(E)(2)(b).
 - 3) Defendant shall pay Plaintiff the sum of \$0.00 pursuant to R.C. 2743.48(E)(2)(c).
 - 4) Defendant shall pay Plaintiff the sum of \$0.00 pursuant to R.C. 2743.48(E)(2)(d).
 - B. Plaintiff does hereby release, hold harmless from any liability, and forever discharge the State of Ohio and 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 which the undersigned ever had, now has, or may have, or claim to have, against the State of Ohio or 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. 2015-00909 WI.
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. 2015-00909 WI.
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 Section 2743.15(A) and Rule 7(A) of the Rules of the Ohio Court of Claims, for the Attorney General's approval, and the 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 Section 2743.15(A) and Rules 7(A) and (B) of the Rules

of the Ohio 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.

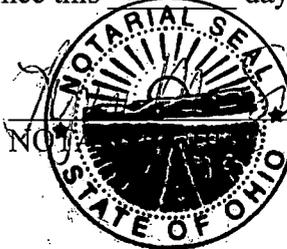
12. This Settlement Agreement may be executed in several counterparts and all such parts shall together constitute one final agreement as if signed by the Parties, and each such counterpart shall be deemed to be an original.
13. The undersigned have read this agreement and release, understand all its 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.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement and Release of All Claims on the day and date indicated below their respective signatures.

12-30-2015
DATE

[Signature]
JACK DEMPSEY
Plaintiff

Sworn to and subscribed in my presence this 30th day of December, 2015.

 **LYNN M. SINDELAR**
Notary Public, State of Ohio
My Commission Expires
July 31, 2018

Dec 30, 2015
DATE

[Signature]
ROBERT T. GLICKMAN
SUSAN C. STONE
DANIELLE G. GARSON
Counsel for Plaintiff
Tax ID No. _____

1/11/16
DATE

[Signature]
PETER E. DEMARCO
AMY S. BROWN
Assistant Attorneys General
Counsel for Defendant

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RECITALS

A. On January 25, 2013, Jack M. Dempsey ("Plaintiff") filed a Complaint against the State of Ohio ("State") in the Court of Common Pleas of Cuyahoga County, Ohio styled *Jack M. Dempsey v. State*, CV 13-800111 (the "Complaint" or "Litigation").

B. In the Complaint, Plaintiff sought declaratory relief as a result of the alleged course of events referenced in the Complaint, which Plaintiff alleges resulted in his wrongful imprisonment, injuries and other damages to him, costs, and attorneys' fees.

C. The State hereby expressly denies all allegations made against them by Plaintiff, including but not limited to any misfeasance, malfeasance or nonfeasance, all allegations of wrongful conduct (negligent or intentional), deliberate indifference, gross negligence, or any other liability as it relates to the occurrences referenced in the Complaint.

D. On July 30, 2015, Plaintiff was found wrongfully imprisoned in the Litigation as provided in R.C. 2743.48(A). The State's motion for new trial was denied on October 5, 2015.

E. On October 26, 2015, the State timely appealed to the Eighth District Court of Appeals of Cuyahoga County, Ohio styled *Jack M. Dempsey v. State*, CA 15-103669.

F. Plaintiff and the State (hereinafter the "Parties") have settled all claims in the underlying action (hereinafter "Settlement with the Plaintiff").

Accordingly, the Parties hereby desire to enter into this Settlement Agreement in order to set forth the rights and responsibilities of the Parties.

AGREEMENT

The Parties agree as follows:

1.0 Release and Discharge

1.1 In exchange for and consideration of the payments, acts, and promises set forth in Section 2 below, the Plaintiff does for himself, his principals, agents, heirs, administrators, executors, representatives, and assigns hereby completely releases, relieves, acquits and forever discharges the State from any and all past, present or future claims, liabilities, demands, obligations, actions, causes of action, rights, damages, costs, losses of services, expenses and compensation of any nature whatsoever, whether based on any provision of the Ohio Revised Code, tort, contract or other theory of recovery, which the Plaintiff now has, or which may hereafter accrue or otherwise be acquired, on account of, or may in any way grow out of, or which are the allegations contained in the Complaint and all related pleadings, including, without limitation, any and all known or unknown claims for insurance proceeds; breach of contract; real and personal property damage; loss of use; annoyance inconvenience; mental anguish or any like claim, to the Plaintiff and any future claim of the Plaintiff's representatives or heirs, economic damages, emotional damages, pain and suffering,

consequential damages, punitive damages, attorneys' fees or any other damages whether known or unknown, which have resulted or may result from the alleged acts or omissions of the State.

1.2 Plaintiff acknowledges and agrees that the release and discharge set forth above is a general release. The Plaintiff expressly waives and assumes the risk of any and all claims for damages which exist as of this date, and of which the Plaintiff does not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect the Plaintiff's decision to enter into this Settlement Agreement. The Plaintiff further agrees that he has entered into this Settlement Agreement as a complete compromise of the matters involving disputed issues of law and fact. The Plaintiff assumes the risk that the facts or law may be other than what the Plaintiff believes. It is understood and agreed to by the Plaintiff that this settlement is a compromise of a disputed claim, and the payments and agreement set forth in Section 2 below are not to be construed as an admission of liability on the part of the State by whom any and all liability is expressly denied.

1.3 This release and discharge shall also apply to the State's past, present and future officers, directors, stockholders, attorneys, agents, insurers, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

2.0 **Payments and Agreement**

In consideration of the release and discharge set forth in Section 1 above, the State, agrees to pay to the individual(s) named below (the "Payee(s)") the sums outlined in Sections 2.1, 2.2, below:

2.1 This case is being settled for the sum of Three Hundred Thirty-Seven Thousand Dollars Four Hundred Thirty-Three Dollars and 98/100 Cents (\$337,433.98) (the "Award"). From the Award, the Defendant, the State of Ohio agrees to pay to the Plaintiff, the sum of One Hundred Seventy-Eight Thousand Six Hundred Three Dollars and 20/100 Cents (\$178,603.20) pursuant to R.C. 2743.19 for wrongful imprisonment from October 1, 1996 through August 18, 2003. The Award represents statutory damages *at one-half the present statutory rate* of \$178,603.20 (for 2,512 days of incarceration), zero dollars in lost wages, and \$158,830.78 as attorney fees/expert fees and costs. From the Award, One Hundred Forty Three Thousand One Hundred Ninety-One Dollars and 78/100 Cents (\$158,830.78) will be deducted and paid out to McCarthy, Lebit, Crystal & Liffman Co., LPA (Tax ID No. 34-1095358) as full and final settlement for all attorneys' fees, expert fees, costs and Litigation expenses incurred by Plaintiff. Payment shall be made payable by drafts and shall be complete upon mailing by first-class mail.

2.2. The payment set forth in Sections 2.1 will be provided without withholdings for taxes or any other deductions. The State, will issue an IRS Form 1099-MISC to Jack M. Dempsey in relation to such payment. Jack M. Dempsey shall provide his social security number to the State along with an executed copy of this agreement and shall be solely responsible for complying with any and all income tax and/or other tax liabilities and obligations which are or may become due or payable in connection with the payments described in Sections 2.1.

3.0 Attorneys' Fees

Except for the payment set forth in Section 2.1 above, the Parties shall bear all attorneys' fees and costs arising from the actions of their own counsel, if any, in connection with the Complaint, this Settlement Agreement and the matters and documents referred to herein, the filing of an Order of Dismissal, and matters related to the Litigation. Jack M. Dempsey expressly disclaims any and all attorneys' fees, costs or expenses pertaining to this Litigation incurred by any person prior to January 25, 2013.

4.0 Delivery of Dismissals

4.1 After the Court of Claims accepts this settlement agreement, counsel for the State shall file a dismissal of the appeal, CA 15-103669 at the State's costs.

4.2 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. 2015-00909 WI.

5.0 Representation of Comprehension of Document

In entering into this Settlement Agreement, Plaintiff represents that he has relied upon the advice of his attorney, who is the attorney of his own choice, concerning the legal and income tax consequences of this Settlement Agreement; that the terms of this Settlement Agreement have been completely read and explained to the Plaintiff by his attorney; and that the terms of this Settlement Agreement are fully understood and voluntarily accepted by the Plaintiff.

6.0 Warranty of Capacity to Execute Agreement

Plaintiff represents and warrants that no other person or entity has, or has had, any interest in the claims, demands, obligations or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein; that the Plaintiff has the sole right and exclusive authority to execute this Settlement Agreement and, if applicable, receive the sums specified in it; and that the Plaintiff has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations or causes of action referred to in this Settlement Agreement.

7.0 Indemnification

Plaintiff agrees to defend, indemnify and hold harmless the State, its attorneys, insurers, representatives, executors, administrators, heirs, successors and assigns, of and from any loss, claim, liability, cost or expense by anyone claiming entitlement to the payments set forth in Section 2 of this Settlement Agreement, including claims for living expenses, personal property expenses, child support obligations, or other sums wherein a subrogation interest or lien is claimed by any party or entity, including but not limited to Medicare/Medicaid/Veteran's Service Administration, and the State of Ohio, including any amounts claimed to be due under the law, state or federal regulations or contracts. The Plaintiff further acknowledges that all obligations to satisfy any such liens are that of the Plaintiff.

8.0 Medicare

This Settlement Agreement is based upon a good faith determination of the Parties to resolve a disputed claim. The Parties have not shifted responsibility of medical treatment to Medicare in contravention of 42 U.S.C. §1395y(b). The Parties resolved this matter in compliance with both state and federal law. The Parties made every effort to adequately protect Medicare's interest and incorporate such into the settlement terms.

Plaintiff and his counsel warrant that the Plaintiff is not a Medicare beneficiary as of the date of this release. Because the Plaintiff is not a Medicare recipient as of the date of this release, no conditional payments have been made by Medicare.

9.0 Governing Law

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio.

10.0 Additional Documents

All Parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions, which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

11.0 Entire Agreement and Successors in Interest

This Settlement Agreement contains the entire agreement between the State and the Plaintiff with regard to the matters set forth in it and shall be binding upon and endure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

12.0 Effectiveness

12.1 The parties acknowledge and agree that this agreement shall not be binding on any of the parties until it is incorporated by a separate settlement agreement which will be executed by Plaintiff and the Attorney General's Office. The parties further acknowledge that the signature of the Assistant County Prosecutor 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 this agreement and release, this agreement shall be null and void and without any force or effect, and none of the parties shall be bound by it.

12.2 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.

12.3. 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.

13.0 No Admission

By entering into this Settlement Agreement, the Parties do not intend to make, nor shall they be deemed to have made, any admission of any kind. The Parties agree that they are entering into this Settlement Agreement solely for the purpose of settling certain disputes between them and to avoid the cost of further litigation with respect to these disputes. This Settlement Agreement is the product of informed negotiations and compromises of previously stated legal positions. Nothing contained in this Settlement Agreement shall be construed as an admission by any Party as to the merit or lack of merit of any particular theory relating to the payment of claims arising from or relating to the occurrences referenced in the Complaint.

14.0 Use of Agreement

The Parties agree that this Settlement Agreement and any acts in the performance of this Settlement Agreement are not intended to be, nor shall they in fact be, used in any case or other proceeding for any purpose. Provided, however, that nothing contained in this Section shall be interpreted to restrict the right of any Party: (1) to disclose the terms of the Settlement Agreement where not prohibited by Section 13 herein; or (2) to provide proof as to the fact of settlement and release provided herein if necessary to respond to a suit or claim.

15.0 Protection Afforded

This Settlement Agreement shall be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408 of the Federal Rules of Evidence and any similar state law provision.

16.0 No Precedential Value

This Settlement Agreement is without prejudice or value as precedent and shall not be used in any proceeding or hearing to create, prove, or interpret the obligations under, or terms and conditions of, any other agreement or any insurance policy. For purposes of this paragraph, "any other agreement" does not include the stipulated Order of Dismissal.

17.0 Authorship

The Parties agree that this Settlement Agreement reflects the joint drafting efforts of all Parties. In the event any dispute, disagreement or controversy arises regarding this Settlement Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship. Each Party also agrees that it is fully informed as to the meaning and intent of this Settlement Agreement and has been advised by independent counsel of his/its choosing in that regard.

18.0 Notices

Any statements, communications or notices to be provided pursuant to this Settlement Agreement shall be sent by first-class mail to the attention of counsel for the Parties identified below, until such time as notice of any change of person to be notified or change of address is forwarded to all Parties:

Plaintiff's Counsel:

Robert T. Glickman, Esq.
McCarthy, Lebit, Crystal & Liffman Co., LPA
Attorneys for Plaintiff
101 West Prospect Avenue, Suite 1800
Cleveland, Ohio 44115
(216) 669-1422

State's Counsel:

Brian R. Gutkoski, Esq.
Cuyahoga County Prosecutor's Office
1200 Ontario Street, 8th Floor
Cleveland, Ohio 44113
(216) 443-7860 / (216) 443-7602 (fax)

Peter E. DeMarco, Esq.
Ohio Attorney General's Office
Court of Claims Defense Section
150 East Gay Street, 18th Fl.
Columbus, Ohio 43215
(614) 466-7447

IN WITNESS WHEREOF, Jack M. Dempsey has executed this Settlement Agreement:

NOTICE: This Settlement Agreement may limit or eliminate rights afforded to you by law.

You should fully understand its contents before signing.

Plaintiff: Jack M. Dempsey

[Handwritten Signature]

JACK M. DEMPSEY

Date: 12-30-2015

STATE OF OHIO

:

: SS

COUNTY OF CUYAHOGA

:

I, Lynn M. Sindelar, a Notary Public in and for the aforesaid county and state, do hereby certify that Jack M. Dempsey whose name is signed to the writing above, has this day acknowledged the same before me.

Sworn to and subscribed in my presence this 30th day of December 2015.

My commission expires: _____



LYNN M. SINDELAR
Notary Public, State of Ohio
My Commission Expires
July 31, 2018

[Handwritten Signature]
Defendant: State of Ohio
TIMOTHY J. MCGINTY, Prosecuting Attorney
of Cuyahoga County, Ohio

By: *[Handwritten Signature]*
BRIAN R. GUTKOSKI (0076411)
Assistant Prosecuting Attorney
Justice Center, Courts Tower 8th floor
1200 Ontario Street
Cleveland, Ohio 44113
(216) 443-7860 | (216) 443-7602 (fax)

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JACK DEMPSEY

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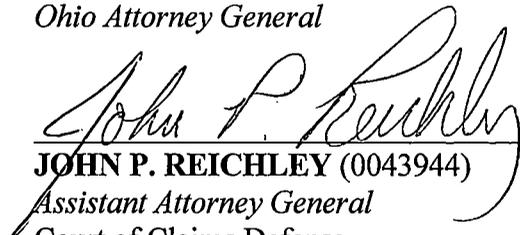
Judge Patrick M. McGrath
Magistrate Holly T. Shaver

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 13th day of January, 2016.

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



MIKE DEWINE

★ OHIO ATTORNEY GENERAL ★

Court of Claims Defense Section
Office 614-466-7447
Fax 614-644-9185

150 E. Gay Street, Floor 18
Columbus, Ohio 43215
www.OhioAttorneyGeneral.gov

MEMORANDUM

TO: Ohio Court of Claims

FROM: John P. Reichley, Section Chief *JPR*
Court of Claims Defense

RE: Jack Dempsey Settlement Agreement
Case No. 2015-00909-WI

DATE: January 13, 2016

Please note that the attached settlement agreement does not include Social Security numbers or Tax ID numbers per the Plaintiff's and his attorneys' requests. I will provide this information directly to the Office of Budget and Management when it comes time for the settlement check to be issued.

IN THE OHIO COURT OF CLAIMS

JACK DEMPSEY

Plaintiff

v.

STATE OF OHIO

Defendant

Case No. 2015-00909-WI

Judge Patrick M. McGrath
Magistrate Holly T. Shaver

JOURNAL ENTRY
APPROVING SETTLEMENT

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, which totals Three Hundred Thirty-Seven Thousand Four Hundred Thirty-Three Dollars and Ninety-Eight Cents (\$337,433.98).

It is further ORDERED that the settlement warrant of One Hundred Seventy-Eight Thousand Six Hundred Three Dollars and Twenty Cents (\$178,603.20) be drawn on the account of the State of Ohio payable to Plaintiff, Jack Dempsey, in care of his attorneys, Robert T. Glickman, Susan C. Stone and Danielle G. Garson, 101 West Prospect Avenue, Suite 1800, Cleveland, Ohio 44115.

A separate second settlement warrant of One Hundred Fifty-Eight Thousand Eight Hundred Thirty Dollars and Seventy-Eight Cents (\$158,830.78) shall be drawn on the account of the State of Ohio payable to Robert T. Glickman, Susan C. Stone and Danielle G. Garson for the payment of professional fees. Both settlement warrants shall be sent to Plaintiff's attorneys.

DATE: _____

JUDGE, COURT OF CLAIMS OF OHIO

Entry cc:

Robert T. Glickman
Susan C. Stone
Danielle G. Garson
101 West Prospect Ave., Suite 1800
Cleveland, Ohio 44115

Peter E. DeMarco
Amy S. Brown
Assistant Attorneys General
150 East Gay Street, 18th Floor
Columbus, Ohio 43215